
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

SEXUAL HARASSMENT LAWS IN INDIA WITH SPECIAL FOCUS ON MEN- Kritika Matta¹ & Dr. Smita Tyagi²**INTRODUCTION****• GENDER**

The term gender and sex are sometimes used synonymously but both terms have different meanings. Gender is developed in the process of socialization. Gender means multi-faceted socially, psychologically and culturally constructed characteristics, roles, behaviors, expressions and identities related with being a male and female, as well as associations with one another. It has an effect in the way people see and perceive themselves. Gender identification is a continuum process that can change over time; it is neither static nor binary (girl/woman, boy/man). Gender is so profoundly deep-rooted in our traditions, our activities, our opinions, and our aspirations that it seems natural to a person. Neither we are born with gender attributes nor we possess them because we belong to a particular sex. It is something we do or related to something we perform as the same is told by the society or the community where a person lives³. Society has created certain norms; behavior and it expects people to behave and act in that manner. Gender is something which one expresses by the way of speaking, dressing, walking, behaving and while interacting with others. Every person has a dual binary version of themselves: an external societal and public gender identity and an interior personal sexual identity. Post-

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³ Eckert, Penelope, McConnell Ginnet and Sally. Language and Gender. Cambridge and New York: Cambridge University Press

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natal experiences shape one's gender distinctiveness and awareness of how that individual is perceived in front of public. It arises from observing society's norms and expectations in general, as well as comparing oneself to others. Gender may not at all times match with the biological sex of a person. There may not be reconciliation between the sexual identity and gender i.e. There may be genitals of one sex in the body (male) and brain and the essence of the other (female). Gender is very personal in nature and comes naturally to oneself.

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

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

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

Gender characteristics may be different in different societies, for example

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- Wearing a dress or skirt, is considered feminine in American culture but dresses or skirts are considered masculine in many Middle Eastern, Asian, and African civilizations. A Scottish man wearing a kilt does not appear feminine in his culture.⁴
- Patriarchal system of society exists in majority of the states in India, wherein males are dominant in nature. Whereas Khasi's in Meghalaya and Nayar's in Kerala has matrilineal societies. In these tribes the husband lives with his wife 's matrilineal kin, the property devolves from the mother to daughter, the family's daughter bears the clan name her entire life, whereas the son adopts his wife's clan name after marriage.
- According to Indian Penal Code and personal laws of various religions polygamy, and polyandry is prohibited in India. In India, Muslim personal law permits polygamy on the other hand polyandry is prohibited, whereas in a few regions of Bhutan, Tibet and Nepal polyandry is practiced. The advantage of polyandry is that having a single woman married to several brothers ensures that their offspring will inherit the pasture land and flocks.
- **SEX**

The term sex means set of biological characteristics. Sex is determined by bodily and biological factors such chromosomes, gene expression, hormone levels and function, and procreative/sexual framework. There are differences in the genetic characteristics which makes up sex, in what manner the characteristics are exhibited. It is assigned at birth on the basis of exterior composition but the same can be changed too. In the case of transsexual people, a person possesses sex characteristic of one sex and gender identity of another, sex reassignment surgeries are undertaken. Primary characteristics of human male is penis, scrotum, testes and accessory glands which allows male to deliver sperm, while primary characteristics of a female is ovaries, a uterus, ovarian tubes, a vagina, fallopian tubes, cervix, and

⁴ William Little, Introduction to Sociology. *Gender, Sex and Sexuality- 2nd Canadian Edition* jointly.
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ability to procreate.⁵ Secondary characteristics of male human body include facial hair, chest hair, more body hair, a built-in pelvis, developed upper body muscles, and the ability to gain muscle mass more quickly, while less body hair, denser hair on the head, curved hips/figure, decreased upper body strength, breasts, the ability to nurture children, the ability to breastfeed, menstrual cycle, and an increase in body fat composition are secondary characteristics of a female human body. An intersexed person is said to have a mix of these characteristics.⁶

- **GENDER IDENTITY**

An individual's unique type of gender is referred to as their "gender identity," which may or may not resemble with the sex they were given at birth. It also means person's sense of their own body, that may include actively choosing to have their bodily functions or appearance altered through surgery, medicine, or other means, as well as other gender-specific expressions like dress, speech, and mannerisms. A person's gender identification is masculine if he feels himself to be a male and prefers to refer to himself in masculine terms. Nevertheless, he only has a male gender role if he acts, dresses, and/or acts in a manner that is generally male. Gender Identity is essential to one's being as it is something natural in nature. Natural impulse is connected to the natural intrinsic nature of a person. There may be different gender identities, for example a gender, cisgender, androgyne, bigender, gender queer, non-binary, omnigender, transgender, gender fluid, butch, Gender expansive, Pangender etc. Equality, Equity and neutrality are very often used interchangeably. However, each one of them signify a different meaning and cannot be used synonymously.

