

STATESMANSHIP CONFERENCE

8th-9th August



BACKGROUND GUIDE

Letter from the Executive Board

Greetings Members!

It gives us immense pleasure to welcome you to this simulation of AIPPM being simulated at Statesmanship MUN 2.0. We look forward to an enriching and rewarding experience.

Agenda: **'Discussing amendments in Indian laws in respect of gender neutrality'**.

This study guide is by no means the end of research, we would very much appreciate if the Members are able to find new realms in the agenda and bring it forth in the committee. Such research combined with good argumentation and a solid representation of facts is what makes an excellent performance. In the session, the executive board will encourage you to speak as much as possible, as fluency, diction or oratory skills have very little importance as opposed to the content you deliver. So just research and speak and you are bound to make a lot of sense. We are certain that we will be learning from you immensely and we also hope that you all will have an equally enriching experience. In case of any queries feel free to contact us. We will try our best to answer the questions to the best of our abilities.

We look forward to an exciting and interesting committee, which should certainly be helped by the all-pervasive nature of the issue. Hopefully we, as members of the Executive Board, do also have a chance to gain from being a part of this committee. Please do not hesitate to contact us regarding any doubts that you may have.

All the Best!

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Introduction

The legal framework of a country is based on its societal skeleton. The concept of gender neutrality in the legal aspect refers to the idea of equality in the recognition of the rights of all individuals irrespective of their sexes.

The Oxford Dictionary defines '**Gender Neutrality**' as an adjective that is suitable for, or applicable to, every individual irrespective of gender. It describes the idea that policies, language, and other social institutions should avoid distinguishing roles according to people's sex or gender, and emphasises on equal treatment of individuals legally with no discrimination.

Before going into the core of the topic concerned, the first and the foremost task is to understand the meaning and essence of the subject matter which is Gender Neutrality. From various sources it can be inferred that gender neutrality describes the idea that policies, language and other social institutions should avoid distinguishing roles according to people's sex or gender, in order to avoid discrimination arising from the impression that there are social roles for which one gender is more suited than another. Gender neutrality emphasizes on equal treatment of men and women socially, economically and legally with no discrimination.

From the pre-historic era to late 60s, the condition and status of women was quite bad. In the ancient India, epics and Puranas equated women with property. Manus dictated that a woman would be dependent on her father in childhood, on her husband in youth and when her lord is dead, to her sons. Leave equality apart, women were not even treated as human being, they were just commodities in the eyes of men by whom you can make your daily chores done. Women were victims of widespread illiteracy, segregation in the dark and dingy rooms in the name of purdah, forced child marriage, indeterminable widowhood, rigidity of fidelity and opposition to remarriage of widows turning many of them into prostitutes, polygamy, female infanticide, violence and force to follow Sati, and the complete denial of individuality.

But the thinking and the perspective of the world towards women started to change a little with time. The first leader of our free India, Pandit Jawaharlal

Nehru said "You can tell the condition of a nation by looking at the status of its women". The fight for gender equality and women's status began in India in the 20th century. Western-educated leaders like Mahatma Gandhi and others initiated this struggle by stating that a woman is completely equal to a man in all the senses. During the struggle of independence, we have seen millions of women, educated and illiterate, housewives and widows, students and elderly, participated in India's freedom movement because of Gandhi's influence. Mahatma Gandhi, the father of this free nation in which we are living today, stood for women rights in the dark misty period when women were confined to their houses and children. He was having an absolute faith in inherent power of women, he emphasized it by saying- "complete emancipation of women and her equality with man is the final goal of our social development, whose realization no power on earth can prevent".

But, the roads of change is long and hard. When there were women like Vijaya Lakshmi Pandit- the first woman (and the first Indian) president of the United Nations General Assembly, Savitribai Phule- started India's first school for girls, Kamaladevi Chattopadhyay- social activist and Indian freedom fighter, Captain Prem Mathur-the first woman pilot in India, Sarojini Naidu- the "Nightingale of India", Sucheta Kriplani- the first woman Chief Minister in India, Indira Priyadarshini Gandhi- to date, the only female Prime minister of India, Justice Anna Chandy- the first female judge in India, and the first woman in India too become a High Court judge, Captain Lakshmi Sahgal- Indian independence revolutionary, Rani Lakshmibai- who don't know her, such a brave woman who led rebellion against the British, some women were still looked upon inferior and subordinate to men. Indira Gandhi's rule as Prime Minister of India was a triumph for women in leadership, yet the nation under her rule was populated by hundreds of millions of impoverished women, whose lives changed remarkably little during her term. India was no less than the days when Goddess like Sita had to defend herself against her husband's accusations of unchastity, impure, infidelity and Goddess like Draupadi had no option to say no to her brother-in-laws who were pulling off her saree in the court, when her husband lost her in a gamble. Women were an object for men then, and were still no less than an object.

