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Gender Stereotype and its Impact on Judiciary

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ABSTRACT:

Gender stereotypes, pervasive and deeply ingrained in societal constructs, continue to exert a significant influence on various aspects of human life, including the judiciary. This abstract explores the impact of gender stereotypes on legal systems, focusing on their implications for judicial decision-making and outcomes. Drawing on case studies and legal precedents, it examines how stereotypes shape perceptions, behaviours, and legal interpretations within the courtroom. The abstract underscores the importance of recognizing and challenging gender biases in legal discourse to uphold principles of equality and fairness. By advocating for gender-inclusive practices and language in judicial proceedings, this abstract seeks to promote a more just and equitable legal system.

INTRODUCTION:

Gender stereotypes have long permeated societies, shaping perceptions and influencing behaviours. These stereotypes, rooted in societal constructs, often impose rigid expectations on individuals based on their gender, limiting their freedom and opportunities. In recent years, there has been a growing recognition of the detrimental impact of these stereotypes, particularly within the realm of judiciary and legal systems. At its core, gender refers to the socially constructed roles, behaviours, and attributes that a particular society considers appropriate for individuals based on their perceived biological sex.¹ However, gender identity transcends simplistic binary categorizations, encompassing a diverse spectrum of identities beyond the traditional male and female dichotomy. The recognition of non-binary genders underscores the need for inclusivity and diversity in societal discourse. Gender stereotypes, on the other hand, are ingrained assumptions or preconceived notions about the characteristics, behaviours, and roles associated with specific genders. These stereotypes often perpetuate harmful biases and discriminatory practices, relegating individuals to narrow and restrictive roles based solely on their gender. In the context of the judiciary, gender stereotypes can manifest in various ways, from influencing legal decisions to shaping courtroom dynamics. Despite the legal principle of

¹ Who, https://www.who.int/westernpacific/health-topics/gender-equity-and-human-rights#tab=tab_1, (last visited Feb. 01, 2024).

impartiality, stereotypes can subtly influence judges' perceptions and decisions, leading to systemic biases and injustices. This essay will delve into the impact of gender stereotypes on the judiciary, examining case studies and legal precedents that highlight the pervasive influence of stereotypes on legal outcomes. By exploring the ways in which gender biases manifest within the legal system, we can better understand the challenges posed by stereotypes and advocate for gender-inclusive practices in legal discourse and decision-making.

What are genders?:

The gender identified at birth can be different from the one an individual identifies themselves as, it can differ from their biological sex². A gender identity is the very expression of one's conscience³. Gender identity goes beyond the societal construct, it inclines towards the whole spectrum rather than being confined to just male or female⁴. For example, one whose biological sex was identified as male can later on be transformed to female through gender reassignment surgery or they can simply identify themselves as female.

The term nonbinary is used for people with different gender identities than just being confined to male and female⁵. Therefore, it has become an important factor to use epicenity so as to make no distinctions. The word "they, there" has been used as a singular pronoun since the 13th century. Such pronoun was found in Shakespeare, Austin, etc. The term man was used to represent humans. For example, "all men are created equal before law" "As the days go specific generic terms were used such as "he or she", which led to specific implications of gender⁶. For example, in 1881, Belva Lockwood was a practicing lawyer in the District of Columbia. She was denied from the Maryland bar because of the pronouns he and him while addressing lawyers⁷. Lockwood was a woman, therefore Belva in her article requested to get rid of masculine pronouns unless such construction can be absurd or unreasonable and the court acknowledged and found it absurd and unreasonable to use, he or him to a woman⁸.

² Rai D, "Gender Neutral Laws in India, iPleaders, (Feb. 01, 2024, 4:19 PM), <https://blog.iplayers.in/what-are-the-laws-on-gender-neutrality-in-india/>

³ *Id.* 1360.

⁴ Rachit Garg, *supra* note 1, at 1360.

⁵ *Id.* at 1360.

⁶ Oed, <https://www.oed.com/discover/a-brief-history-of-singular-they/?tl=tr>, (last visited Feb. 01, 2024).

⁷ Mrs. Belva, Lockwood Denied Bar Entry in Maryland Due to Ambiguous Use of the Pronoun 'He'" *Newspapers.com*, (Feb. 01, 2024, 4:19 PM), <https://www.newspapers.com/article/detroit-free-press-mrs-belva-lockwood-d/114144669/>

⁸ *Id.* at 1361.

What is a gender stereotype?:

A set of ideas or preconceived notions about something or someone that are mostly wrong because of a lack of knowledge can be a stereotype. assumptions or beliefs that certain characters hold certain traits or are supposed to behave in certain ways also are stereotypes.

people can be stereotyped on the basis of two most common grounds.