- **GENDER EQUITY**

⁵ Julia E. Richards, R. Scott Hawley, Sex Determination: How Genes determine a developmental choice. [The Human Genome](#).

⁶ Milton Diamond, (2000) Sex and Gender: Same or Different. *Feminism and psychology*

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The word "equity" is originated from the Latin word "acquitias," which literally signifies —levelling." Equity refers to a collection of laws which traditionally supplemented the common law. Equity denotes the quintessence or rules that emerge from the administration of justice process, particularly in cases where the areas are not sufficiently enclosed by statute. Equity provides essence of liberty and goodwill to the law. The general principles of equity include —*Aequitae est correctio legis generalities latae, qua parte deficit* means equity is a rectification of the law in those areas which are defective, He who seeks equity must do equity, Equity doesn't undergo a wrongful act to be without a solution, He who seeks equity must come with clean hands, Equity is something which ought to be done, Equity attributes an intention to fulfil responsibility.

Gender equity signifies laws of impartiality and reasonableness in the allocation of rights and duties between male and female. It recognizes that male and female have diverse wants and authority therefore these distinctions must be recognized and pointed out in a way that remedies the disparities amid the sexes. Equity refers to the equitable distribution of resources based on the needs of distinct groups of people in the education, health, and humanitarian sectors. Thus, Gender equality means the need for a gender analysis of these expectations.

- **GENDER EQUALITY**

Gender equality states that regardless of gender at birth, women and men all have alike opportunities, rights, and responsibilities. Gender equality indicates the advantages and needs. Primary considerations of men and women must be kept in account in relation to the diversity of different groupings of men and women. Gender disparity is generally highlighted to be a female problem; but in fact, it interests and engages men as well. Equality is acknowledged as a human rights concern as well as a pre requisite for and pointer of long-term, people-centered growth. Men and women are considered to be equal if they have equal share in distribution of power and influence; have parity in opportunities for pecuniary independence at workplace

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or the establishment of businesses; share equal obligation at home, in regards to children; feel totally devoid of compulsion, pressure, and gender-based violence, at workplace and at home. In *E.P. Royappa v. State of Tamil Nadu*⁷, the Supreme Court mentioned that "In many aspects and dimensions, equality is a dynamic idea that cannot be 'cribbed, cabined, and restricted' within traditional and doctrinaire limitations." Arbitrariness is the polar opposite of equality. Equality and whims and fancy are mortal rivals. Gender equality necessitates adjustments in both men and women's lives. More equal relationships will require a redefining of woman's and man's rights and obligations in all sectors of life, including the family, the workplace, and society as a whole. Gender, has an equal impact on men's lives as it does on women. Male's behavior is formed by societal principles and perceptions of masculinity, as well as expectations of men as leaders, husbands, and sons.

- **GENDER NEUTRALITY**

The term neutral means impartial or unbiased state of person or things, not being prejudiced, engaged or being aligned towards either or any of sides. The status of being neutral is not going towards any of the extremes or in strait jackets which is marking or setting up labels, neither being in support or being against on any basis. Seeing things as is, without any preferences or favours.

Gender neutrality or Gender Neutralism signifies an idea or a concept that the policies, rules, regulations, language, social institutions must avoid differentiating roles and positions according to people's sex or gender. A policy, programme, situation or a conduct must not have differential positive or negative impact on gender. Objective of gender neutrality is to eliminate gender distinction or bias and gender inequalities prevalent in the society. It basically connotes with not being associated with either men or women. It happens to be undeniable that men and women are biologically unlike, the two anatomies exist that scientifically and

⁷ AIR 1974 SC 555

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medically term an individual as male and female. But the sex must not determine the gender roles, the mind-set and expectation from an individual. The absence and detachment of the gender spectrum is referred to as gender neutrality. Its objective is to deconstruct societal gender conceptions, as well as gender boundaries and roles. Gender neutrality entails letting go of stereotypes and about a way of being than an identity. It plays a crucial role in eliminating gender bias. Gender neutrality appears to be a method in achieving parity and ending the ongoing fight between the sexes that obstructs development by allowing the rights of one sex to trump over the rights of another sex. The following analogy explains the difference between gender equality and gender neutrality

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

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

- **GENDER NEUTRAL LANGUAGE**

"Gender-neutral language" refers to the use of non-sexist, inclusive, or gender-balanced vocabulary. The aim of gender-neutral language is to eliminate the usage of terms that can be interpreted as prejudiced, discriminatory, or insulting because they imply that social gender is the norm. Gender-neutral language is inclusive and helps in the lessening of gender typecasting, advancement of social transformation, and aids in accomplishment of gender equality. Gender neutral language treats all genders equally. It ensures that no specific gender is preferred unduly over the other

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or at the cost of other. It eliminates the criteria of prejudices and biasness. No category will lead to no differentiation. Gender neutral language is in favour of all since it does not focus on any specific gender. There must be gender sensitivity in language while framing, writing, translating, or interpreting law.

