

MARGINALIZED MEN: GENDER DISPARITY IN LAW

ABSTRACT

Male dominance in our Indian society was prevalent for a long time. But it did not extend for an uncertain period. Presently, if we see the position of men it's deteriorating in terms of equality, safety, reputation etc. A clearer picture of the same is voiced through this paper. From our minds to our laws, everything has been unidirectional. It is time to show the people and to the law of our nation, what "Equality" actually implies.

Keywords – Gender equality, men's rights, harassment, false allegation, feminism

INTRODUCTION

'Constructive biased used for empowering women is now being misused. A man suffers for years of insult, disparage and ignominy because of such laws being misused by women'

Gender equality is a human issue and not only a women's issue. As per Section 8 of The Indian Penal Code, 1860 gender means the pronoun "he" and its derivatives are used by any person, whether male or female.¹But the law does not regard it and has overlooked the fact that men and women can at any time be in pari passu. Numerous legislations have been enacted in favor of women and absolutely against men. It is targeting the rights of men somewhere or the other.

Agreed that India has a past filled with laws, traditions and cultural attitude prevailing in the mid eighteenth and nineteenth centuries which were mostly patriarchal in nature, but with the evolution of the twentieth century, it has been significant to see women excelling in various fields in order to uplift their status in the country. In the current scenario it is certain that women are not deprived of their rights, liberties and importance.

A query that perpetuates here is that, whether the rights and liberties of men are in danger. Prior to the #mentoo movement which commenced in October 2018 in reciprocation to the #metoo, men kept quiet and confined such information. It was concealed because of its debilitating effects upon men. It was after the #mentoo movement that men opened their mouth to voice their story and the irreparable damage caused to them. There are cases where false accusations are charged on men and later proven innocent, but their name is already out to the public which harms their reputation in the public domain.

Still the law has no mercy and ties men with the burden of proving themselves innocent, else held guilty. Indian citizenries have headed towards being female oriented and so are the laws of the country. People have absolutely forgotten that men can also be victims of rape and harassment. If women don't like being touched in a certain way, there are men who also find it inappropriate but they are helpless and cannot voice this out.

¹The Indian Penal Code 1860, s 8

HISTORY

The law has given 6 fundamental rights under Article 14-35 of the Constitution of India irrespective of the religion, race, caste, place of birth, sex etc. These rights are enjoyed by all the citizens of India or we can reframe it as; these are the only 6 rights enjoyed by men in India. However, if we quote legislations specific to women, the list is inclusive and not exhaustive. And still, the inception of 'Gender Equality' was confined only to the female upliftment and thereafter became a female fight only. Thus, people wholly forgot as to what gender actually meant. This female fight has given birth to a concept called as Feminism, which has a weighty attack on men's rights. Apart from this, putting false accusations upon men relating to matters such as domestic violence, rape, harassment, dowry etc., and not giving them an opportunity of being heard and present their side is the utmost wrong, any person can do.

Before we delve into actualizing the true status of men in this time of westernization and modernization in our society, a light upon the issues and settlement of issues related to women will be dealt with.

A. WOMEN'S POSITION IN THE COUNTRY

The status of women in India has been subject to numerous extraordinary changes over the past few millennia. In ancient times, women were not treated with much respect and weren't considered equal to men. They were only showpieces to be kept at home and that too under a veil. But gone are those days, women are no longer deprived of anything. In fact, they have got more than their demands. The modern scenario of women is that now they are all feminists, yet with no sense of its importance. Feminism actually means building a world that works for all. However, feminism is backed with movements that campaign for women's rights only. And now, fighting for women's rights has become synonymous to man-hating.

B. MOVEMENT IN 1988

The primary reason behind commencing any movement is the injustice and inequality that individuals undergo. And talking of men's rights it is not an issue that arouses today but is traced back to 1988. Credits to the Supreme Court Adv. Ram Prakash Chugh, who says,

“When I started the organization, people did not take me seriously.” He says “It was not acceptable that men too could be victims”.² He started a movement in lieu of the false cases of dowry and harassment being hurled to men. He formed a society called the Crime against Man cell, also known as the prevention of cruelty to husbands. Adv. Chugh related to this suffering of men as he himself had confronted a lot in his marital life.