Need For Gender Neutrality

There is an urgent need of Gender Neutral Society. Equality should be in real terms, not just in our thoughts and books. The liberties which are given to boys by birth, should be the same for girls too. Male or female should become only a matter of words, in our conscious mind both should be same, with equal rights and equal duties. From home to school to workplace, everyone should be treated equal irrespective of their sex. In corporate world, female employees earn less than similarly qualified men employees because of gender bias. But fundamentally, this is against fairness and equality. The overall objective of gender neutrality is a society which women and men enjoy the same opportunities, rights and obligations in all spheres of life.

Gender neutrality is intrinsically linked to sustainable development, educational attainment and political empowerment. There is a need to make the world a better place for current and future generations. It will only happen when all people are valued as equals that we can really achieve a brighter future, full of ideas and inputs from people across society.

Provisions For Gender Neutrality

- Constitutional Provisions
- Constitutional Privileges

1. Article 14 – Equality before law for women

The first and the foremost right which is guaranteed to all the persons is the right to equality. Equality forbids inequalities, unfairness and arbitrariness.

Article 14 provides equality before law - The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Article 14 uses two expressions, “equality before the law” and “equal protection of the laws”. The underline principle of Article 14 is that, all persons and things similarly circumstanced should be treated alike, both in privileges conferred and liabilities imposed. Amongst equals, the law should be equal and should be equally administered. In the case *Sanaboina Satyanarayna v. Government of Andhra Pradesh*, they formulated a scheme for prevention of

crime against women. In prisons also prisoners were classified into two categories, first prisoners guilty of crime against women and second prisoners who are not guilty of crime against women. Prisoners who are guilty of crime against women challenge the court saying that their right to equality is deprived. The court held that classification to keep away prisoners for crimes against women from the benefits of remission, was reasonable, proper and not violative of Article 14.

In *Air India v. Nargesh Meerza*, the Supreme Court struck down the Air India and India Airlines regulations on retirement and pregnancy during the services as air hostesses, as unconstitutional. These rules were held to be unreasonable, arbitrary and therefore, violative of Article 14 of the constitution.

2. Article 15 – Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 15(1) – Article 15 (1) says that ‘the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them’.

Article 15(1) is in absolute terms. The grounds of discrimination which are prohibited are religion-race, caste, sex or place of birth. In the case *Raj Rajeshwari Devi v. State of U.P.*, the U.P. Court of Wards Act, 1912 was challenged. Under this act, while male proprietor could be declared incapable of managing his property only on one of the five grounds mentioned therein and that too after giving him an opportunity of showing cause as to why such a declaration should not be made, a female proprietor could be declared incapable to manage her property on any ground, without giving any her show-cause notice. The provision was held by the court to be bad in law as it amounts to discrimination on the basis of sex.

Article 15(3) – Article 15(3) says that ‘nothing in this article shall prevent the state from making any special provision for women and children’.

As per Article 15(1), discrimination on the ground of sex is prohibited, but Article 15(3) allows the state to make special provisions for women and children. To elucidate on the provisions of criminal law, as per section 497 IPC, the offense of

adultery can be committed only by a male and not by a female who cannot even be punished as an abettor.

3. Article 16 - Equality of opportunity in matters of public employment

Article 16(1) – Article 16(1) says, ‘there shall be equality of opportunity to all citizens in matters relating to employment or appointment to any office under the state’.

The main object of Article 16(1) is to create a constitutional right to equality of opportunity in matters of public employment. Equality of opportunity for all under the state means that public employment or appointment to any office under the state means that public employment and appointment to public office shall be on grounds which do not, exclude any citizen or class of citizen.

Article 16(2) – Article 16(2) says, ‘no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state’.