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

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

Execution of gender-neutral terminology is seen to be accompanied by undesirable responses and harsh treatment for those who advocate for transformation. In Sweden third gender pronoun han was used. Hon was used for she. The Oxford English Dictionary added the word Mx. to be used instead of Mr,

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Mrs, or Ms. Mx can be prefixed to a person's name and can be used by an individual with any or no gender specific identity.

Gender neutral words help in removing the biasness as it cuts down the scope of gender stereotype. No differentiation amongst various genders and sex, it will automatically lead to a turmoil free society. The constant tiff amid man and woman will end by the usage of gender neutral language and will also lead to an easy inclusion of LGBTQ+ community in the society. Gender Fair Language will create no demarcations on the ground of gender as it will treat men and women symmetrically. —Neutralization can be attained, for instance, by substituting *policeman* with gender-unmarked forms *police officer*⁸. Words like accused, victim, appellant, respondent, criminal, perpetrator, offender, petitioner, defendant, judge, advocate, prosecutor, intern, assistant, editor, interpreter, official, receiver, professor, speaker, trainee, officer etc are gender neutral in nature.

- **GENDER STEREOTYPE FACED BY MEN**

Gender Stereotype is broad belief regarding behaviour that women and men should or should not have, or the roles that woman and man should or should not do. Gender typecasting hampers woman's and man's ability to develop personal capabilities, follow specialized jobs, and make life decisions. The harm caused to an individual by the implementation of a stereotyped belief, example rules and regulations that represent a typecast, leads in derogation of human rights in a manner which destructively influences the one's acknowledgement, exercise, or enjoyment of the rights and freedoms.⁹ Gender Stereotype is embedded in Indian societies from antiquity, irrespective of religion, caste, sex etc. It is passing from one generation to other and thus leading to a shallow and hollow society. It causes disoriented

⁸ [Sabine Sczesny](#), [Magda Formanowicz](#) and [Franziska Moser](#), (2016). Can Gender- Fair Language reduce gender stereotyping and discrimination?, *Frontiers in Psychology*, 02 February 2016

⁹ OHCHR, Gender Stereotyping as a Human Rights Violation: Commissioned Report (2013)

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perceptions. It sets or establishes specified roles for both man and woman which they're supposed to play and if they don't act according to their roles as set by the society they are disrespected, taunted and tortured. This problem is not only faced by man and woman but by third gender too.

Judicial Stereotype signifies the practise of judges ascribing specific features, characteristics, or functions to a person only because of her or his association in a specific group of people. It shows habit, tendency or mind set of judges in having prejudicial preconceptions¹⁰. Equality before the law is necessary for access to justice, for necessitates judicial impartiality and equanimity. In order to provide parity and fairness for victims and survivors, judicial stereotyping must be eliminated. Stereotypical thinking is observed in normal day to day life which affects a person's intellect and conscious. India has patriarchal society, which endows men with burdensome notions. It is the social set up, which should be blamed or needs a change as it creates feeling of animosity between man and woman. If a man doesn't fulfil the expectations set by the society, his masculinity is questioned. Stereotypes are a result of nurture than nature.

A few examples of Gender Stereotype faced by men in Indian Society are

- A man should never feel pain and if he does, he is not a man in true sense. In India it is commonly said that "*Mard ko dard nai hota*" and this patriarchal belief eulogises and patronises emotional castration of boys from an early age, teaching them to bear abuse and glorify sacrifices. A vast majority of abused males put on a fake smile, cover their scars, and suffer in silence because of this social conditioning.
- A man should not be emotional or he must not cry or be very expressive. Sentences like —Don't cry, be a man or "**Ladki ki tarah mat roo**" are often used.