Later on, associations for the Men’s Rights Movement began to shape in the years 1996 (Purush Hakka Sanrakshan Samiti), 2003(Sangyabalya), 2005 (Save Indian Family, which also marked 19th Nov, 2007 as International Men’s Day for the first time) and then from 2008-2012 little advances were made to reach a point where laws are made fairer and equality is achieved. Lately the men’s movement came to be called the ‘Meninist Movement’. But the movement never intended to bring down women in any manner but its sole purpose was uniformity. To point out here, feminism never directed towards this idea of fairness but only empowering women even in their wrong doings.

LEGAL BACKGROUND

Law is a set of rules and regulations, which is laid down for the purpose of maintaining the security and peace in the country. It resembles an assurance to the citizens of a country. But what if protection is only for a segment and neglects or fails to realize the privileges of another section. This is what is generally termed as inequality. Well in a country like India there exists disparity in almost every sphere. Inequality between rich and poor, minority and majority, religions etc., but one that exists between the individuals is simply unjust. The inequality of rights, sections, acts, codes, rules between men and women is absolutely unfair. If we begin to cite women favoring laws, and then the list is truly long. Starting from the 90’s, women-oriented laws can be recognized easily. Even today the list of women specific laws does not seem to sufficient the present needs of the law and the law makers. Therefore, they keep enacting, amending and modifying the said laws. The recent laws which have been altered and added are only for one reason primarily, that is, protection of women.

In 2013, a women-centric amendment act was passed, called The Criminal Law (Amendment) Act, 2013. It has provided for amendment in The Indian Penal Code, 1860 and The Code of Criminal Procedure, 1973 on laws related to sexual offences. It has been vilified

² Soni Mishra, ‘Men insist’*The Week*(India 16 June 2016)<<https://www.theweek.in/theweek/specials/male-rights.html>>accessed 1 September 2020

for being gender-biased. Majority of the alterations and additions made were to protect wholly women. The act gave that legal support to women to commit the same crimes for which they were being protected.

- Section 354 – outraging modesty of women (amendment made the punishment stricter)
- Section 354 A, B, C, D – only protects women against sexual harassment, act with intent to disrobe a woman, voyeurism and stalking respectively.
- Section 375 – Rape (it is a taboo section, which is still interpreted in the light that only women can be raped. This section is not pointing towards any gender biasness but it is more of a societal problem)

Thus, The Criminal Amendment Act of 2013 was profoundly condemned in the year of its enactment only. And a lot many individuals wanted to replace the word men or women with “any person”.

However, apart from these trending laws of 2013 there were laws embedded in the legal system which were hostile to men. These men who actually feared these laws and somewhere built a sense of unjust in their minds formed groups. Such male activists have given their all to replace such laws existing in the society.

The changes demanded by male activists in the legal system are as follows –

- Sec 498-A³ in The Indian Penal Code, 1860 be made bailable, non-cognizable and compoundable.
- Changes in rape laws under which consensual rape not to be termed as rape in cases where the promise of marriage was broken or where a relationship broke.
- Also, punishment for false rape cases was demanded.
- The Domestic Violence Act, 2005 be made gender neutral.
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 be made gender neutral.
- Sec 113b of The Indian Evidence Act, 1872 be reviewed which states that if a married woman committed suicide within 7 years of marriage it will be assumed by the court that her husband and in-laws abetted the suicide.
- Scrapping of dual legal provision for similar benefits and to avoid multiple litigations.

³ Husband and relative of husband of a woman subjecting her to cruelty

- Gender equality in various provisions of The Indian Penal Code, 1860, The Code of Criminal Procedure, 1973 and The Indian Evidence Act, 1872.
- Changes in divorce laws where no maintenance to be availed by women who are a main earner in the family.
- Changes in child custody, where parental custody must also be allowed.
- Under Sec 114a of The Indian Evidence Act, 1872 it is a compulsory statutory presumption that consent is absent in case of claims made by a rape victim (woman).

There is also a ray of hope provided under The Indian Penal Code, 1860- Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.⁴

In the case of **Mahila Vinod Kumari v. State of Madhya Pradesh**⁵ it was reflected that how the evil of perjury and fabrication of evidences leads to sufferings by innocent people in a serious case of rape. In this case the petitioner lodged an F.I.R against two persons of committing rape on her. On the basis of this complaint the two people were arrested and a charge sheet was also filed. However, the accused persons abjured their guilt. And later the petitioner in the trial court also denied the fact that she was ever raped or filed any F.I.R. The trial court directed cognizance in terms of Section 344⁶ of The Code of Criminal Procedure, 1973 to be taken against the petitioner. Thus, the petitioner was sentenced to harsh imprisonment.