While Article 16(1) gives in general terms, the right to equality of opportunity, Article 16(2) envisages discrimination against the citizen on grounds of religion, race, caste, sex, descent, place of birth and residence. In the case of *C.B. Muthamma v. Union of India*, a service rule requiring a female employee to obtain written permission of the government before the solemnisation of her marriage and denial of right to be appointed on the ground that she was a married woman, was held to be discriminatory.

4. Article 39-A Equal justice and free legal aid

It says that the state shall secure that the operation of legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities. The principles contained in Article 39-A are fundamental and cast a duty on state to secure that the operation of the legal system promotes justice, on the basis of equal opportunities and further

mandates to provide free legal aid in anyway by legislation or otherwise, so that justice is not denied to any citizen by reason of economic or other disabilities.

5. Article 42 – Provision for just and humane conditions of work and maternity relief

Article 42 lays down that state shall make provision for securing just and humane conditions of work and maternity relief. In the case *D. Bhuvan Mohan Patnaik v. State of A.P.* The court stated that directed principles of state policy contained in Article 42 of the constitution maybe extended to the living conditions in jail. Giving meaning to Article 42, the court upheld and granted maternity benefit to non- regularised female workers.

6. Article 46 – Promotion of education and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.

Article 46 says that the state shall promote with special care the educational and economic interests of weaker sections of people, and in particular, of the Scheduled Castes and the Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.

7. Article 47 – Duty of the state to raise the level of nutrition and the standard of living and to improve the public health

Article 47 of the constitution says that the state shall regard the raising of the level of nutrition and the standards of living of its people and the improvement of public health as among its primary duties and, in particular, the state shall endeavour to bring about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

8. Article 51-A – Fundamental duties

It shall be the duty of every citizen of India –

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of the women.

9. Article 238-D – Reservation of seats in panchayat

It states –

(3) not less than one-third (including the no. of seats reserved for women belonging to the Scheduled Castes and Tribes) of the total no. of seats to be filled by direct election in every panchayat shall be reserved for women and such seats maybe allotted by rotation to different constituencies in a panchayat.

(4) not less than one-third of the total no. of offices of chairpersons in the panchayats at each level to be reserved for women.

10. Article 243-T – Reservation of seats

It states –

(3) not less than one-third (including the no. of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total no. of seats to be filled by direct election in every municipality shall be reserved for women and such seats maybe allotted by rotation to different constituencies in a municipality.

(4) the offices of chairpersons in the municipalities shall be reserved for the Scheduled Castes and the Scheduled Tribes and women in such manner as the legislature of a state may, by law, provide.

Legal Provisions

- The crimes identified under Indian Penal Code

1. Rape (Sec. 376 IPC)

The crux of the offence of the rape under section 375,IPC is sexual intercourse by a man with a woman against her will and without her consent under any one of the six circumstances mentioned below:-

- (a) Against her will,
- (b) Without her consent,
- (c) With consent obtained by putting her or any other person in whom she is interested under fear of death or of hurt,
- (d) With consent but given under misconception of fact that the man was her husband,
- (e) Consent given by reason of unsoundness of mind, or undue influence of intoxication or any other stupefying or unwholesome substance,
- (f) Woman under 18 with or without consent.

Thus, it is only a man who can be liable for rape; a woman cannot be held guilty of rape unlike English law where woman is equally liable for rape as in case of a man. However, a woman can be liable for abetment of rape under section 109, IPC.

In the case *Tukaram v. State of Maharashtra* popularly known as Mathura rape case, apex court held that the fear which the clause 'thirdly' speaks of is negative by the circumstances. The court held that the victim's failure to appeal to companions and her conduct in meekly following the constable (accused) and allowing him to have his way to the extent of satisfying his lust amounts to consent for the sexual intercourse.

Mathura, an eighteen year old harijan orphan girl was called to the police station on an abduction report filed by her brother at the police station – Desai Ganj in Maharashtra on 26th March, 1972. When they were about to leave the police station, Mathura was kept back at the police station in the late hours of the night by one of the constables, Ganpath, who was on duty. She was taken to a toilet and

raped by Ganpath. Then another constable Tukaram, molested and tried to rape her but being too heavily drunk did not succeed. It was alleged that the two constables, while on duty, had bolted the doors of police station from inside and plunged the place into the darkness.