- 1- inherent characteristic
- 2- gender roles

Inherent characteristic:

The expectations of the specific gender to profess or practice certain traits as per their gender. characteristics traits can be generalized based on appearance, emotional capability, and rationality. For example, expecting a woman to be more compassionate and kinder than a male to be more masculine. kindness and compassion are an emotion and are very essential for humanitarian grounds, such an emotion should be practiced by every human. where in fact femineity and masculinity are a choice.

Gender roles:

The presumption is that certain gender can only be productive for certain jobs. the societal assumption of gender-specific roles such as women to be best suited for domestic jobs and men for professional jobs is pure stigma⁹. for example, the presumption that nursing is a profession most suited for women, but men are increasingly pursuing it as well.

Impact of stereotype:

A human brain is structured to minimize complex structures therefore, generalizing makes it easier for anything to make sense¹⁰. people can be subjected to generalizations based on someone's nationality, religion, sexuality, physical appearance, etc. Therefore, the stereotype is deeply rooted and often done subconsciously, this subconscious behaviour can be extended in our thoughts and actions which can later influence our judgment. such judgement can bring

⁹ sci.gov, https://main.sci.gov.in/pdf/LU/04092023_070741.pdf, (last visited Feb. 01, 2024).

¹⁰ Zhang, Baoshan et al. "Editorial: The psychological process of stereotyping: Content, forming, internalizing, mechanisms, effects, and interventions." *Frontiers in psychology* vol. 13 1117901. 5 Jan. 2023, doi:10.3389/fpsyg.2022.1117901

resistance to changes in an evolving society and resistance to changes can be an oppression to growth.

The Impact of Gender Stereotypes on the Judiciary:

Stereotypes can influence the legal system into impartiality. law practitioners can sometimes be blind to the purview of law which can completely distort its application. a legal outcome with reasoning can be achieved but generic terms can undermine the reasoning achieved. Stereotypes can subvert the very doctrine of the rule of law¹¹. Words play an important role in communication. the language used, and the sentence made can all reflect individuals' values and thoughts. a language is not just a mean of communication but also reflects the picture of society and people¹². hence, the legal system is the one that corrects and as well shapes society.

Bench bias in judicial decision making.

Discrimination against woman

A Judgement on the age of majority of a woman was passed, where Parents of a twenty-four-year-old woman initiated habeas corpus to produce their daughter for marrying against their parent's wishes. The petition was allowed, and the high court of Kerala ruled in favour of the parents. Stated that even though she was twenty-four years old, she was considered weak vulnerable, and open to exploitation¹³. The jurisdiction of "Parens Patriae" was considered for the welfare of the girl, and the decision of marriage was also to be considered with the involvement of her parents. However Supreme Court revised the decision in the case of **Shafin Jahan vs Ashokan KM**. The age such as 24 to be considered as weak and vulnerable for a woman was unbiased as per gender and the fact that the high court's neglect of the age, of the woman as majority was discriminative, the age of majority as per the constitution gives any person the capability of the right to take their own decisions¹⁴. Furthermore, the "Parens Patriae's" authority was limited to those who were reliant on guardians and unable to exercise

¹¹ sci.gov, *supra* note 8, at 1362.

¹² Reuters, <https://www.reuters.com/world/india/indias-top-court-lists-gender-stereotypes-be-avoided-documents-2023-08-18>, (last visited Feb. 01, 2024).

¹³ Shafin Jahan vs Asokan K.M. on 8 March 2018

¹⁴ Shafin, *supra* note 12, at 1363.

their own free will, such as minors or mentally ill individuals, the jurisdiction does not go beyond this even if it seeks to establish marital relations.

Gender role stereotypes in the workplace:

In the case **Air India vs Nargesh Meerza**, the judgement was passed regarding, the striking of certain employee regulations which were unreasonable and merely a restriction over women. These regulations were regarding the termination of their service as air hostesses.

The conditions were:

- reaching the age of 35.
- if they consummated marriage in under four years of service.
- or if upon experiencing first pregnancy¹⁵.

Although the court found the regulations to be violative of Article 14. the provision for termination of a job contract after four years of marriage was considered valid for the sake of family planning and health care¹⁶. this raises the question regarding the limitations of job opportunities implied on a woman on the basis of her marital and motherhood status.