This is just one instance where the power of being women was abused; such cases also form a long list just like the never-ending women-oriented legislations.

MEDIA & SOCIAL MEDIA: A PERQUISITE OR BLIGHT

⁴The Indian Penal Code 1860, s 191

⁵Mahila Vinod Kumari v State of Madhya Pradesh, (2008) 8 SCC 34

⁶Summary procedure for trial for giving false evidence

Media today is so powerful. It can make or break a person's image in minutes. Media is that source which acts as a link in disseminating information with people all around the world. One of the components of media is the latest trending social media, such as Facebook, Twitter, YouTube, Instagram, WhatsApp etc. It has become a tool to reach out to millions of people, who might be known or even unknown.

A small piece of information that a person shoots on social media without knowing the actual details of it leads to new assumptions and judgments in the minds of others. And, for a matter of fact people actually tend to believe in it, choose to support it and create new write-ups. This can be explained through a case of **Jasleen Kaur v. Sarvjeet Singh 2015 (August)**⁷ which made national headlines. In the following case a girl charged false accusations on a 28-year-old boy of eve-teasing at a traffic signal in West Delhi. She posted the whole story on social media (Facebook) knowing it to be erroneous. The boy was called a 'pervert' by the media people while the girl was lauded by well-known personalities such as Delhi Chief Minister Arvind Kejriwal and actress Sonakshi Sinha. However, a witness turned up in support of the boy claiming that the girl was stating a whole different story. The matter went to the Delhi court and after subsequent hearings; Singh was given a clean chit.

The case shows that how a girl swayed the general public with her fake story, as often the girls get a benefit of doubt in such cases. And also, the media who are not interested in knowing the real facts and lend a helping hand to such sham cases. The boy had to go through a lot of humiliation and defamation because of this case for a period of 4 years. Later, all those who misunderstood him and were very much influenced by social media, apologized to him. But it is not difficult to understand that an apology is not what he needed in return of the loss he faced for 4 years.

A well-known principle which is not so well-known by the general society is that "a person is presumed to be innocent, unless proven guilty". Thus, it is expected from all to remain neutral unless the final decision is passed. It can therefore be apprehended that media or social media is blight in a case where men are to be highlighted.

MEN UNDER ATTACK

⁷'After 4 Years Of Public Shaming & Struggle, Saravjeet Singh Finally Proven Not Guilty On Jasleen Kaur Case' *The Logical Indian* (India 25 October 2019)<<https://thelogicalindian.com/news/saravjeet-singh-jasleen-kaur/>> accessed 11 September 2020.

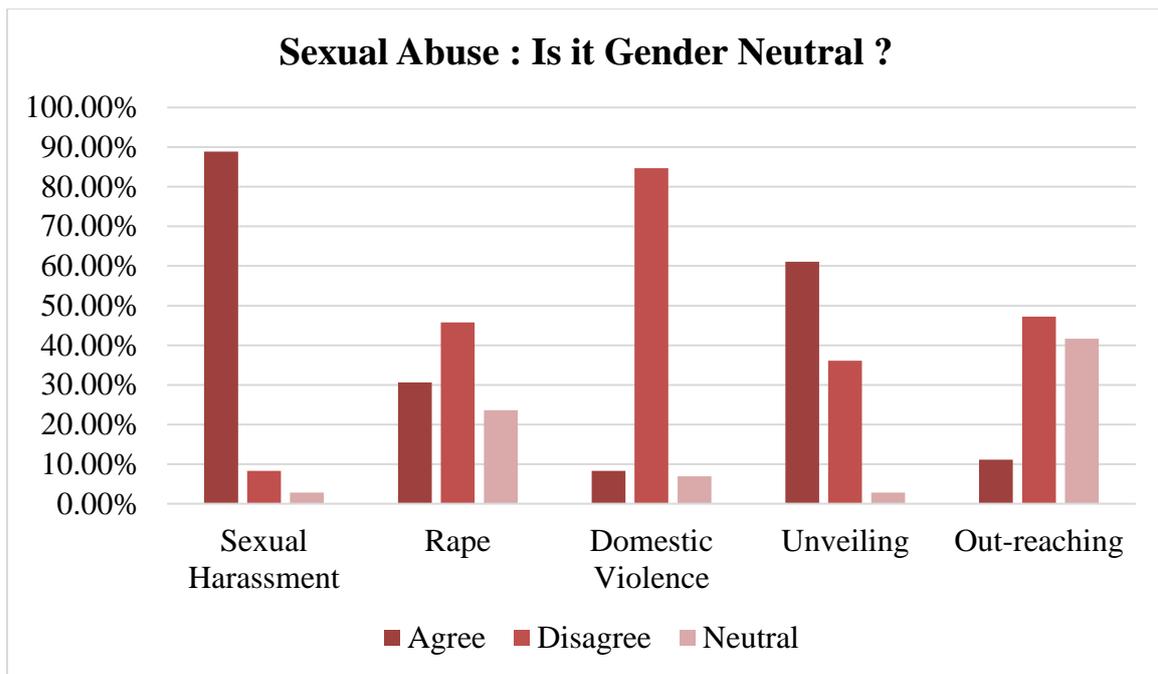
The table shown below is a specimen as to how in general; men are not even given proper help with respect to cases which are in the minds of people unidirectional. The question here is that can't men seek help from others such as an organization, society, help lines etc. Is help also limited to one gender? The table⁸ below might be able to give the readers an idea.