The session judge acquitted the accused, on the grounds of tacit consent, of the charge of rape for sexual intercourse between Ganpath and Mathura at the police station.

On appeal, the Bombay High Court reversed the finding of this session judge and found Ganpath guilty of rape and Tukaram guilty for molesting the woman. The high court rightly distinguished between 'consent' and 'passive submission', and held that mere passive or helpless surrender of the body and its resignation to the other's lust has induced by threats or fear cannot be acquitted with desire or will.

Section 376 of IPC provides punishment for the offence of rape. It says that whoever commits rape shall be punished with simple or rigorous imprisonment for a term which shall not be less than seven years but which may be for life or for a term extending up to ten years, and shall also be liable to fine unless the victim is his own wife and not under 18 years of age in which case, he shall be punished with simple or rigorous imprisonment for a term extending up to two years, or with fine, or with both.

In India, the situation is much worse. In 2001, the Decan Herald revealed that for every 1 case of rape reported 68 go unreported (1:68); and that the ratio of reported and unreported cases of sexual harassment is approximately 1 to 10,000. The National Family Survey of India has revealed that 1 to 5 women face domestic violence from their husbands. Global statistics are estimated between 20 to 50 per cent.

2. Kidnapping and Abduction for different purposes (Sec. 363-373)

Kidnapping literally means child stealing. At common law the term kidnapping consists of stealing and carrying away, or secreting any person whether in the same country, or by sending him away from his own country into some other, or

to paths beyond the seas whereby he is deprived of the friendly assistance of the law to redeem from such captivity.

In a celebrated English case of *R v. Prince* the house of lords as long ago as 1875, by a majority of 15 to 1, upheld the conviction of the accused for having unlawfully taken Annie Philips, and unmarried under the age of 16, out of the possession and against the will of her father.

Held, that it is no defence to a charge of unlawfully taking an unmarried girl under the age of 16 years out of the possession and against the will of her father, that the accused bona fide reasonably believe that the girl was older than the prescribed age of 16. The court rightly observed that the intention of the legislature in enacting such a provision was to punish those who had connection with young girls, albeit with their consent, unless the girl was infect old enough to give a valid consent. The man who has a connection with a child relying on her consent, does so at his peril if she is below the statutory age.

Abduction in common language means the carrying of a person by fraud or force. When no force or deceit is practiced on the person abducted, there can be no offense of abduction.

Under section 363 punishment for kidnapping is given. It says that whoever kidnaps any person or from lawful guardianship, shall be punished imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Section 363A defines kidnapping or maiming a minor for purpose of begging

It says whoever kidnaps any minor or, obtains the custody of the minor in order that such minor maybe employed or used for the purpose of begging shall punishable with imprisonment of either description for a term which may extends to ten years and shall also be liable to fine.

Section 364 defines kidnapping or abducting, in order to murder

It says whoever kidnaps or abducts any person in order that such person maybe murdered or maybe disposed of as to be put in danger of being murdered, shall be punished with imprisonment of life or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Section 366 defines kidnapping, abducting or inducing woman to compel her marriage, etc.

This section makes kidnapping and abduction of a woman with the intention of forcibly marrying or having sexual intercourse with her a cognizable offense. Mere kidnapping or abduction does not attract section 366, IPC. It comes into operation only when the kidnapper or abductor abducts the woman with intent to marry a person against a will or force her to illicit intercourse, etc. Even subsequent intent or act of intercourse with the kidnapped or abducted girl will not attract section 366, if such an intent was absent at the time when accused enticed the girl.

The supreme court in *Jinish Lal Shah v. State of Bihar* case, while setting aside the judgement and conviction of the appellant of the courts below under sections 366, 366A and 376, IPC for procurement of minor girl, forcible marriage, rape, held that in the absence of any threat, coercion or inducement having been established by the prosecution, the appellant could not be held guilty of charges framed against him. The appellant, a tuition teacher was convicted by trial court under section 366A and 376, IPC which was upheld by the high court. The courts below had proceeded on the basis that the girl was below 18 years of age on the date she left the house.