Discrimination based on character and stigmatization:

Indian courts have expressed its stereotype on several occasions especially when the question of the character of a woman is raised. The stigma is that if a woman does not behave in a traditional way, then such a woman would have consented to sexual relationships. A recent judgment by the Karnataka high court held the character of the woman in question regarding her falling asleep after being ravished, called it “unbecoming of an Indian woman”¹⁷. Such prejudiced assumptions have led the court to the conclusion that an individual had consented to sexual relationships. However, the court fails to see beyond its prejudgement as to the scope of consent. The choice such as a sexual relationship can be given merely based on

¹⁵ LawBhoomi, <https://lawbhoomi.com/air-india-v-nargeshmeerza/#:~:text=The%20case%20of%20Air%20India,of%20the%20Constitution%20of%20India,> (last visited Feb. 01, 2024).

¹⁶ Nargesh Meerza & Ors, 1981 AIR 1829, 1982 SCR (1) 438, AIR 1981 SUPREME COURT 1829

¹⁷ Kumar V and India TO, timesofindia, (Feb. 01, 2024, 4:19 PM),

<https://timesofindia.indiatimes.com/city/bengaluru/falling-asleep-on-being-ravished-is-unbecoming-karnataka-high-court/articleshow/76615900.cms>

communication. Any person who has voiced their need shall then be considered to have established their consent. Assumptions regarding a woman's dress which are apart from traditional clothing, the actions and statements asserted during the judicial proceeding diminish the value of a woman's consent for a sexual relationship. Nothing should justify a person's inappropriate sexual behaviour, and a woman's clothing and behaviour do not justify any kind of sexual harassment.

The Supreme Court ruled regarding the term 'loose character of a woman' in the case of:

State of Punjab vs Gurmit Singh:

where the observation was made regarding, materials of record to show the case that the victim was habituated to sexual intercourse leading to the conclusion of a loose character, however, such inference is not permissible. Even if a prosecutrix is debauched in her sexual relationships earlier cannot merely conclude her to have consented to sexual relationships in the future¹⁸. Any person has the right to submit or not to any kind of sexual relationship and the character alone of anyone is not sufficient to justify the consent of the victim to the submission for sexual relationships. such stigmatization cast against the victim changes the prospects of the person on trial.

Judgment compromising on dignity:

The rape victims or the acid attacked victims were usually asked if they accept the plea of marriage offered by the accused so that the dignity of the woman can be restored in the society. The concern regarding a woman's purity before marriage and her acceptance by any other man other than the accused turned a blind eye to the crime being utterly odious.

Indian courts using "plea of marriage":

- the Delhi High Court reduced the sentence of the accused on the pretext of allowing the plea of marriage promised by the accused to the victim in the case of **Rahul vs the state of NCT Delhi**¹⁹.

¹⁸ In State of Punjab v. Gurmit Singh, the Supreme Court (1996 (2) SCC 384)

¹⁹ Rahul Kumar vs State Of Nct Of Delhi, AIR ONLINE 2020 DEL 1136

- Even in the case of **Dalbir Singh vs the state of Punjab**, the charges of rape were quashed merely because one of the accused married the victim²⁰.
- the probability of conviction was decided to be less due to the party's decision on compromise and marriage, the case against the rape offender was quashed by the Guwahati high court in the case of **MD Jahirul Maulana vs the state of Assam**²¹.

As per section 320 of the criminal procedure code, compounding or compromise in cases were established for easy justice, the superior court often settled cases through compromise or acquittal. Especially for the cases when the accused was allowed to plead for a “plea of marriage”, such allowance was a pure lack of humility²². the generalization that the dignity of a woman could only be restored upon marrying the accused led to a conventional image practiced by the court which lacked to observe the degree of the crime such as rape. However, such laws were revised in three bench cases of **Shambhu & another vs the state of Haryana**, where rape was declared as a non-compoundable offense, such crimes should not be quashed, considering the fact that the free will Of the victim was influenced by helpless and trauma. Therefore, such discretion should be avoided where the nature of the offense is serious like rape, murder, dacoity etc²³.

Gender equality in defense:

The case of **Secretary, Ministry of Defence vs Babita Punya**, highlights the discrimination of recruitment of women in the armed forces, section 12 of the Indian Army Act 1950, states the prohibition of females in the army except to the extension of the central govt However in 1992 certain cadres were allowed. A writ petition was filed regarding the permanent commission for female officers who were recruited through the SCC exam in comparison to their male counterparts²⁴ Similar petitions were filed and challenged. In 2010, the Delhi High Court clubbed the petition, and the permanent commission was granted in February 2019, but it was granted prospectively, such commission was only for the eligible ones, the already

²⁰ Dalbir Singh & Ors vs State of Punjab , 1979 AIR 1384, 1979 SCR (3)1059, AIR 1979 SUPREME COURT

²¹ Jahirul Maulana @ Jahirul Islam (MD) .Vs. State of Assam & Ors.reported in 2016 (4) GLT 460.

