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***Gender Inequality In Indian Legal System On Sexual Offences
Constitutionality is challenged under Indian Penal Code***

I. INTRODUCTION:

“Gender Inequality in Indian Legal System (Indian Laws) on Sexual Offences which violates some of the Articles of Indian Constitution and few provisions of the law which made by Indian lawmakers also an unlawful. Here we will discuss about the Gender Inequality on Sexual Offences in existed Indian Laws, both constitutionally and legislative provisions of law on different acts especially from IPC. In India, there is Gender Inequality in existing written laws on Criminal activities like Rape, Sexual Assault, Sexual Harassment and offences related to other Sexual activities. The Sexual offences include Modesty, Harassment, Disrobe, Voyeurism, Stalking, Sexual Touch, Abuse, Custodial Rape, Gang Rape, Sodomize, Outrage, Adultery, and Assault and so on. In Indian Legal system, on all these above said offences, the offender would be considered always as men and victims might be women / children / Transgender.

We can say, In India, there is No Gender Neutral Sexual Offence Laws; since there are special acts with provisions of law existing only for Women and minor (male and female) child, and Transgender but not for adult males. This leads to the violation of Articles 14 and 15(1) of the Indian Constitution in case of Men. i.e., Constitutionality challenge occurs under the legislative provisions. [Art 14: EQUALITY BEFORE LAW – The State shall not deny to any person/persons on equality before the law or the equal protections of the law within the Indian territory, Art 15 (1): The State shall not discriminate against any Indian citizen on the grounds only of religion, race, caste, sex, place of birth or any].

This Gender Inequality on Sexual Offences in Indian Legal systems and its favoured & unfavoured provisions of laws related to that will be explained here with some suggestions for implementation/amendments of laws, for Gender Neutrality or Gender Equality Criminal Laws”.

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II. ANALYSIS OF SEXUAL OFFENCES ON VARIOUS GENDERS & THEIR PROTECTIONS IN INDIA:

Women: Sexual Offences occurs in every society of the universal world. India is not an exclusion from that. The Offences like Modesty, Harassment, Disrobe, Voyeurism, Stalking, Sexual Touch, Abuse, Custodial Rape, Gang Rape, Sodomize, Outrage, Adultery, and Assault against women are happened in our society regularly. For that, in India, many provisions of law enacted by the legislatives for protection of women from Sexual Offences. There are many laws written by the Indian Law Makers to protect women from this evil community or society.

The Indian Penal Code (IPC), 1860, stated many favoured laws for women’s (both major and minor females) protection. The sections **354**, (Outraging the women’s modesty – “Any Person assaults *any woman*, intending to outrage her modesty, shall be punished”), **354 A** (Sexual Harassment – “A *Man* who commits to a *woman* like Demand of sexual favors, any unwelcome physical contacts or sexual overtures, showing pornography, etc shall be guilty of the offence and shall be punished”), **354 B** (Assault with the intention to Disrobe – “A *man* is guilty of the offence to a *woman* by using any criminal force to remove her clothes and be naked, shall be punished”), **354 C** (Voyeurism – “A *Man* who watches a *woman* engaging in a private act or captures the image of her without her observation, shall be punished”), **354 D** (Stalking – “The act of a *man* who follows and contacting a *woman* continuously even she doesn’t shown attention, shall be punished”), **375** (Rape – “The sexual intercourse with a *woman* by a *man* against her will / without her consent / when she has been of unsound mental health, etc, shall be punished”), **376** (Punishment for Rape), and **497** (Adultery – “Whoever has sexual intercourse with a person who is and whom *he* knows or has reason to believe to be the *wife* of another *man*, without the consent of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished. In such case the *wife* shall not be punishable as an *abettor*”) showed that, women to be the victims always, considered *women as a vulnerable group* and men to be the offender / accused always, considered *men as a non-vulnerable group*. The

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Punishments are either imprisonment or fine, or with both, depends upon the offences done by the accused that found guilty either bailable or non-bailable from the above mentioned sections.