The appellant preferred an appeal against his conviction in the supreme court contending that since the prosecution had failed to establish that the prosecutrix was less than 18 years of age as of the date of incident, the charge under section 366A, IPC of which he was found guilty by the court below should fail; so should the finding relating to the offense of rape as the prosecution had failed on the basis of the evidence on record to prove that there was either force or coercion used by the appellant.

The state pleaded that even if the charge under section 336A, IPC should fail, the appellant was still liable to be convicted under section 366, IPC for kidnapping,

abducting or inducing a woman to compel her to marriage. The apex court held that before an accused could be held guilty under sections 366 and 376, IPC, it must be proved that either the complainant was compelled to marry the accused against her will or force to or induced to have intercourse against her will.

Section 366B – Importation of girl from foreign country

Section 366B was inserted in the act in 1923 wide section 3 of the act 20 of 1923. The section deals with extra territorial offenses, penalising importation into India from any country outside India or from the state of Jammu and Kashmir of the girl below the age of 21 years with intent or knowledge that she would be forced or seduced to illicit intercourse with another person or prostitution

Section 372 – Selling minor for purposes of prostitution, etc.

When a female under the age of 18 years is sold, let for hire, or otherwise disposed of to the prostitute or any person who keeps or manages brothel, the person so disposing of such female shall, until the contrary is proved, be presumed to have disposed of her with the intent that she shall be used for the purpose of prostitution. Section 372 and 373, IPC, punished the trade of selling and buying minors for purposes of prostitution.

Section 373 – Buying minor for purposes of prostitution, etc.

Any prostitute or any person keeping or managing a brothel, who buys, hires or otherwise obtains possession of a female under the age of 18 years shall, until the contrary is proved, be presumed to have obtained possession of such female with the intent that she shall be used for the purpose of prostitution.

3. Homicide for Dowry, Dowry Deaths or their attempts (Section 302/304-B IPC)

In brief there are four situations when a married woman is subjected to cruelty and harassment leading to the commission of an offense, that are first, when her

husband or his family members subject the women to cruelty or harassment – section 498, IPC.

Secondly, if such cruelty or harassment was inflicted by the husband or relative for, in connection with, any demand for dowry immediately preceding death by burns and bodily injury or in abnormal circumstances caused her death within seven years of marriage, such husband or relative is deemed to have caused her death and is liable to be punished under section 304, IPC for dowry death.

Thirdly, if one intentionally causes woman's death (section 300 clause, IPC), it would amount to murder punishable under section 302, IPC.

Fourthly, if the husband or any relative of her husband creates a situation which he knows will drive the woman to commit suicide and she actually does so within a period of seven years of marriage, the case would fall within the ambit of section 306, IPC (abetment to suicide).

In 1986 a new offense known as "dowry death" was inserted in the Indian Penal Code as section 304B by the Dowry Prohibition (Amendment) Act, 1986 (43 of 1986) with effect from November 19th, 1986. The provisions under section 304B, IPC are more stringent than provided under section 498A of the penal code. The offense is cognizable, non-bailable or triable by court of sessions.

In 1980, in the case of *V.N Pawar v. State of Maharashtra* Supreme Court said that wife-burning tragedies are becoming too frequent for the country to be complacent. Police sensitization mechanisms which will prevent the commission of such crimes must be set up if these horrendous crimes are to be avoided. Likewise, special provisions facilitating easier proof of such special class of murders on establishing certain basic facts must be provided for better appropriate legislation.

To curb the practice of dowry death there is an urgent need to enforce effectively the punitive and preventive measures with iron hands. At the same time the law must be made more effective.

Should death penalty be provided for dowry death under section 304B, IPC?

It is pertinent to note that Justice Markandey Katju in *Nathu v. State of Uttar Pradesh*, suggested for death penalty for dowry death under section 304B, IPC. Justice Katju observed that “dowry death is was then murder but surprisingly there is no death penalty for it whereas death penalty can be given for murder. In my opinion the time has come when law be amended and death sentence should be permitted in cases of dowry death”. In view of the said observation of Justice Katju the law commission of India in its 202nd report examined section 304B, IPC in the light of various judicial pronouncements and critically dealt with the substantive as well as procedural aspects of the subject in order to examine the desirability of substituting death punishment under section 304B, IPC for dowry death.