²² *The Law Blog*, <https://thelawblog.in/2020/08/05/the-legality-of-compounding-in-rape-cases-the-unlawful-compromise-part-i/>, (last visited Feb. 01, 2024).

²³ Shambhu Kumar And Others vs State Of Haryana on 26 March, 2014

²⁴ Ministry Of Defence vs Babita Puniya on 17 February, 2020 Equivalent citations: AIR 2020

serving officers were put out of the gambit²⁵. Although this judiciary was the gateway to a new opening for the opportunities for women officers, however, some discrimination was yet to be addressed, such as for the woman officers in the Indian Coastal Guard where permanent commission was still not granted in spite of the ruling.

the bench consisting of Chief Justice DY Chandrachud Justice JB Pardi Wala and Manoj Misra raised the question regarding the patriarchal discrimination in terms of women serving in the Indian Coastal Guard against the solicitor general Vikramajit Banerjee who is. Representing Indian Coastal Guard²⁶. Officer Priyanka Tyagi, a woman officer of 14 years who served as a stint pilot in ISG was denied permanent commission despite an outstanding work record which includes saving 300 lives at sea and also was selected to be the first-ever woman to be on the crew of maritime patrolling in 2016²⁷. despite her achievements permanent commission was denied without even a grant of interim relief from the court. The Supreme Court stands firm on the permanent commission to be granted to women in the Indian coastal guard without any discrimination and surely not confiding and allowing only a ten percent grant as suggested, the Supreme Court stressed a gender-neutral policy which can change the face of maritime forces for the woman while it's still an ongoing fight.²⁸

Discrimination against Transgenders

The fight for recognition:

Transgender is the correspondence of the gender identity best upon them since their birth. they differ from the atypical gender identity. For a long time, this gender has always been ignored and excluded from the mere expectations of life. they had to fight for their recognition of the

²⁵ legal.economicstimes, <https://legal.economicstimes.indiatimes.com/news/litigation/arbitrary-sc-on-denial-of-promotion-to-women-armed-forces-officers/104951068>, (last visited Feb. 01, 2024).

²⁶ Sarda K, "You Speak of Nari Shakti: Supreme Court Raps Centre over Woman Officer, *India Today*, (Feb. 01, 2024, 4:19 PM), <https://www.indiatoday.in/law/story/supreme-court-pulls-up-centre-over-permanent-commission-of-women-officer-in-coast-guard-2504300-2024-02-19>,

²⁷ Mahapatra D, "SC Notice to Govt on Coast Guard Pilot's Plea Seeking Permanent Commission, *The Times of India*, (Feb. 01, 2024, 4:19 PM), <https://timesofindia.indiatimes.com/india/sc-notice-to-govt-on-coast-guard-pilots-plea-seeking-permanent-commission/articleshow/107639708.cms>

²⁸ *The Indian Express*, <https://indianexpress.com/article/india/women-permanent-commission-indian-coast-guard-supreme-court-chandrachud-9181965/>, (last visited Feb. 01, 2024).

basic rights. Even with the constitution guaranteeing every citizen the protection of rights, this community nonetheless has and still experiences severe prejudice.

In **The case of National Legal Services Authority vs Union of India**. The court recognized transgenders to be a vulnerable community, the petition was regarding the inclusion of the third gender option in important identity documents. This recognition can help in availing benefits regarding their reservation in work and educational institutions, including the right to marry and free sex reassignment surgery²⁹. However, the gender identity must be determined by the district magistrate, the document must be clarified through the medical practitioner who conducted the surgery. as stated in sections 5,6, and 7 of the transgender person (Protection of Rights) Act, 2019³⁰. Such disclosure of medical history is purely a violation of the right to privacy as per the judgment in **Puttuswamy vs UOI**, and such necessity of a gender identification certificate is not expected to be acquired by a cisgender.

Medical rights and the prohibited medical practices:

The Madras High Court in the case of **Sushma & the commission of police and ors** passed a landmark judgment for the prohibition of conversion therapy, this judgment declared the ages of mental cruelty to an end. the freedom of conscience goes beyond any professional or religious belief³¹.

In the case of **Anjali guru Sanjana Jaan vs state of the state of Maharashtra and ors** the Bombay high court passed a decision regarding a transwoman being rejected from the election for village panchayat based on gender, where the individual identified herself as a female, the court directed on her favour for the acceptance of application and the “right to self-identify their gender”³². Supreme Court on **LSA vs you** also expressly encouraged self-identified gender, one of the ways of expressing one’s gender can also be through sex reassignment surgery³³ However the decision of a sex reassignment surgery can be sometimes pushed upon an individual through constant discrimination or through compulsion.