| <u>PARAMETER</u> | <u>WOMEN HELPLINE</u> | <u>MEN HELPLINE</u> |
|-------------------------|------------------------------|----------------------------|
| Number | 181 | 8882498498 |
| Working since | 41 months | 12 months |
| Total calls | 85,000 | 38,000 |
| Calls per day | 79 | 107 |
| Funding | Government | No funding |
| Toll free | Yes | No |

The table is a description on the attack of men in terms of helpline numbers, working period, total calls received, funding and toll-free number.

- The number used for women as a helpline is a three-digit number, which any woman or even a small girl can remember and dial in need of help. However, men have a normal ten-digit number, which is not occasionally remembered by people.
- The working of women helpline has been in existence for more than 3 years now. On the other side, men's helpline has just started and has been only a year.
- The total number of calls received by women is 85,000 in the duration of 3 years however the total number of calls by men is 38,000 in just 12 months.
- The calls per day are also more by men as compared to women.
- The funding of women helplines is government aided however no funding for men helplines.
- A women helpline number is toll free, however for men it is not.

⁸SnehaAgrawal, 'Raped tortured by wives: Helpline for Indian men gets 100 calls to report abuse daily' *India Today* (New Delhi 2 October 2015) <<https://www.indiatoday.in/india/story/all-india-mens-helpline-swamped-with-complaints-of-torture-by-wife-265980-2015-10-02>> accessed 18 September 2020



The world seems to be silent on attacks happening on men, as it is a mindset that only women are rampant to crimes like rape, sexual harassment, and domestic violence. Therefore, even the internet has a lack of information regarding the same. Thus, a survey based on the standpoint of people of different ages in apropos to sexual assault on men too was conducted. The above chart gives an overview of the fact that even men can be targeted in crimes such as rape, domestic violence etc. It is the voice of the public that is displayed in the form of a chart and a thought that people are getting attuned to this actuality.

We accumulated about 72 responses from this survey in which 47.2% were female and 52.8% were male. Further bifurcation in terms of age was also taken into consideration. Responses from below 18 years were only 2.8%, between 18-25 years was 90.3%, between 26-35 years was 4.2%, between 36-50 years was 1.4% and above 50 years was also 1.4%.

The chart can be interpreted in the following manner:

- The question raised was whether or not men can be sexually harassed. To this the response was quite informative from the people as there is awareness of the fact that sexual harassment can be a gender-neutral crime. Thus, the majority agreed to this point (88.9%), a few disagreed (8.3%) and some were neutral (2.8%).
- The next exploration was relating to rape which is said to be only patriarchal. Surprisingly, the agreed ratio was less (30.6%) as compared to the disagreed ratio (45.8%) and some neutral (23.6%). The reason for this could be a society which is driven by a strong masculine custom. Well as most of the responses were from the age

group of 18-25 years, they are well informed that the society can treat a man as un-masculine in nature of such crimes. But still their opinions regarding the same is reserved that it is a taboo and only men cannot rape.