In a case of *Rajbir @ Raju v. State of Haryana* the apex court taking a serious note of dowry abuse resulting in rising of the dowry death cases in the country directed to registrar journals of all the high courts to circulate to all trial courts to ordinarily at section 302, IPC to the charge of section 304B, IPC so that death sentences could be imposed in such heinous and barbaric crimes against women.

Under the existing provisions, dowry death cases are registered under section 304B, IPC that provides maximum punishment of life imprisonment (minimum 7 years). Now after this order from the apex court, a person convicted of dowry death would be charged under section 302, IPC along with section 304B, IPC and so he can get either life imprisonment or death sentence. This is a welcome step and will go a long way in reducing dowry death cases in the country.

4. Torture, both mental and physical (Section 498-A IPC)

Section 498A – Husband or relative of husband of a woman subjecting her to cruelty – whoever, being the husband or the relative of the husband of the woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable.

For the purpose of this section, “cruelty” means

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

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

While in *State v. Bijay, the Andhra Pradesh* and the Delhi high court judgements upheld that the word 'cruelty' is well defined in section 498A, IPC. In this case fifteen year old Rina was married to Bijay after 6 months of alleged cruelty and demands for dowry of Rs. 2000 and tape recorder she committed suicide. Several relatives led evidence to show that Rina was subjected to cruelty, but the court ruled that the uncorroborated evidence of relatives could not be accepted. There were no physical signs of cruelty. Mental torture by forcing her to do domestic work, after turning out (dismissing) all the servants in the affluent home, was not established. Besides, it is also very much doubtful if doing domestic duties in the absence of servants maybe considered torture, let alone torture enough to make a housewife prefer death to get away from it all, says the judgement.

The girl had told her mother and her aunt that they would not be able to see her unless the demands of the husband were met. But the court could not relate these demand with the suicide as there were only three weeks between the two, and it was two short spans during which cruel treatment was allegedly meted out to Rina. The court also found the girl sentimental and imaginative from her letters. Therefore, the mother in law and the husband, who were charged with abetting her to commit suicide were let off.

Those who know the social situation in which dowry deaths take place will find it difficult to agree with the reasoning of high court. The range of mental cruelty is a vast and intractable terrain, as the Andhra judgement observed, and being forced to do domestic work in the early weeks of marriage after the dismissal of servants would amount to both physical and mental cruelty. If the girl is sentimental and imaginative such treatment is or the more bound to hurt the teenage psych.

This judgment underlines the fact that it is not enough to pass legislation against social events unless it is actively supported by investigating authorities, who can make a full proof case, and a judge whose intellect reflect the social contact in which we live, it is difficult to implement the social welfare laws.

5. Molestation (Section 354 IPC)

Section 354 – Assault or criminal force to woman with intent to outrage her modesty – whoever assaults or uses criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both.

Section 354, IPC has been enacted with a view to protect a woman against an indecent assault as well as to save that public morality and decent behaviour. The section punishes and assault, or use of criminal force to any woman with the intention or knowledge that the woman's modesty will be outraged.

In the case *Rupan Deol Bajaj*, the Supreme Court held that slapping a woman on her posterior amount to 'outraging of her modesty' within section 354 and 509, IPC. At a dinner party on July 18th, 1988 Mr K.P.S Gill, then director general of police, of the state of Punjab came and stood in front of Mrs Bajaj a senior of I.A.S officer so close that his legs were about four inches from her knees. He then asked her 'to get up immediately' and come along with him and on her objection slapped her on the posterior in the full presence of all the guests.

It appears the police did not initiate any action on the first information report of Mrs Bajaj and the high court of Punjab and Haryana allowed the petition of Mr Gill for quashing of F.I.R on the ground that matter being too trivial, it needs no action.

Allowing the petition of Mrs Bajaj, the supreme court held that the alleged act of Mr Gill in slapping Mrs Bajaj on her posterior amounted to 'outraging her modesty' within section 354 and 509, IPC for it was not only an affront

(disrespectful) to the normal sense of feminine decency but also an 'upfront of her dignity'.

6. Sexual Harassment (Section 509 IPC)

Section 509-Words, gestures, or act intended to insult the modesty of woman - whoever intending to insult the modesty of any woman, utters any word, makes any sound or gestures, or exhibits any object, intending that such word or sound shall be heard or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Sexual Harassment at work place

Sexual Harassment maybe defined as sexual misconduct by supervisors (i.e., superior officers, etc.) irrespective of the employer's knowledge or any loss or adverse effects for refusing a superiors unwelcome advances. As early as 1993 at the International Labour Organisation seminar held at Manila, it was recognised that sexual harassment of women at work place was a form of gender discrimination against women.