²⁹ “National Legal Ser.Auth vs Union Of India & Ors on 15 April, 2014

³⁰ *indiacode.nic.in*, <https://www.indiacode.nic.in/bitstream/123456789/13091/1/a2019-40.pdf>, (last visited Feb. 01, 2024).

³¹ *The RMLN*, <https://rmlnlulawreview.com/2021/07/12/conversion-therapy-in-india/>, (last visited Feb. 01, 2024)

³² “Anjali Guru Sanjana Jaan v. State Of Maharashtra And Others, Bombay High

³³ *LSA vs UOI*, *supra* note 28 at 1368.

In the case of **Nagai vs superintendent of police**, the madras high court prohibited compelling a person to change their own identity through medical examination under article 21³⁴, following in the case of **Arun Kumar vs inspector general**, the madras high court again prohibited the sex reassignment surgery for infants of intersex unless any life-threatening situations arise³⁵. Despite all these provisions, transgenders are a backward community in India, and surgery like sex reassignment cannot be afforded by all.

Political rights of transgender:

In the case of **Kabeer c alias Aneera Kabeer vs St of Kerala**, a writ petition was filed regarding the ability to have access to food, ration, and medical treatment from the government for the transgender community, a self-identification card for the transgender availed such benefits³⁶. In the case of **mx Alias SK vs the state of West Bengal and Ors**, the court highlighted the right to seek admission into universities, this judgment idolizes the role of the court in creating special adjustments to ensure no limitation of education for transgenders in public university applications³⁷. The case of **mx Sumana Pramanik vs UOI** highlighted the reservation and the concession in fee and age for the examinations. As per the transgender persons (protection of Rights) Rule 2020, transgender can avail the benefits of other backward communities for the purpose of vertical reservation³⁸. These provisions have been a great push to the community towards growth and courts also have encouraged NGOs to promote self-reliance amongst the transgender community, however secure government jobs can still be a struggle for such a community. The judiciary still holds prejudice against the matters of sexual assault as it has clearly weighted upon which gender is more vulnerable to sexual harassment. as we can see in the transgender persons (protection of Rights) Act, 2019 which criminalizes sexual, physical, verbal abuse and highlights the maximum penalty which is up to not less than 6 months which may extend up to 2 years³⁹. but if compared to the punishment of the sexual

³⁴ South Asian Translaw Database, <https://translaw.clpr.org.in/case-law/nagai-vs-superintendent-of-police-woman-police-constable/>, (last visited Feb. 01, 2024)

³⁵ “ARUNKUMAR & OTHER VS. THE INSPECTOR GENERAL OF REGISTRATION & OTHERS - South Asian Translaw Database

³⁶ “Kabeer C Alias Aneera Kabeer vs State Of Kerala on 8 June, 2020”

³⁷ “In Re: Mx Alia Sk vs The State Of West Bengal & Ors on 27 November, 2019”

³⁸ “Mx Sumana Pramanik @ Suman Pramanik vs The Union of India & Ors on 2 February, 2021”

³⁹ transgender persons, *supra* note 29 at 1369.

abuse provision specified to a woman it's way less, as it extends up to 3 years or to life imprisonment as per section 376 of Indian penal code, 1860⁴⁰.

Fight for Marriage and family rights:

In the case of **Navtej Singh vs UOI**, the secretary of law and justice decriminalized consensual sex among homosexuals⁴¹. In the case of **Arun Kumar vs Inspector General**, the Madras High Court solemnized a marriage between a man and a trans woman as a valid marriage under the Hindu Marriage Act⁴². In **Chinmayee Jena vs St of Odisha**, the judicial decision explicitly recognizes the rights of a transperson to live in a relationship with the choice of their partner⁴³. Even after so many legal fights, recognition of queer marriage is still a debate in India although the court extends its full support to queer relationships for the avail benefits of a marriage in terms of economic and political terms. The legitimate rights of settling and opening a joint account require a marriage certificate a simple right as this is made a topic of debate. Every individual has the right to live a married life and start a family as promised in the constitution, yet the transgenders are on the field fighting for their basic rights. The nonacceptance of queer marriage in India has made it even hard for transgenders to seek a family life. Although the supreme court in the case of **Deepak Singh vs the central administrative tribunal** highlighted the landmark judgment of the preconceived notion of a typical family, “the societal stigma may ignore the disparities that can emerge which can change the definition of “family”. however, a familial relationship can be a partnership, single parent, queer, unmarried, etc any form of manifestation of love can be compared to that of a traditionally recognized family⁴⁴. Yet the adoption rights of transgender are still a question mark as the marriage of queer is still not recognized and adoption by a single parent is still debatable. Clearly, the status of the third gender is very important in government documents but the authenticity and the necessity of a gender identity certificate can bring disagreements that might violate privacy and can bring debarment in essential sectors. the military service still is banned to the LGBTQ+ community and still an ongoing debate⁴⁵. As transgenders have continually been oppressed by family and

⁴⁰“Section 376 in The Indian Penal Code, 1860” <<https://indiankanoon.org/doc/1279834/>>

⁴¹ “Navtej Singh Johar vs Union of India Ministry Of Law And ... on 6 September, 2018”

⁴² Arun Kumar, *supra* note 34 at 1369.