¹⁰ OHCHR, Eliminating Judicial Stereotyping, equal access to justice for women in gender-based violence cases (2014)

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- A man must be physically, mentally and emotionally strong, have things in control, be dominant, must keep things to themselves and not open up as women. ***“Auroto vali baateinn”***.
- A man is supposed to win and excel. If he loses to a woman, its considered as shameful and disgraceful. It is often said ***“Ek ladki se haar gaya”***.
- A man is expected to earn more than a woman in the house, if he earns less, he is not respected in the society. Men are prime bread earner of the family and responsible for providing for family financially.
- Society does not expect men to help women in daily household chores. If at all he does so or acts as a helping hand he is generally termed as ***“Joruu ka gulaam”***.
- There lies a misconception that major responsibility of nurturing the child, upbringing and caring for the child is of a woman only and not man.
- Men must not work as house husbands, domestic help, nurse, teacher, babysitter etc. There lies a fallacy that these roles are designed for women and not men.
- A male member is the head of the house and all decision making power, control should be in his hands, if he is not able to exercise power over his close ones, he is considered as incompetent.
- Man should be competent to engage in fight, if he does not do so, it is often said ***“Hattho mei chudiya pheni hai kya”***.
- Men are thought to be tall, dark and handsome, they are expected to dress up, talk and act manly, if they don't, they aren't termed as masculine. Men who do not behave according to how they are expected to be, are termed feminine or womanly, the same seems to be criticism or insult for the man in Indian society.

WHY MEN HESITATE?

—According to Ginsberg, *A society is a collection of individuals united by certain relations or modes of behaviour which mark them off from others, who do not enter*

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*into those relations or who differ from them in behaviour*¹¹. Men are considered and expected to be strong, powerful, bread winners, responsible, masculine, macho, trustee, chivalrous, courteous, decision maker, control people and resources. If men lack any of these qualities he is taunted and looked down upon not just by fellow men but also women, basically the whole society. Men, like women, face sexual violence, domestic violence, stalking, cruelty etc. Men are dealing with tremendous pressure and stress to be men.

These are the numerous reasons as to why men are reluctant in reporting cases of sexual violence and domestic violence against them.

- Men may feel shameful and dishonoured: Despite the fact that sexual violence and domestic violence is never the victim's fault, victims often feel as if something is wrong with them as a result of their ordeal. Reporting of such cases would make them look weak and more vulnerable. It creates a question on their masculinity.
- Men may feel powerless: If a man is incapable to fight out the perpetrator, especially when it's a woman, it makes him look feminine and incapable to protect oneself. It is often thought that if he is not able protect himself how will he protect his family. Men are supposed to be robust and powerful and if they are not able to fight back, he is considered as weak. He may feel ashamed of being beaten up by woman or harassed by woman.
- Men may feel fear: Fear of not being believed, worry of retaliation, fear of how others will react and treat you, fear of how the police will react, fear of being shunned, fear of being judged and fear of being mocked are very common amongst men.
- Men may feel embarrassed: A man may have to go through a lot of humiliation and disgrace as society would mock such victims. They go through depression, anxiety, suicidal thoughts.

¹¹ Mishra, Dr. Dilip, Man and Society, [https://ddceutkal.ac.in/Syllabus/MSW/PAPER- 2.pdf](https://ddceutkal.ac.in/Syllabus/MSW/PAPER-2.pdf), accessed on April 2024

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- Men may feel that they will not be believed: Sexual predators and cruel people do not have any specific gender. Individual of any gender is capable of committing such crimes. Since society presupposes men to be protectors and guardians, a statement by a man that I was harassed by a man or a woman is never digested by the society. It is considered to be an unreal situation which cannot happen.
- Men may feel the fear of social stigmatization: Society has set certain rules not just for women but men too. Men who are suspected of committing domestic violence get marginalised by the society as laws and societal mind set favours women in such situations. People presume things, make judgements and fail to understand that there lies a difference between accusation and conviction. In cases of divorce, men feel fear of counter fake criminal proceedings, fear of losing the custody of child and loss of reputation thus causing mental harassment.
- Men may feel that they will be perceived as gay: There lies a fear of being harassed again as he becomes more vulnerable. He may also become talk of the town and a laughing stock for the co-workers and people around him. Being called as a homosexual is another stigma faced by the victims.
- Men may live in denial: Like women, men also deal with family and societal pressure to live with the abusive spouse. They may live in denial may not be ready to accept that they are abused or live in hope or belief that things would become better gradually.
- No protection is given to men from such heinous offences as it is believed that sexual violence is not committed against men in India. It believed to be an imaginary situation by legislature, judiciary and the society. Thus because of no laws men are unable to file a police complaint or seek justice in the court of law.