The Criminal Law (Amendment) Ordinance, 2018, favoured that, the punishments for rape of (women and girls) amended and increased in years of punishment of imprisonment and also extended to life imprisonment or death depends upon the offences.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, aims to provide every Woman, a safe and secured working environment i.e., free from all form of Sexual Offences. Also established **Internal Complaints Committee (ICC)** and **Local Complaints Committee (LCC)** for Redress complaints of Sexual Offences.

The Constitution of India, favoured in **Article 14** (Equality before law for women) and **Article 15 (3)** (The State shall make special provisions any, in favour of women and children) for the protection of women.

Children: Sexual Offences against minor / children (both male & female below eighteen years of age) occur in every society of the universal world. In India, Abusing a child or any Sexual Offences against minors are considered as a serious crime.

POCSO, Protection of Children from Sexual Offences Act, 2012, a special act formulated to effectively address Sexual Abuse of Children below the age of eighteen years. This formulation defines Offences including penetrative and non-penetrative assault, sexual harassment, also pornography. The Punishments given to the offender depends upon the gravity of the Offence. **IPC's Section 44(1)** of the special children law provides that, the National Commission for Protection of Child Rights along with the State Commission for Protection of Child Rights monitor the implementation of the provisions of the Act. This Act sets a Gender-neutral tone.

An important thing we have to know that The POCSO Act is only applicable to **child survivors** and **adult offenders**. In case, **two children** have sexual relations with each other,

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or a **child** perpetrates a sexual offence on an **adult**, The Juvenile Justice (Care and Protection of Children) Act, will apply.

The Constitution of India, favoured in **Article 14** (Equality before law for Children) and **Article 15 (3)** (The State shall make special provisions any, in favour of women and children) for the protection of Children from evil activities.

Transgender: Sexual Offences against Transgender occurs in each and every society of the universe. India is not an exclusion from that offence. The Offences like Modesty, Harassment, Disrobe, Voyeurism, Stalking, Sexual Touch, Abuse, Custodial Rape, Gang Rape, Sodomize, Outrage, Adultery, and Assault against Transgender are happened in our society as like that happened for Women.

In India, for protection of Transgender from the evil society, *The Transgender Persons (Protection of Rights) Act, 2019* was enacted by the Law Makers. In this Act, Section 18 discussing about Offences and Penalties. This Act stated under **Section 18 (d)** that, if any harms or injuries or any endangers to the Transgender person, including causing **Physical Abuse, Sexual Abuse**, Verbal and Emotional Abuse and Economic Abuse, shall be punishable with imprisonment of minimum six months which may extends to two years and with fine.

Men: Sexual Offences occurs in each and every society of the universal world. India is not an exclusion from that. But in case of Men, according to Indian Laws, Men can be **sodomized** only which mentioned under **Section 377** of **IPC**. Section 377 deals with **Unnatural Offences** (“*whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment and also with fine*”). In Indian Legal system, men cannot be raped or cannot be sexually offended because they are considered as a **non-vulnerable group and dominant persons**. This myth flows in the Indian society. The Law Makers also believes this myth and still now no gender equality sexual offences law made by them. The Criminal laws always stated that men are Accused or Offenders but not victims. Hence, we say that **no protection for males in the Indian society legally against Sexual Offences**. The Law Makers must amend the laws by considering that Male Too as a Victim on these type of Offences.

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III. RECOMMENDATIONS AND RESISTANCE MADE SO FAR **FOR GENDER NEUTRALITY IN INDIAN LEGAL SYSTEM ON** **SEXUAL OFFENCES:**

In 2000, the 172nd law commission of India recommended that Rape Laws should be made gender neutral to protect male victims too, but the Government of India did not implement the suggestions.

In 2013, a *Criminal Amendment Act* was passed, in that the term Rape from Sexual Assault were replaced to cover all the genders, however later, changes were reversed due to the resistance from feminists’ group and criticisms.

