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ABSTRACT:

“The purpose of this paper is to discuss how family laws differ based on gender. It began by asking why laws did not protect men. This paper will also discuss whether judges or decisions are biased, this paper also discuss about the challenges men face because of judicial separation or divorce and discuss about the consequences of action that are being taken by the authorities with the women favored laws. The paper will also discuss the rights that were emphasized in the Indian Constitution in support of women, it will provide answers to all the questions raised above”.

I. INTRODUCTION:

According to our Indian family laws a woman can file various cases against men. When it comes to marriage which is a soulful connection between men and women. It was performed through various family laws like ***Hindu marriage act of 1955, special marriage act of 1954*** etc... However, the institution of marriages is easily broken. There has been a sharp increase in the number of divorces each year, either because of issues between the husband and wife. Which resulted in increasing rate of divorce and the women by divorce facing some huge problems like not able to maintain themselves. So, it also resulted in increased petitions before family court, so only the strict laws are imposed in safeguard the interest of women, however, does not place much emphasis on the difficulties that a man faces in a family court. Family-related matters are witnessed by a family court. It includes divorce cases, ***cases involving property, cases involving annulments***, etc.

Unless and until it is a divorce by mutual consent, the majority of divorce cases are biased against the husband. A wife's petition for divorce always works against the husband. the husband ***needs to address extra than simply*** the trauma of the divorce; he ***needs to additionally address such things as accusations of home violence and dowry, the submitting of firs in opposition to him, troubles with protection*** and alimony, etc. Along with this, a father must also fight for child custody, which typically goes in the mother's favour because she is the child's primary guardian.

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II. ROOT CAUSE OF GENDER BIAS IN COURTS:

Family Courts and other judicial institutions function in the larger social context. A family unit with a male and female parent and biological children is preferred by traditional gender roles. They see the mother as *nurturing* the child and the father as providing for them *financially*. Fathers are not expected to spend as much time with the kids as mothers do. Their main responsibility is to pay for them to live comfortably. The mother, on the other hand, is to take a direct interest in every aspect of their lives. Many families frequently succumb to following these traditional gender roles as a result of social pressure. Women are still seen as the primary nurturers even as more and more of them start working outside the home. As a result, they have to balance both. So, the *traditional gender role* is the sincere cause of biased judgements in courts.

III. ARE THE FAMILY LAWS FAVOURABLE TO MEN?

In some situations, men are less likely to accept by the society and the courts. It was due to his *traditional gender roles*. In the areas of the *legality of marriage, separation, divorce, maintenance, and child custody*, family law has broad jurisdiction. However, there are very few *positive sides to men* in this area; the rest are only for the *benefit of women*. It was not concluded that the law had laws that only benefited women while also having laws on men that were too low when compared to women.

III.I IN THE CASES OF DIVORCE:

Some men's rights advocates assert that judges are less likely to believe accusations of cruelty made to men. This is especially important because cruelty is a common justification for divorce. In the Hindu marriage act of 1955, it has some provision that was very much favourable to women to get divorce easier because the section contains some grounds for divorce which was only consider the interest of women. A wife may file for divorce under the *Dissolution of Muslim Marriages Act, 1939*, for a number of reasons, including desertion, cruelty, and failure to provide support, imprisonment, impotence, and cruelty. The Bombay

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High Court, however, in *Dagdu Pathan n, Latur vs. Rahimbi*¹ According to this case, all a Muslim man needs to do to get a divorce is give his reasons for getting divorced and name mediators. Furthermore, the wife must make a monetary payment for the divorce under the Muslim legal doctrine known as **khula**. Due to the lack of codification in Muslim personal law, many of its provisions are derived from judicial decisions.

III.II IN THE CASES OF MAINTANENCE:

Maintenance is the quantum of sum payable to the wife by husband by the result of divorce or judicial separation. It may be interim or permanent. But in the matters of maintenance people was forced by the court to pay maintenance. There has been very low number in fact it was counted that the cases where the men get maintained by his wife. In all the family laws men does not have any provisions to get maintained *Somdatta Chatterjee nee Raychaudhuri v. Anindya Chatterjee*²², (2019) held that a wife earning well would not be eligible for maintenance under the Special Marriage Act (1954). These instances demonstrate that only women who require financial support and maintenance are given the same. Like certain cases only women were dismissed as not to be maintained by his husband and the dismissals was only because of the qualification of wife and capable of maintaining herself.

III.III IN THE CASES OF CUSTODY:

Custody is where the children between divorced parents then they wanted to solve the dispute in custody also. In most of the cases men was failed to get custody of his children because women have nurturing right of a child. where father is only for maintaining the children financially. But now the courts provide the rights of visitation of their children to men, but it was not enough. Because he has not absolute control and relationship over the child. In the case of *Chethana Ramatheertha v. Kumar V. Jahgirdar*³ (2002), The Karnataka High Court held that a mother provides a child with the best upbringing and protection. The Supreme Court stated in an appeal that it disagreed with this broad generalization. The Apex Court made it clear that it did not support the Court's claim that a mother's custody would always be

¹ 2003 (1) BomCR 740.