⁴³ “Orissa High Court WPCRL/57/2020 on 28 July, 2020

⁴⁴ “Deepika Singh vs Central Administrative Tribunal on 16 August, 2022

⁴⁵ *Simple English Wikipedia, the free encyclopedia*, https://simple.wikipedia.org/wiki/LGBT_rights_in_India, (last visited Feb. 01, 2024)

the public, they always get drawn backward in terms of economic and political needs perhaps making them vulnerable to sex work for survival, there shall be welfare schemes for the betterment of the community in terms of jobs and education so that they are uplifted.

Discrimination against men:

Why is a crime always weighed upon the gender of a person, why not the very fact of their psychology and the factors that lead up to the crime, can a judgment ever be passed keeping the gender of the criminal and victim out of scope? In a country where domestic violence against a woman is taken seriously why is domestic violence against a man taken as a question of masculinity?

Domestic violence against Husbands:

Section 498 A of the Indian penal code states the punishment for the cruelty faced by a woman by her husband or relatives of her husband. this same provision fails to protect the husbands from cruelty faced by women. according to the purush hakk sawa kshan samiti, husbands should also be added to the ambit of domestic violence ⁴⁶.

In the case of **Sumana Bhasin vs Neeraj Bhasin & ors**, the case was filed against the husband on grounds of false and fabricated allegations. the case was filed by the wife just to harass her husband on grounds of domestic violence⁴⁷. The case was dismissed by the court ignoring the misuse of section 498A. Even in the landmark case of **Sushil Kumar vs UOI**, the court declared that most of the cases filed under section 498 A are mostly with a dishonest intention of retribution⁴⁸. In the case of **Arnesh Kumar vs the state of Bihar**, the false allegation of the wife resulted in the arrest of an innocent man. The Supreme Court in this case acknowledged the possible misuse of section 498 A to trouble husbands and their relatives. As a response, the police were restricted from making an arrest merely based on a complaint⁴⁹.

False allegation of rape in India:

⁴⁶ DNA India, <https://www.dnaindia.com/mumbai/report-this-pune-samiti-fights-for-the-rights-of-men-1766791>, (last visited Feb. 01, 2024)

⁴⁷ Sumana Bhasin vs Neeraj Bhasin on 18 March, 2010

⁴⁸ Sushil Kumar Sharma vs Union Of India And Ors on 19 July, 2005

⁴⁹ Arnesh Kumar vs State Of Bihar & Anr on 2 July, 2014” <<https://indiankanoon.org/doc/2982624/>>

A false rape allegation completely destroys the dignity of a man, the accusation causes a significant impact on his mental health, the trauma caused can be impossible to recover and the repercussions of a false allegation can reflect badly on the personal and family life of a man. although justice can be delivered in a case of false allegation, the restoration of dignity is nearly impossible to restore, it devastates the societal status of the person accused. In the case of **Sejal Sharma vs the state of Haryana**,⁵⁰ 2021 petitioners have been ruling a racket under the false allegation of rape, the victim was allegedly blackmailed for some monetary benefits⁵⁰. This case undermined the very purpose of section 375 in the Indian penal code. A heinous crime such as rape was used as allegations for monetary benefits. In **Chennai false rape case**, an engineering student was accused of a false rape case, the mother accused the boy of impregnating her daughter, and the boy was only granted a bail after DNA report that proved the innocence of the accused, the case ruined the career of the student although damages were compensated but the 7 years spent in jail in spite of innocence cannot be compensated through pecuniary means⁵¹. Allahabad high court on April 26, 2022, fined 10,000 for passing a false accusation against a woman from Prayag Raj, Uttar Pradesh against her husband for rape. the bench was strict about the misuse of the justice delivery system for false allegations⁵². The false promise of marriage is often used against men for severe punishments for rape and most of the time it has been misused⁵³, the very act of rape is defined under the Indian penal code as sexual intercourse without the will or consent of the woman, how then can consensual sex be taken as rape under the false promise of marriage. A breach of promise is very different from every act of rape and the distinction has to be made in criminal laws. such false allegations of rape can be reduced by addressing this distinction.