In 2017, a *Public Interest Litigation* (PIL) was filed at Delhi High Court that challenged the constitutionality of the rape laws under the Indian Penal Code.

In 2019, a *gender neutral bill* was brought before the Parliament to make the rape laws gender neutral in India by challenged the constitutionality under IPC, CrPC and the Indian Evidence Act.

IV. GENDER INEQUALITY IN SEXUAL OFFENCES LAWS **BASED ON THE ANALYSIS:**

Sexual Offences occurs in the universe are very common. Based on the above analysis, we found that, in India, the enacted laws framed by the Indian Law Makers *favoured only for Women, Children and Transgender*. They *unfavoured for Men*. We also found that, the Indian Law Makers considered *Men* should be the *Offender or Accused all the times* during the Offences, they *never* thought that *Men too as a victim sometimes*. Also, *Women* can be considered as an *Offender*, only when they made Sexual offences against *children*, but not against *men*, others and not even against women too sometimes. But women can be booked for forced unnatural sex under Section 377 in rare scenarios.

From the analysis, we noted that;

- *Constitutionality is challenged under Indian Penal Code.*
- *Gender neutral tone provisions for Children*

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- *Favoured legal provisions for women – Gender Biased law*
- *Unfavoured legal provisions for men – Gender Inequality law*

V. SEXUAL OFFENCES LAWS OF DIFFERENT COUNTRIES:

The “*Criminal Justice (Northern Ireland) Order, 2003*” to make the law gender-neutral, brought some changes in the definition that the term “non-consensual intercourse by a man” was replaced by “non-consensual intercourse by a person”

The “*Sexual Offences (Scotland) Act, 2009*” brought changes in the definition of the act that a gender-specific term “women” was replaced by “person” to include male victims also.

The “*United States Department of Justice, 2012*” mentioned that the concept of Sexual Offence includes all gender of victims and all gender of offenders but not limited to particular gender.

VI. PLEADINGS / RECOMMENDATIONS / SUGGESTIONS FOR AMENDING THE SEXUAL OFFENCE LAWS:

Based on the above written contents, it is clearly known that, in Indian Laws on sexual offences, there is no gender equality i.e., Gender Inequality of sexual offences law. Women, children (male and female child), Transgender of India are protected by enacted laws and special acts on sexual offences but men had no effective protected laws and no special act to protect male victims from sexual offences in India. Hence, we can say that *there are special acts existing only for Women, Children (minor male and female child), Transgender, but not for adult males*. This leads to the *violation of Articles 14 and 15(1) of the Indian Constitution*. Hence, to make the law as a constitutional and also Gender Equality, we plead the lawmakers that, A New Act to be implemented for Adult males as like that of *POCSO Act* for Children (male and female child below 18 years of age), *The Sexual Harassment of Women at Workplace Act* for women, *The Transgender Persons (Protection of Rights) Act* for Transgender protection. The **Indian Penal Code** favored most of the enacted laws for Women rather than Men. Hence in the existing IPC Sections like **354, 354A, 354B, 354C, 354D, 375, 376 and 497**, *the gender-specific words like “any man” and “any woman” will*

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be replaced by gender-neutral words like “any person”. This leads to the making of Gender-Neutral sexual offence law. The Law Makers could also refer the International Laws on Sexual Offences for amending Indian Laws, since many of the western Countries made the Sexual Offence law as Gender Neutral.

VII. CONCLUSION:

In India, still now there are *No gender-neutral sexual offence laws*. The Indian law should recognize men too as victims. It is necessary to bring **awareness** about harassment and male sexual offences also. The Indian Legislature should make laws gender neutral because in some cases, **female offenders** got away with their **guilt** because of **Gender Biased Laws in IPC**. The Lawmakers should overlook the loopholes present in the written criminal laws on sexual offences and made changes on it for **Gender equality / Gender neutrality laws** by admitting that the victims and offenders of sexual offence can be any gender.

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