² C.O. No. 1972 of 2016.

³ II (2003) DMC 288, 2003 (3) KraLJ 530.

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favourable to the fathers.

IV. DOES TRADITIONAL GENDER ROLES INFLUENCING THE JUDGEMENTS?

Yes, the *traditional gender roles* mostly influence the society and courts to follow some attitude towards the gender. A gender role, also referred to as a sex role is a social role that includes a variety of attitudes and behaviours that are typically regarded as appropriate, or desirable for a person based on that person's sex. Though there are exceptions and variations, gender roles are typically centre on ideas of what *masculinity and femininity* are. When coming to the communities the *Christianity* allows the females to acquire the *leadership of organized church* where the males are restricted. When it comes to *Islam* in olden times the women are treated in very strict manner and now it was become liberalized even in Middle East. For an instance, a man asked *prophet*, 'who should I honour in my life', prophet said, 'your mother' then the man asked, 'whom should I honour after my mother', prophet said, 'your father' and when it comes to *Hinduism* females are allowed to some gender transgression. Female sexuality is portrayed as potentially harmful and destructive, despite the high value placed on women's fertility. So only by the grounds of traditional gender roles our society has constructed. The cases are normally becoming favour of women as the decision makers are primarily considering this traditional gender roles. But in nowadays due to westernization and modernization of the world the society is becomes changing and the olden myths has been destructed. Now the women and men are having equal preference, knowledge, privileges etc., and nearly the *traditional gender roles are outdated nowadays*. But then it influences the judgements. In this modern world gender inequality is reduced as much as before. So, we can say that the legislation has not failed to cope with men's rights.

V. IMPACT OF DOMESTIC VIOLENCE ACT ON MALE VICTIMS:

This act was passed on 2005 to protect women from *domestic violence*, domestic violence which includes not only physical but also *emotional and sexual assault*. Most people today

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might consider it offensive and politically absurd. We all understand that every coin has two sides, though. To put it another way, the Indian psyche is still fixated on the idea that domestic violence only affects women, and that the possibility that it might also affect men is not all that common. People mistakenly believe that men cannot be victims of women. But men are also affected by the internal issues. By recognising the characteristics of domestic violence. When this brutality takes place between two relatives of the same family, it is called domestic violence. The victim is reluctant to report the crime or seek legal assistance from any **governmental or non-governmental organisations** because it occurs within the family. Domestic violence has not only gone to impact on victims it should also affect the children in that home. According to a survey more than one third of marriage in India ends in divorce or judicial separation. The most frequent cause is domestic violence. When a marriage dissolves due to this reason, we think that the man and his family are primarily at fault. If the **men scream at his wife**, it may result in domestic violence but what about if **wife yells at husband**. So even though domestic violence against men may not be as common as it is against women, these victims also need to be protected. If a woman slaps a man, there is always an assumption that he must have done something wrong, or she was forced by him to do something. Here the same logic applies to men and also violence against anybody. Though most of the victims are women, it is shocking to learn that men are also victims of similar crimes.

Sandhya Wankhede vs. Manoj Bhimrao Wankhede⁴. The appellant Sandhya moved in with R1, R2, and R3 for almost a year after getting married in 2005. This caused problems in her marriage because of the constant disturbance, so she reported her husband to the police for assault under section 498 of the **Indian Penal Code**. In this instance, the Supreme Court had noted and held that the provision section 2(q) did not exclude women who are partners or relatives of the husband from the purview of a complaint that could be made under the Domestic Violence Act, 2005. According to the findings, complaints cannot be made against adult women relatives in addition to adult men.

⁴ CC/492/2019.

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VI. ROLE OF GENDER BIASED LAWS IN MAKING THE SITUATION WORSE:

Since gender is a social construction, factors like *race, caste, nation, class, culture, sexual preference, aptitude, rituals*, etc. frequently have an impact on it. Gender roles are very rigid in many south Asian nations, including India. Stereotypical ideas and gender biases are fostered by this rigidity. The Indian Penal Code's provisions against gender violence do not apply to men who suffer domestic abuse at the hands of their wives or other intimate partners. These attackers, who are typically women, are exempt from the law. Yes, it was Indian penal code *section 498A* the section states that only male is liable to the cruelty caused to his wife. There is not any subsection or provision to state that women liable for cruelty to her husband.

And the complaint by men is not even considered and police officials are not even hear to their pleas, when they try to open up or report their physical or domestic violence because section 498A of ipc is one sided to woman.in most cases the issues faced by the men are not even came to light, they think that situation will get better shortly because of this reason too they do not report about the domestic violence that they face. There are many false cases where women *falsely accuse a man of rape or domestic violence because of the biased laws in the Indian Penal Statute that favour women*. The sad thing is that these biased laws automatically assume that a man can never be the victim. Women do not need to provide any kind of evidence to back up their claims. Biased laws assume that they are *genuine creatures*.