Discrimination based on child custody for fathers:

⁵⁰ “Sejal Sharma vs State Of Haryana on 23 September, 2021

⁵¹ *INDIAN LEGAL SYSTEM AGAINST FALSE ALLEGATION*, <https://indianlegalsystem.org/compensation-on-a-false-rape-case/>, (last visited Feb. 01, 2024)

⁵² *TimesNow*, <https://www.timesnownews.com/mirror-now/crime/uttar-pradesh-woman-fined-rs-10000-for-filing-false-rape-case-against-husband-article-91108383>, (last visited Feb. 01, 2024)

⁵³ *Live Law*, <https://www.livelaw.in/high-court/kerala-high-court/kerala-high-court-quashes-rape-case-false-promise-parties-married-244022#:~:text=The%20Kerala%20High%20Court%20has,under%20the%20Special%20Marriage%20Act.,> (last visited Feb. 01, 2024).

Child custody is preferred mostly to a mother than that for a father in the case of **Roxann Sharma vs Arun Sharma**, the court demonstrated that the mother is the most suitable custody for a child unless the father can prove that the mother would be unsuitable for custody⁵⁴.

In the case of **Chandrakala Menon vs Vipin Menon**, the honorable Supreme Court held that the question of custody has to be decided on the basis of the notion that it is the mother who is more suitable for raising a girl and the father is considered to be the best custodian for older boys, such question was not considered on the basis of legal aspects⁵⁵.

Shouldn't child custody be given to both parents? for the welfare and best interest of the child, unless, one of the parents wants to voluntarily withdraw or is not stable enough to take care. prior to that, the custody of the child should be granted to both parents for stable growth.

Sexual assault against men:

1.4 % of men have gone through sexual harassment in India and 3000 incidences of sexual assault were reported in 2022. a poll was conducted by the civil society where it was interestingly found that among them about 18 percent of men were compelled into marital relationships⁵⁶. The definition of sexual harassment as per EEOC is “unwelcoming sexual advances, sexual favours or physical or verbal abuse with sexual intentions”, at any workplace, this definition extends to any sex whether it be men on female, female on men, or men on men, etc⁵⁷. However, the bill passed in 2021 regarding sexual harassment in the workplace was confined to only a woman's modesty.

Statistic of male harassment in India:

From the recent Economic Times survey, it is high time for even men to be added to the bill too, as according to the statistics of the survey, across the major cities such as Bangalore, Mumbai, Pune, Kolkata, Chennai, Hyderabad and Delhi. 51 % were said to be sexually

⁵⁴ Roxann Sharma vs Arun Sharma on 17 February, 2015

⁵⁵ “Chandrakala Menon (Mrs) And Anr. vs Vipin Menon (Capt.) And Anr. on 14 January, 1993

⁵⁶ LinkedIn, <https://www.linkedin.com/pulse/sexual-harassment-men-hidden-epidemic-mohd-varis-mansoori-74qlf/>, (last visited Feb. 01, 2024)

⁵⁷ RAINN, [https://www.rainn.org/articles/sexual-harassment#:~:text=Sexual%20harassment%20includes%20unwelcome%20sexual,Employment%20Opportunity%20Commission%20\(EEOC\)](https://www.rainn.org/articles/sexual-harassment#:~:text=Sexual%20harassment%20includes%20unwelcome%20sexual,Employment%20Opportunity%20Commission%20(EEOC),), (last visited Feb. 01, 2024)

harassed at the office, 31 % in Delhi and 28% in Hyderabad. Because of social disdain and assumptions, these incidents still remain unreported⁵⁸.

Paternity leave

According to the central civil services rule, 1972, a male government servant qualifies for 15 days of paternity leave, however, no such law has been mandated in private sectors⁵⁹. Rajasthan High Court judgment was found to be essential for two reasons.

1. equal maternity leave for mothers regardless of giving birth to the child has also raised questions about the validity of leaves for paternity⁶⁰.
2. the purpose of maternity leave is to fulfill the concept that all working women can choose to be mothers⁶¹.

According to the Madras High Court, refusal of paternity leave can violate the right to the life of the child under Article 21, and clearly, this covers all the government as well as the private sector employees. the absence of a legal mandate regarding paternity leave contributes to inequality in family support⁶².

Gender-neutral Provisions in India:

Is it practically impossible to achieve equality in a community that is gender biased and where there has been constant marginalization of a specific community? can legal provisions protect and provide them equal footing opportunities without discrimination? Gender-biased laws have merely emerged from social customary practices, mainly through religious customs and traditions which can make these customs difficult to be opposed therefore, legal provisions have emerged to eradicate prejudice against the generalized community. But does that mean

⁵⁸ *The Economic Times*, <https://economictimes.indiatimes.com/special-report/even-men-arent-safe-from-sexual-harassment-at-workplace-survey/articleshow/6389438.cms?from=mdr>, (last visited Feb. 01, 2024).