- **GENDER NEUTRAL LAWS IN INDIA**

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Gender Neutral laws creates a level playing field for men, women and trans genders. It does not lead to favours or inclination towards a specific gender. Gender neutral laws guarantee parity of rights for each individual , irrespective of gender, such as equal protection under the law and equal opportunities¹². Various gender neutral laws are-

[The University Grants Commission \(Prevention, Prohibition, and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions\) Regulations, 2015](#) ,Protection of Children from Sexual Offences (POCSO) Act, 2012, Juvenile Justice (Care and Protection of Children) Act, 2015, Probation of Offenders Act, 1958, The Information Technology Act, 2000, [Protection from Sexual Exploitation and Abuse \(PSEA\) etc.](#)

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

University Grant Commission has notified India’s foremost gender neutral regulation on sexual harassment. —On May 2, 2016 the [Ministry of Human Resource Development \(University Grant Commission\)](#) issued [The University Grants Commission \(Prevention, Prohibition, and Redressal of Sexual Harassment of Women Employees and Students in Higher Educational Institutions\) Regulations, 2015](#). It was drafted with the goal of prohibiting and preventing sexual harassment in educational institutions by both men and women. Sexual Harassment is defined under section 2(k) of the above mentioned regulation, while Regulation 3(d) of the same regulation lays down that Higher Educational Institutions must act speedily in the aftermath of any sexual harassment against staff and students of all sexes.

¹² Priya Nandan. (2022). Gender Neutral Laws in India,*International Journal of Law Management & Humanities*, Volume 5 (Issue 1)

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

RECOGNITION OF SAME SEX SEXUAL HARASSMENT

In —*Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College and Ors*¹³.the question before Calcutta High Court was whether —the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013 applies where the aggrieved and respondent are of the same gender.

Petitioners, laid down that the complaint was invalid and claimed that, in light of *Vishaka & Ors. vs. State of Rajasthan & Ors.*¹⁴, the question of 'gender equality' takes precedence in determining whether a complaint falls within the 2013 Act's peripheral. The topic of gender equality does not emerge in this instance because the victim and respondent are of the alike gender.

Respondents, laid down that —the University Grants Commission (Prevention, Prohibition, and Redressal of Sexual Harassment of Women Employees and

¹³ 2021(1) SCT 431 (Calcutta)

¹⁴ 1997(7) JT 384

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Students in Higher Educational Institutions) Regulations, 2015¹, claiming that it covers a comprehensive range, allowing for action against persons of the same gender in cases of sexual harassment. —They further stated that this, when combined with the meaning of "respondent" in Section 2 (m) of the 2013 Act, which refers to "a person" as a respondent, shows that same-gender accusations are considered under the 2013 Act.

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

- **Protection of Children from Sexual Offences (POCSO) Act, 2012**

This was passed with an aim of curbing child sexual abuse. State has powers under Article 15 (3) of Constitution of India to draft distinctive laws for children. Before enactment of POCSO, a person had to be 16 years old to accord to sexual contact (under the IPC). Section 354, 376 of Indian Penal Code were applicable but the same failed to include young male victims. The Prevention of Immoral Traffic Act of 1956 concentrated on organised prostitution rackets and only dealt with Child Sexual Abuse in isolated situations. The National Plan of Action, 2005 made for children included numerous sections to protect children from human trafficking,

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sexual abuse, and pornography. The State is required by the National Policy for Children of 2013 to safeguard every child from different sorts of abuse, sexual exploitation, sale or trafficking, and pornography.¹⁵

POCSO Act, 2012, augmented the consent age to 18 years and expanded sexual actions beyond penile-vaginal penetration. As a result, getting involved in vulgar acts with a child or girl under the age of 18 is illegal, even if the boy or girl consents¹⁶. The acts seek to ensure right to privacy and confidentiality all the stages of judicial proceeding. It envisages to function in a way that is in the paramount concern and wellbeing of the child.

Sexual Exploitation of the children is a heinous and a serious offence which must be curbed. This benevolent act is **gender neutral** in nature. Section 2 (d) of POCSO Act. Child victim can be of any gender. It is not a gender specific legislation. Hence, both man and woman can be prosecuted for offences under the Act, for crimes against boys and girls. In *Alakh Alok Srivastava v. Union of India*¹⁷, Delhi High Court laid down that that POCSO Act is gender neutral. Therefore, it makes no distinction or discrimination between male and female victims of sexual offences. Under the POCSO Act, the legal precedent that has been established in relation to the testimony of girl victims as witnesses would also be applicable to boy victims. In *Jabbar v. State*¹⁸, Delhi High Court held that POCSO is applicable to minors of either gender. The Bench after reviewing all important clauses concluded that under POCSO Act victim's age or gender cannot be used as a defence to excuse culpability.