VII. BUT THERE IS CERTAIN PROTECTIONS TO MEN ALSO:

Yes, the legislation is not biased it also have some laws to ensure the safety of men and protect from the laws were favour on women which were often abused by them. The various sections addressing the protection of anyone who believes that the complaint made against him is untrue or pointless. Furthermore, under any law passed to protect women's rights, a variety of legal remedies have been made available to anyone accused by anyone. One can look for

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safety.

VII.I UNDER CRIMINAL PROCEDURE CODE (CRPC):

Section 227:

The section states that any person believing the complaint raised by his wife is false according to him the person must provide the evidence in contrary to the complaint on this basis and the Honourable Magistrate can dismiss the plea by the spouse under section 498A and decide accordingly.

Section 438:

This section in CrPC deals with presenting an appeal or making an application for bail before the session court to circumvent the arrest from the police; this application is also known as Anticipatory Bail.

Section 482:

The inherent power of the High Court to dismiss the matter if the evidence or testimony does not seem to support the accusation made against the person (spouse) by his wife where such section deals with an objective that any power of the law to protect the interest should not be used for personal vendetta or as a weapon for undue advantage, this can also be used to quash the FIR by any person. **The Honourable Apex Court specifies the following list of considerations to be included in the application when describing the rules for applying**

Section 482:

1. *No prima facie case*
2. *Absence of cognizable offence*
3. *Crime in the case cannot be disclosed.*
4. *Lack of evidence*
5. *Time barred by the Limitation Act*
6. *Vexatious in nature*

VII.II. UNDER CIVIL PROCEDURE CODE (CPC):

Section 9:

The Courts shall (*subject to the provisions herein contained*) have jurisdiction to try all suits

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of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. To obtain compensation for the harm sustained as a result of a proceeding or police detention for a false case, one may also file a complaint under section 9 of the Civil Procedure Code, 1908. So Crpc have some provisions in favour of men but then these laws are not effectively working in the courts when compared to the laws made to woman. Anuj Chaudhary v/s State of Uttar Pradesh⁵, according to the ruling of the Supreme Court in the case, which was decided by the Honourable High Court, it is prohibited too. File more than one FIR for the same offence. In accordance with section 154 of the Indian Penal Code, any person who files multiple FIRs will only be considered to have committed one offence if the nature of the offence is the same and the person filing the FIR requests the same relief from the state authority (police).

VII.III UNDER INDIAN PENAL CODE (IPC):

The Indian Penal Code governs, controls, and specifies the punishment for those found guilty of crimes of any kind (*whether heinous or non-heinous*). Various provisions protect a spouse's rights if they are implicated in a horrific crime even if they are convinced, they are innocent.

Section 120B:

This section deals with criminal conspiracy, any person filing a suit or complaining about any person to the state authority and such complaint has no stand or basis or that person has no locus standii in filing complaint such person is at good faith to file a complaint under section 120B to prove the complaint is a mere conspiracy against him.

Section 182:

This section deals with protecting the interest of the person against his spouse if the wife submitted or provided false evidence for the public servant to act accordingly.

Section 191:

This section states that a person can file a complaint under this section, raising doubt on all the documents presented by his wife to authority seeking benefits of false evidence.

⁵ 2039 of 2012.

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Section 504:

This section deals with any act by spouse or communication by way of oral or written to provoke the other party in acting against with an intent to make it a reason for filing a complaint or instigating a situation of violence to provide evidence to false accused.

*Advait Amrish Goel v/s Mukesh School of technology*⁶, according to the Supreme Court, filing a FIR does not automatically result in the complaint's target being taken into custody right away. The "presumption of innocence," which states that everyone should be presumed innocent until and unless proven guilty, is a fundamental principle that the court has repeatedly reaffirmed. It was established that the mere act of filing a FIR would not be taken as absolute fact. There is no denying that everyone experiences violence, regardless of gender, though the frequency varies. This only addresses the issue that is seriously causing irreparable harm; it does not lessen the problems of either gender. Only when equality is attained in society are gender neutral laws the way to go. Men have access to redress through a variety of avenues. A remedy will always be available if there is some sort of mechanism in place to protect men's rights. So the gender-neutral laws like states must want to implement in India. The motive of the paper is also all about gender-neutral laws.

VIII. CONCLUSION:

The impact of mental illness on one's health is very significant. As this aspect does not attract any significant laws, we frequently tend to ignore it. But right now, it is imperative that strict laws be created that can protect and safeguard a man's mental health when it results solely from the fictitious circumstances that a woman fabricates. The government established the family welfare programme with the intention of protecting the victim's and his family members' rights in situations that result in emotional distress or financial hardship. *Several organisations* have been created to defend the rights of men, and they have seized the opportunity to address the problem that is having a significant negative impact on their life. *To conclude I bring back the*

⁶ Writ Petition No. 9889 of 2017.

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*original question with which I started, Whether the legislations are failed to protect men and by this paper I answer the question ‘the legislation are not biased and some provisions also there to protect men but those legislation are dominated by the women’s legislation and by this paper I suggest the lawmakers to make some laws on the area of neutral gender laws which will provide someequal proportion to **both men and women**.*

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