⁵⁹ *Live Law*, <https://www.livelaw.in/lawschoolcolumn/lack-of-paternity-leave-is-negating-the-purpose-of-maternity-leave-243528>, (last visited Feb. 01, 2024)

⁶⁰ *Live Law*, <https://www.livelaw.in/lawschoolcolumn/lack-of-paternity-leave-is-negating-the-purpose-of-maternity-leave-243528>, (last visited Feb. 01, 2024)

⁶¹ *Live Law*, *supra* note 59 at 1373.

⁶² *Livelaw*, <https://www.livelaw.in/high-court/madras-high-court/madras-high-court-refusing-paternity-leave-father-violates-child-right-life-article-21-need-law-india-235738>, (last visited Feb. 01, 2024)

provisions should be equally applied to all genders, and no special provisions shall be made for any specific gender?

While this question seems fair, ignorance of the constant oppression faced by women and transgenders cannot be ignored. In the case of **Paramjit Singh vs the state of Punjab**, it was held that policies that uplift an oppressed section of the society do not come off as discriminatory. They are to protect from discrimination who have been oppressed for far too long⁶³.

However, what could be the Significance of gender-neutral laws in India?:

Equality before the law as per Article 14 is the very thing that establishes the base of the Indian legal system, fundamental rights promise equal protection of the law without any prejudice. Gender-specific laws can be protective for one gender and be a rebound for the other. Therefore, it is necessary that certain laws extend to protect crucial biases especially when it comes to sexual assault, domestic violence, etc. Interpretation of law that slightly bends towards a certain gender can limit the scope of its purview which is to protect and establish a ground where everyone is given an opportunity to express. Gender-based legal provisions can certainly victimize one gender. This can lead to its misuse. A preconceived notion can just be an aid to wrong interpretations.

India has progressed in terms of uplifting the marginalized community and accepting norms that were highly influenced by prejudice. Protective discrimination has helped in aiding the suppressed to voice up. Eventually, it has come to a point where now it is necessary to bring in gender-neutral laws to stop discrimination as well as victimization. In the case of **MR Balaji vs the state of Mysore** held that Protective discrimination should not extend up to preferential treatment⁶⁴.

Provisions on gender neutrality in India:

There is no specific uniform code in India, in regard to gender neutrality but there are provisions that equally protect it. Some of these provisions include the constitution of India,

⁶³ “Paramjit Singh vs State Of Punjab on 5 August, 2022

⁶⁴ *LawBhoomi*, [https://lawbhoomi.com/mr-balaji-vs-state-of-mysore/#:~:text=The%20court%20decided%20in%20MR,by%20Article%2015\(4\)](https://lawbhoomi.com/mr-balaji-vs-state-of-mysore/#:~:text=The%20court%20decided%20in%20MR,by%20Article%2015(4).), (last visited Feb. 01, 2024)

where part III is about fundamental rights⁶⁵. Article 14 establishes equality before the law, article 15 prohibits any form of discrimination, and Article 16 deals with the fundamental right to equality in the context of employment including part IV which talks about directive principles of state policies that encourage the very right to seek adequate means of livelihood⁶⁶. The Criminal Amendment Bill of 2019 steps towards gender-neutral terms in the language of criminal laws. It has successfully acknowledged the rights of all genders including males and transgenders. The provision of this bill neutralizes sexual harassment, stalking, eve teasing, domestic violence, etc⁶⁷.

CONCLUSION:

With the progression of time, the scope of crime is expanding and the provisions that exist right now can fail to address such evolving change. A gender-inclusive language in the judiciary can change the very prospect of new laws being introduced. The deep-rooted stigmatization of a particular gender can influence writing and decision-making. The judiciary is the very forum that interprets law therefore, introducing gender-neutral language in judgments can lead to evolved interpretations in coming needs. Using pronouns in the language when passing a judgment or when establishing arguments can significantly reduce gender bias. The legal system has to opt to use language to replace words or sentences which can lead to gender stigmatization, as mentioned in the handbook of combating gender stereotypes forwarded by the chief justice of India. For example, using the word transgender or queer or homosexual in place of hijra or eunuch and chaste woman, harlot, whore, career woman as woman. Language matters because it leads to interpretations and perspectives, therefore it is very essential for the legal system to opt for language that is explicit and not controversial.

⁶⁵ Rai D, Gender Neutral Laws in India, iPleaders, (Feb. 01, 2024, 4:19 PM), <https://blog.iplayers.in/what-are-the-laws-on-gender-neutrality-in-india/>

⁶⁶ Rai D, supra note 64 at

⁶⁷ Id, at 1375.