Young age, physical infirmities, lack of life and societal experience make children more vulnerable and easy victims. Sexual abuse is committed not just against girls but minor boys too. Young boys spend their lifetime in silence because of humiliation and ignominy associated with sexual abuse. Boys are frequently

¹⁵ Dr. Jyothi Vishwanath. (2016). Legal Framework concerning child sexual abuse in India- A Critical Assessment, *Journal on Rights of the Child*, Volume 1:1 (2016)

¹⁶ [Mrinal Satish](#), Gender and Nation: In defence of the victim, *The Indian Express*, April 26, 2022

¹⁷ 2018 SCC 478

¹⁸ CrI. A. No. 1444 of 2013, Decided On, 30 May 2018

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physically violated and are assaulted by gangs. Patriarchy attaches chivalry to protecting females rather than boys, people are indifferent towards male child sexual assault than of female child sexual abuse.¹⁹ In spite of POCSO Act, 2012 being gender neutral, a lot many times the cases against male child sexual abuse go unreported and ignored.

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

- Orogenital exploitation is widespread; as a result, there happens to be no forensic evidence because salivary specimens of sperm aren't accessible at the time of recording. As noncontact abuse is uncommon in boys, the exploitation is more severe²⁰.
- Girl child sexual abuse are exposed inadvertently because of pregnancy, and family abuse is terminated by marriage, while the revelation degree amongst boys appears to be lesser and accidental revelation appears to be rarer, causing abuse for years.²¹
- Unlike females, who are frequently violated in a heterosexual environment, males are more frequently assaulted by men, causing confusion about the victims' sexual orientation, numerous doubt whether or not they are homosexuals.
- Patriarchy stigmatises homosexuals as less than men, further postponing revelation. Homophobia can lead to over sexualized conduct in male survivors, and boys are more likely than girls to blame themselves for failing to halt the abuse.

Kathua and Unnao Rape incident created an uproar in the society. —Criminal Law Amendment Act, 2018| made several changes in the law. Several amendments were made in —Indian Penal Code, 1860, Code of Criminal Procedure,1973, Indian Evidence Act, 1872 and Protection of Children from Sexual Offences (POCSO) Act, 2012.|| Different

¹⁹ Dressler J. (1955). When heterosexual men kill homosexual men: Reflections on provocation law, sexual advances and the reasonable man standard. *Journal of Criminal Law Psychology, Volume 85*(Issue 3), pg 726–63

²⁰ Gartner RB. (1999). Sexual victimization of boys by men: Meanings and consequences. *Journal of Gay Lesbian Psychotherapy*.

²¹ Kanugodu [Vyjayanthi, Srinivasa Subramanian](#), Reddy Praveen, Chandra [Girish](#), Rao [Chandrika](#) and Sathyanarayana Rao, T.S. (2017).

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provisions and punishments have been introduced in Indian Penal Code according to the age of female victim. Inserted sections are gender specific in nature. However, no such differentiation on the basis of age has been done for the young male victim in POCSO. In an instance of rape of girl child under 12 years, a provision of Death Penalty was introduced, whereas there is no such provision in POCSO. Such biasness in the law violates Article 14 of Constitution of India and lays an impression that rape or abuse of a male child is less heinous or serious in nature.

Section	Age Limit	Punishment
376(3) ²²	Under 16 years of age	—Imprisonment not be less than twenty years, but which may extend to imprisonment for lifel.
376 AB	—Under 12 years of age ^{ll}	—Imprisonment not be less than twenty years, but which may extend to imprisonment for life, and with fine or with death ^{ll} .
376 DA	Gang Rape under 16 years of age	Imprisonment for life
376 DB	Gang Rape under 12 years of age	Imprisonment for life and with fine, or with death

STATISTICS

According to the *Kailash Satyarthi Children's Foundation study* there has been an increase in the number of male children who have been sexually assaulted. The number of male victims increased by 25% in 2018. (from 183 male child victims in 2017 to 229 in 2018). In 2019, this climbed by a further 17%. that is to say (from 229 male child victims in 2018 to 268 in 2019). —As per the Kailash Satyarthi Children's Foundation study on Awareness and Perceptions about Child Sexual

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Abuse among Young Adults in India, 25% of males in India have experienced sexual abuse as children. As a result, roughly 5.8 million male children are sexually molested each year. Despite this, the number of cases reported is minimal, indicating a significant difference. The top reasons for not reporting sexual crimes against male youngsters were humiliation, embarrassment and shame resulting from social stigma.²²

- **Juvenile Justice (Care and Protection of Children) Act, 2015**

—*There can be no keener revelation of a society's soul than the way in which it treats its children- Nelson Mandela*

The Juvenile Justice Act, 2015 (herein after JJ Act) was passed by parliament and got assent on 13th December, 2013. It was enforced on 15th January, 2016.²³ It repealed Juvenile Justice (Care and Protection of Children) Act, 2000. The purpose is to punish the children for their wrongdoings, but to care for and protect the child or juvenile through institutionalisation and rehabilitation, in order to shield them from future social evils and criminal tendencies.