The apex court in *Vishaka v. State of Rajasthan*, has defined, sexual harassment as a form of sex discrimination projected;

- Through unwelcome sexual advances;
- Requests for sexual favours and other verbal or physical conduct with sexual overtones whether directly or by implications particularly when the submission to or rejection of such a conduct by the female employee was capable of being used for affecting the employment of the female employee,
- Unreasonably interfering with her work performance, and

• Had the effect of creating the intimidating or hostile working environments. In other words, sexual harassment includes such unwelcome sexually determined behaviours (whether directly or by implication) as :

(a) Physical Contact and advances;

(b) A demand or request for sexual favours;

(c) Sexually colored remarks;

(d) Showing pornography;

(e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

It was further said that sexual harassment of woman employees at a workplace, amongst to violation of the 'right to gender equality' and also the 'right to life and liberty' – the two most precious fundamental rights guaranteed vide articles 14,19 and 21 of the constitution.

The crimes identified under the Special Laws (SLL)

1. The protection of women from Domestic Violence Act, 2005

The long awaited Act on domestic violence has finally been enacted by the Parliament keeping in view the recommendations of the United Nations Committee on Convention on Elimination of all forms of discrimination against women and to provide for more effective protection of the rights of women guaranteed under the constitution in general and in articles 14, 15, 21, in particular. The Lok Sabha passed the protection of women from Domestic Violence Bill on 24th August, 2005 and Rajya Sabha on 29th August, 2005. The President of India gave his assent to the Bill on 13th September, 2005 and the Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005) became law.

This section defines the expression "domestic violence". Any act, omission or commission or conduct of the respondent shall amount to domestic violence in certain circumstances. It includes causing physical abuse, sexual abuse, verbal and emotional or economic abuse which are also explained in the section. In determining whether any act, omission, commission or conduct of the

respondent constitutes “domestic violence”, the overall facts and circumstances of the case shall be a guiding factor.

In *Savita Bhanot v. Lt Col V.D. Bhanot* case, it was held that petitioner under Domestic Violence is maintainable if acts of domestic violence have been committed prior to coming into force of Act or despite her having in past lived together with respondent, a shared household woman, is no more living with him at time of coming into force of Act. The court has to look to the rights of a woman as guaranteed under article 14 of the Constitution of India. Denial of benefit will tantamount to violation of article 14 of the continuation. Domestic Violence once committed in domestic relationship is continued process.

2. The Dowry (Prohibition) Act, 1961

The object of this bill is to prohibit the evil practice of giving and taking of dowry. This question has been engaging the attention of the Government for some time past, and one of the methods by which this problem, which is essentially a social one, was sought to be tackled was by conferment of improved property rights on woman by the Hindu Succession Act, 1956. It is, however, felt that a law which makes the practice punishable and at the same time ensures that any dowry, if given does ensure for the benefits of the wife will go a long way to education public opinion and to eradication of this evil.

In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly-

(a) By one party to a marriage to the other party to the marriages; or

(b) By the parent of either party to a marriage or by any other person, to either party to the marriage or to any other person.

In the case *Mary v. Cherchi*, the issue involved was as to whether the share of the girl entitled to under the succession Act if given to her at the time of marriage constitutes dowry. The honourable court held that entitlement to share takes place only on intestacy and that may be capable of being understood only as

handling over of her share in the estate at the time of marriage and as such is not a consideration for the marriage.

3. The Commission of Sati (Prevention) Act, 1987

This Act was to provide for the more effective prevention of the commission of sati and its glorification and for matters connected therewith or incidental thereto.

4. The Immoral Traffic (Prevention) Act, 1956

An Act to provide in pursuance of the International Convention signed at New York on the 9th day of May, for the prevention of immoral traffic.

5. The Child Marriage Restraint (Amendment) Act, 1979

It is an Act to restrain the solemnization of child marriages.

Protective Discrimination

In India, women are always at an advantage because of our recent laws which provides them so much freedom. For instance, ladies have a separate ticket counter at almost every place. They have seats reserved in buses. In metros, they have a complete coach reserved for themselves in every train. All these and other benefits are provided to them for their safety and security.