- Another query regarding domestic violence was asked, whether it is only women who are victims. The respondents agreeing to this were few (8.3%) and some neutral (6.9%). However, the opposing ratio was much more (84.7%) this is because women have favouring laws and external support to curb their victimization, men don't.
- Next was an opinion on the unveiling of the fact that sexual abuse ever happened to men. The poll leaned at a higher perspective (61.1%) upon this question, which means at some point of time they have heard about such abuse faced by a male friend or relative. It also includes male responders who faced sexual abuse. The disagreed ratio was little less (36.1%) to the agreed ratio and some choose not to say (2.8%) and thus under neutral category.
- Last was with respect to reaching out of such cases to the doors of justice that is the courts. Very less people agreed (11.1%), the disagreed ratio was quite extensive (47.2%) and many were neutral too (41.7%). The reason for not going to the courts is maybe fear of reputation, confusion or for simply being under the tag of men. Another reason that does not allow men to move to the courts is the long list of women-oriented legislations.

The end that can be drawn from the graph and numbers is that even people have an idea that men too can be victims although; they do not seek any relief. In addition, people also believe and have been disclosed with facts such as sexual abuse faced by men and how they do not open about this to others in the vicinity due to either shame or lack of laws to save them. In and all we can say that people especially of the age of 18-25 years know that sexual abuse on men is nothing to be surprised of. But the doubts that revolve in the minds of people are – why laws are not gender-neutral, are all men same, are women only victims, and so on.

CASE LAWS & OCCURENCES

To verify the fact that men can be victims too and those false allegations have become a common route for women, here are highlights from some cases that actually realized the same. Also, recommendations for gender neutral laws have been placed before the law makers, but the action time for the same is yet to come.

A. CASES

(i) SUSHIL KUMAR SHARMA V. UNION OF INDIA & ORS.⁹

It is a landmark case in which the petitioner challenged section 498A of The Indian Penal Code, 1860 to be ultra vires the Constitution. Firstly, it was pointed out that the accused are more often innocent and due to the sympathies exhibited by the courts, the unscrupulous persons make such false accusations. Secondly, prayer in relation to false charges under sec 498A of The Indian Penal Code, 1860 was made, to take stringent actions against persons making such charges.

It is also stated here that the provision being intra vires does not give a green signal to the people to impose wrong complaints. Unless the law makers deal with it, the courts have to lift the veil of false cases and punish the person. Section 498A of The Indian Penal Code, 1860 being an important provision to combat dowry menace must not give an assassin's weapon to women but be used as a shield. This misuse can lead to a new legal terrorism. To be captured under a case of sec 498A is in itself a matter of defamation. After that even acquittal does not wipe out the fact that he was once in and the adverse media coverage adds to the misery.

However, it was held that a possibility to misuse the law does not invalidate it but if it is actually misused then the legislature has to amend, modify or repeal it. The writ petition is accordingly disposed of.

(ii) NARENDRA V. K. MEENA¹⁰

The facts of the case state that how the husband (appellant) and his family were mentally tortured by his wife (respondent) and thus divorce petition was filed on grounds of cruelty under Section 13(1) (ia) of The Hindu Marriage Act, 1955. However, the High Court allowed an appeal filed by the respondent abdicating the decree of divorce. Hence, the present appeal to the Supreme Court.

As stated by the appellant the respondent did all possible things to leave the appellant in a state of mental disharmony. She once locked herself in the bathroom and poured kerosene for no reason, she asked the appellant to make distance with his family, and she made false

⁹Sushil Kumar Sharma v Union of India &Ors.,AIR 2005 SC 3100

¹⁰Narendra v K. Meena, AIR 2016 SC 4599

accusations of having an extra-marital affair with the maid and constant threats to commit suicide. Thus, even the court agreed that in such circumstances the marriage deserves to be dissolved by a decree of divorce. The Supreme Court also mentioned that the judgment given by the trial court was perfectly correct and there is no need for a different perspective. The respondent appears to be a woman with whom no one can live in tranquility and thus divorce be granted.

The case highlights the fact that the High Court did consider an appeal from the respondent wife playing a victim card and charging false allegations on the appellant which are quite serious in nature. Thus, women can also be guilty but through the sympathy provided by all to women, the innocent people are dragged behind the bars for no offence committed.

B. OCCURRENCES

(i) SEXUAL HARASSMENT

There is no such case to prove sexual harassment against men, but this does not deny the fact that men cannot be harassed at all. A number of articles and reports state that sexual harassment exists in the men segment too. The difference is only that it goes unregistered due to many fears. Stating one such article from the year 2017 of Mr. Vijay Nair¹¹. He faced cyber stalking for months, and received sexually explicit messages via email or WhatsApp. Later on, it was found that the perpetrator was a woman with whom Mr. Nair was acquainted.