JJ Act, 2015 uses gender neutral terminologies thereby making it a gender neutral act. It does not differentiate between a male and a female child and keeps both on the same pedestal. Children in need of care and protection and children in conflict with law, whether male or female are treated equally. There happens to be no discrimination on the basis of gender. The definition clause uses gender neutral terms like abandoned child, best interest of child, child in need of care and protection, child in conflict with law, child friendly, child legally free for adoption, child welfare officer, children's court, child care institutions, child line services,

²² Status of POCSO Cases in India, Kailash Satyarthi Children's Foundation, March 2021

²³ Kumari Ved. (2016). The Juvenile Justice Act, 2015- Critical Understanding, *Journal of the Indian Law Institute*, [Volume 58, No. 1 \(January - March 2016\)](#), pp. 83-103

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orphan etc. Section 2(12) of JJ Act²⁴ defines child and Section 2 (35) of JJ Act²⁵ defines juvenile. Usage of gender neutral term leads to an acknowledgement that petty, serious and heinous offences can be committed by both young boys and girls. It is not just males who fall under the classification of offender. The Act acknowledges that in distress and adversary situations both male and female children need care and protection. This Act is gender neutral in respect of both perpetrator and victim. It does not attach any gender specifications and perceives a fact that crime is a crime whether done by a male child or a female.

Children, irrespective of gender have particular vulnerabilities owing to definite requirements and demands at various phases of development until they reach maturity. They are future of the country, while dealing with children of any gender, their age, background, physical and mental conditions must be taken in account. To prevent crime by and against children we need to discover constructive solutions to children's engagement in illegal activities and involve them in the rehabilitation process rather than treating them as troublemakers or problem children who need to be punished. The Juvenile Justice Act, 2015 recognizes and respects human and child rights inclusive of all genders by adopting restorative justice process.

- **Probation of Offenders Act, 1958**

—*Hate crime, not the criminal -Mahatma Gandhil*

Probation of Offenders Act, 1958 is a criminal law applicable throughout the country containing relating to probation of good conduct and admonition. The first and foremost section dealing with this subject was Section 562 of —*the Code of Criminal Procedure,1898*l. Subsequent to 1973 amendment, [Section 360 of the Code of Criminal Procedure](#) deals with probabtion. The principal goal of the Act is to reform first-time or amateur offenders and reintegrate them back

²⁴ Defines child as a person who has not completed eighteen years of age

²⁵ Defines juvenile as a child below the age of eighteen years

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into society²⁶. The sections under the Probation of Offenders Act don't apply only to minors, but also to adults irrespective of gender. The sections of Probation of Offenders Act, 1958 aren't applicable solely to offences under the Indian Penal Code; they also apply to offences under other specific legislation. It provides for gender neutral terms such as

—Person^l and —Offender^l. It acknowledges a fact that criminal offences are committed regardless of gender and age. Men and women commit crime for the same reasons, both have capacity to demonstrate criminal tendencies. It is not just men, who commit criminal offences.

- **The Information Technology Act, 2000**

—*Technological progress is like an axe in the hands of a pathological criminal- Sir Albert Einstein*

There has been a revolutionary growth an advancement in information technology sector. People have become highly reliant on internet, even for their basic day to day needs. Internet is used in almost all aspects and fields of life. Everything is one click away and world has made world a global village. With the steep increase in the use of cyber space, cyber-crimes have also increased. This act was framed with a goal to curb cyber-crimes and to give legal acknowledgment for dealings carried out by way of electronic commerce. Cybercrimes means²⁸crimes done by the means of internet communication. Some commonly committed crimes in India are: Cyber bullying, Cyber stalking, hacking, Cyber pornography, Cyber morphing, Cyber terrorism, Email Spoofing and Impersonation, Email Spoofing, Impersonation, Virus/worm attacks, Credit Card Frauds, Forgery, Phishing, violation of privacy, tampering with computer resource documents etc.