But the question arises here is are women using the laws meant for their protection in a right way or misusing them against men. Not every women but some are actually using their right to take revenge from men and for personal gains. Innocent men and families have been victimised because of such misuse of women protection laws.

Section 498A of Indian Penal Code was passed to protect women against marital cruelty and dowry harassment. A lot of rights are provided to women in this section which are explained above. This section allows the arrest of husband and his relatives immediately the complaint is filed and solely on the basis of allegations made by the wife, without any evidence and investigation. Offences under this section are non-bailable and accused gets punished by imprisonment

even before the guilt is established. This is a right provided to women for their safety and protection and for fast relief. But unfortunately, it is increasingly being misused by women to settle scores with their in-laws and husband. Innocent families have been victimized and imprisoned only on the basis of allegation of wife. It has noted by several authorities that almost 98 per cent of cases filed under section 498A are based on false accusations.

There is a huge requirement of revising Section 498A. Such laws will only give rise to its misuse by witty and clever women for their personal gains. Very less are the cases that real victims who are really being harassed by their husband and in-laws for the reason of dowry and other be able to report the cases and avail the remedy entitled to them. But there are many women who actually take advantage of these women protection laws and files fraud cases against their husband and families to get divorce or to harass the in-laws. Most cases have been recorded that women accuse their husband of cruelty and dowry harassment, to make the divorce process easier and to get a huge sum of money as alimony.

In the case of an accident or murder, law requires proof before action can be initiated against the accused. So why the law does allows innocent families to suffer merely on the basis of a false complaint. There's an urgent need to look into the misuse of these laws. Our lawyers are also responsible for this misuse of women protection laws, as even after know the truth, they don't counsel and advise them to not put a false case and resolve the issue amicably, and instead they take their case.

This law came into effect to prevent women against domestic violence, harassment for dowry and cruelty. And it is a very important law for the protection of women who seriously suffers all these violence in their homes. But there should be a major revision in the practice of arresting the husband and relatives without investigation irrespective of their ages and health. Most women misuse the law not only to extract money from their spouses, but also due to career constraints or adjustment problems faced by them after marriage.

At present, the accused is arrested as soon as a case is registered against him under Section 489A and the investigations are carried out later. Old and ailing

parents and relatives of the have been jailed for such a long period without even investigating. There is a strong recommendation that since the nature of charges are very serious, it should be made a bailable offence and proper security to be given to the wife. These fraud cases and false allegations are a result of corruption in our country.

After the marriage, we all have seen men to be always balancing between their mother and wife. These days, whenever there is a dispute between a husband and a wife, the society always points the man to be culprit and woman to be victim. All this is because the society has made a presumption that only a women can be harassed and violated by a men, men are not subject to be harassed. But there are live examples of women who harass their husbands and keep them in fear. So, there is a strong requirement of gender laws to be changed.

Status of Male Victims In India

Prostitution And Sex Tourism of Boys In India

In various studies it was found that prostitution and sex tourism of male children is rampant in major pilgrimage centers of India. Due to development of tourism without proper and protective measures leads to sexual exploitation of children, in the form of child labor, child prostitution, child trafficking, child abuse. There is a huge rise in the demand of male children for all these purposes. These children are exploited by domestic and foreign tourist as well. Due to extreme poverty and less means of survival, they are forced to prostitution.

Gay Rape In India

There is a lack of social acceptance to LGBT and transgender communities due to the sexual orientation of them. Their rape cases are rarely reported due to the provision of Section 377. It is a fact irrespective of the social acceptance that the sexual abuse and rape cases against these people are increasing day by day.

Conclusion

By the help this study, it can be concluded that the status of both women and men is exploited in the country. Need was felt to bring a change in definition of sexual offences to deliver justice among all genders in the society. Males are always considered as the perpetrators as the system has no provisions and laws for men to seek legal recourse if they are harassed or raped because it is generally presumed that they can never be raped. It is the time to admit that males can even be raped, and not always they are on the enjoying side of it. Equally, the women protective laws should also be advanced so that crimes against females will be able to decrease.

The shift from gender equal approach to gender neutrality is more needed and will be more beneficial to a civilized society.