Thus, it is important to introduce gender neutral laws, as in such cases where men are victims nobody comes to lend a hand to them. Moreover, the victim feels suffocated to not having any recourse in the field of law, no emotional support from friends and family, for the society it is inconceivable to consider the fact that women can also sexually harass a man and in some cases the fear that a female perpetrator may use it against him anytime.

(ii) FALSE CASES AND THREATS

A recent case of imposing false charges on a boy named Aman Baisla¹² went viral through an Instagram video posted by the boy who is no more. Aman had lent money to a girl who was

¹¹Devika Agarwal, 'Vijay Nair sexual harassment case: Rising incidents against men emphasize need for gender-neutral laws in India' *Firstpost* (India 17 March 2017) <<https://www.firstpost.com/india/vijay-nair-sexual-harassment-case-rising-incidents-against-men-emphasise-need-for-gender-neutral-laws-in-india-3452286.html>> accessed 8 October 2020

¹²Shruti Badjatya, 'Delhi man hangs self, names ex-business partner, Harayanvi singer in last video' *India Today* (New Delhi 6 October 2020) <<https://www.indiatoday.in/india/story/delhi-businessman-suicide-blame-haryanvi-singer-instagram-video-last-truth-1728834-2020-10-06>> accessed 10 October 2020

his ex-partner in the company and a singer named Sumit Goswami who was the girl's friend. They later refused to pay him back and when he asked for his money, he was threatened by them. The girl once came to meet Aman, she tore her clothes and blackmailed him to give 10 lakh rupees more by the end of October or else she will impose false rape charges on him.

Aman uploaded this video on 29th September, 2020 after which he committed suicide. He mentioned in his video how he felt so much trapped in this and could not ask for help as he was a boy and the police would accept and believe the women's statement only.

The whole context of giving this reference off the track from the case laws is that some cases do not come up at all, some are seen via social media as a channel and it takes time for people to accept the truth and take a stand in cases where men are victims.

It must be debatable here to mention a case with all facts that has not yet been pronounced by the court. But it must be understandable on part of all, that a person ready to give away his life is not a jest. This reference is only based on one ratiocinate, that is, Section 32 (1) of The Indian Evidence Act, 1872 which states that "When it relates to cause of death.—When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that persons death comes into question. Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question". In simple terms, a dying person's statement is to be taken into thought. Even our Indian law recognizes this fact that 'a dying man seldom lies. Another principle of *nemo mariturus presumuntur mentri* meaning a man will not meet his maker with a lie on his mouth supports the fact that truth sits upon the lips of a dying man.

CONCLUSION

Society may continue treating men as the stronger gender, but we must not forget that the same society also imposes a bunch of unrealistic expectations on men. Feminism, in its truest spirit, is about equality. It seeks to establish a new equation where both men and women enjoy equal status and equal rights. These changing times today demand exactly that — equalism rather than toxic feminism. On one hand, we are trying to rid our society of toxic masculinity, and on the other, we have started promoting a twisted and unfair version of

feminism. Only six countries currently give women and men equal rights — Belgium, Denmark, France, Latvia, Luxembourg and Sweden and out of these six countries- France being the number one. Is India even trying to compete with these? The answer is “No”.

In India, women are innocent until proven guilty and men, on the other hand, are guilty until proven innocent. Is it not unfair? Are men not meant to be respected in the same manner as women? They also deserve to be respected and live a life of dignity. We cannot initiate one wrong to mitigate another. Let's not undermine the cause of those actually suffering from patriarchal prejudices. We've strayed too far away from the path that feminism was actually supposed to tread on. It's time we retrace our steps and reclaim the true virtues of feminism. To end here, the readers must know that the paper is not in favour of or against any gender. The paper strives for erasure of gender unevenness, as no society can thrive for long on an unfair set of laws and principles. By gender equality; we refer to a scenario where a world that works for both men and women exists. Equal treatment of men and women is needed. We all must have this idea in mind that, all men and women cannot be same. To paraphrase this, it means that only men cannot rape, sexually assault, eve-tease etc., a woman. Similarly, all women cannot be labelled to have made false charges of crimes that harm the reputation of men. Men and women of quality always respect each other's equality.