²⁶ (1972) 2 SCC 633

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Information Technology Act, 2000 is not a gender specific law. Cybercrimes are committed by and against both genders. It uses gender neutral terms like Person and

—Whoever. The act is cognizant of a fact that even women commit cybercrimes and the same can happen with men too. It seems to be very convenient to defraud, bully, troll, harass, disrepute, stalk, misrepresent someone behind computer screens. A few of the social psychological reasons for cyber attacks include extreme narcissism, rage, revenge, anger, retaliation, envy, obsession and mental illness. Gender has no role to play in cybercrimes. Every individual fears, his or her image and family honour being tarnished. No person would want to be subjected to defamation or be humiliated virtually in front of lakhs and millions of people. Cyber bullying, and harassment cause significant consequence on an individual. It shakes the person's confidence and haunts them their entire lifetime. Obtaining sensitive and personal information by defrauding, changing voice or by impersonating can be done by any individual. Cyber Stalking is a crime wherein stalkers use internet or another technical gadget to track someone. Indian Penal Code, 1860, mentions, stalking as an offence under section 354D. It is a gender biased legislation. The law makers have presumed that only a man stalks a woman. This offence infringes victim's privacy and confidentiality. Every human being has dignity, modesty and honour irrespective of his or her gender. Information Technology Act, 2000 is a gender neutral act and acknowledges that men and trans genders are also subjected to cybercrimes.

- **Protection from Sexual Exploitation and Abuse (PSEA)**

“United Nations Children's Fund (UNICEF) is a United Nations (UN) distinctive programme devoted to supporting national initiatives to improve children's well-being, nourishment, education, and over-all welfare. UNICEF started working in India in 1949. Its [Protection from Sexual Exploitation and Abuse \(PSEA\) policy lays down that Sexual exploitation and abuse \(SEA\) and sexual harassment \(SH\) are](#)

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both violations of basic intrinsic rights. It is gender neutral policy which protects both men and women from sexual violence. The strategy, policy and values postulate that children, women, men, and communities must be treated with care, sensitivity, self-esteem and respect, as well as receive aid without fear of exploitation or abuse.²⁷ Accountability, Prevention, and Gender Equality are all used to create a zero-tolerance culture.

World Health Organisation is United Nation's specialised agency, which is committed in eliminating sexual exploitation and abuse in workplaces and operations. Sexual exploitation and abuse are against internationally recognised legal norms and standards. Such behaviours are considered significant misconduct by the WHO, and may be grounds for disciplinary action, including summary dismissal and criminal prosecution. World Health Organization defined Sexual Violence as "any sexual conduct, attempt to obtain a sexual act, unwelcoming sexual remarks/ advances and acts to traffic, or otherwise directed against a person's sexuality, by any person irrespective of connection to the victim in any setting, including but not limited to home and work, using coercion, threats of harm, or corporeal force, by any person irrespective of relationship to the victim in any situation, including but not restricted to home and work." The definition uses gender neutral term ie person thereby laying down that sexual offences can be committed by any person against any person.

- **CONCLUSION**

A country cannot function without a smooth society. Legislation is a reaction to a social and collective outcry. Men and women form foundation of a concrete family and thus a society. Equality, appears to have lost its significance to our lawmakers, society, activists and judiciary. Unquestionably, the legislature or the judiciary does not propose to discriminate against a victim of sexual offence because he is male, but

²⁷ Viola Rodrigues. (2020). *Cyber Stalking Issues of Enforcement in Cyber Space, International Journal of Law Management & Humanities, Volume 3*(Issue 2), pg 568

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unfortunately, there is no acknowledgement of men and trans gender as a victim of domestic violence, rape, sexual harassment, stalking etc. Both crime and our laws should be gender- neutral. The same motivations drive criminal behaviour in both men and women. Anyone who violates the law must be made liable to the consequences outlined in the Code, and the law should not make any distinctions between different types of offenders on basis of gender." All citizens possess self-esteem, respect and to provide a dignified environment have the [should be a "legislative necessity"](#)²⁸. When the law recognises persons of all genders, it must likewise lay down for the deterrence and safeguard from sexual assault, for everyone who falls within that spectrum. The Bench failed to see that by refusing to remark on making Indian Penal Code gender neutral in nature, it was defying values given in the NALSA decision. Making law for sexually violent offences (particularly rape, sexual harassment, and sexual assault) leads to addressing of transgender community's requirements. To make the world a safer place for everyone, we must equally protect our sons and daughters. The patriarchy's predominance may be to blame for the low rates of reporting and seeking aid in India. The reality is that guys who are expected to be superior due to their nature overlook oppression of victims, regardless of gender and there lies uncalled beliefs on them to ignore negative aspects of violence and to disregard such instances. It's time for society and our lawmakers to recognise that sexual crimes and abuse know no boundaries and are genderless. The severity of female sexual abuse and assault is not diminished in any way by this. It's merely raising attention to the fact that there shouldn't be any bias when delivering justice to those who seek the same.

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

²⁸ <https://www.firstpost.com/india/sc-dismisses-plea-to-make-sexual-assault-gender-neutral- move-reflects-courts-reluctance-to-view-rape-cases-as-victim-centric-4337983.html>,

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



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