

## **Male- the ignored gender in most gender laws in India**

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### **Introduction**

Feminism is a word that everyone in India is familiar with, and almost everyone has an opinion on it. Yet, India has never been fortunate enough to ever boast of a time when both the genders have been at the same level on the social equilibrium because in reality, overwhelming majorities of the people who have extremely strong opinions on feminism are amusingly unfamiliar with what the word actually means.

Oxford's English Dictionary defines feminism as "the advocacy of women's rights on the ground of equality of the sexes".<sup>2</sup> This concept gained significance in the latter half of the 18<sup>th</sup> century so as to avoid a repetition of the pre-modern era when the political, economic and social rights of the female community were being blatantly trampled upon. Societies and governments across the globe gradually developed a more sensitive and inclusive approach towards the rights of women. Policies and laws became more women-centric in an attempt to erase the atrocities of the past and invoke amongst women a sense of confraternity and belongingness and with passage of time, a sizeable proportion of these objectives were achieved. However most of these provisions have thereafter not been gender-neutralized. They have remained untouched till date and that is the nutshell is the root cause for this unfortunate social imbalance.

This paper seeks to highlight and critically analyze various sexual-harassment and other gender related provisions in Indian laws by reflecting upon their biased nature. The author also seeks to find answers to some of the pertinent questions which arise during the course of this paper such as- Are we really helping women by these pro-women laws? Are we still pushing them as well as this country back by constantly telling them that they are weak and hence need these extra benefits? Why is the empowerment of women considered equivalent to the deprivation of men? Why don't we spread legal awareness and awareness

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<sup>2</sup>*Feminism*, OXFORDDICTIONARIES, <https://en.oxforddictionaries.com/definition/feminism>.

of women's rights among the poor and illiterate in villages and help the real sufferers rather than creating an imbalanced society?<sup>3</sup>

### **Adultery**

“Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.<sup>4</sup>

This provision of the Indian Penal Code presupposes a scenario where the participation of both the individuals involved is consensual and yet, the Code dictates that the husband can hold the other man responsible, but not his own wife who knowingly cheated on him.

This irrational classification between men and women exists because our lawmakers are unable to fathom that being a woman does not, or rather should not, ipso facto grant to any individual the right to be presumed of being morally more upright as compared to any man. Despite various attempts by aggrieved husbands and public interest litigants to challenge the constitutional validity of this law, both the Parliament and the Judiciary seem to be unfettered with regard to their attitude towards this draconian provision.

In Yusuf Abdul Aziz v. The State of Bombay<sup>5</sup>, the appellant, who was being sued for adultery, filed a case in the High Court at Bombay, to determine the constitutional inconsistency between Article 14 of the Indian Constitution (Right to Equality) and Section 497 of IPC. He lost the case and, therefore, approached the Supreme Court in appeal. The Supreme Court was of the view that Section 497 is protected by Article 15(3), as it was made for the protection and uplift of women in the society. Article 15(3) states: “Nothing in the Article shall prevent the state from making special provisions for women and children”.<sup>6</sup>

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<sup>3</sup>49 *Gender Biased Laws That You Need To Know Right Now*, THEMALEFACTOR, <https://themalefactor.com/2013/01/19/49-gender-biased-laws-need-know-right-now/>.

<sup>4</sup>Sec. 497 of The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860.

<sup>5</sup>Yusuf Abdul Aziz v. The State of Bombay, (1954) A.I.R. 321.

<sup>6</sup>Avani Bansal, *India Needs To Debate About Law On Adultery*, LIVELAW, <http://www.livelaw.in/india-needs-debate-law-adultery/>.

Intentionally or unintentionally, through this landmark judgment which is cited till date, the Judiciary has implied that the Parliament has unlimited powers to empower the social status of women, including giving them the license to abet a crime and walk free.

**Husband or relative of husband of a wife subjecting her to cruelty**

“Whoever, being the husband or the relative of the husband of a 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 to fine.”<sup>7</sup>

This is the exact excerpt of S. 498A of the IPC, which India introduced in 1983 after a spate of dowry deaths in Delhi and elsewhere in the country. Reports of new brides being burned to death by their husbands and in-laws and these murders being passed off as “kitchen accidents” were doing the rounds on a daily basis. There was humongous uproar amongst politicians, activists and the female fraternity in general and this mounting pressure ultimately culminated in this law being passed by the Indian Government. The intentions were noble, but as it stands today, a law that was made to save lives has in ironically taken many lives due to its disastrous execution. Over the years, Section 498A has acquired the reputation of being the "most abused law in the history of Indian jurisprudence".<sup>8</sup>

Problems in this provision are aplenty. Let’s start by pointing out the obvious observation which is, the lawmakers have presumed that a married man being subjected to cruelty by his wife or in-laws is not even remotely possible. Secondly, while this law had been formulated to secure women from marital violence, the arbitrariness that it confers upon the police authorities as well as the women who allege domestic violence has been received with opprobrium and accused of fostering misogyny. Domestic violence under Section 498-A is a cognizable, non-bailable and non-compoundable offence. This leaves no scope for the issue to be amicably resolved outside court. A complaint filed under this section cannot be revoked by the petitioner at a later stage. Complaints filed under this Section also warrant immediate arrests of the husband and the family members where necessary, including elderly parents and minor-aged siblings, without conducting initial

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<sup>7</sup>Sec. 498A of The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860.

<sup>8</sup>DeepikaBhardwa,*The Woman who fights for men’s rights*, BBC,<http://www.bbc.com/news/world-asia-india-38647822>.

investigation. The accused in some of the cases were as young as two years old and, in a particularly bizarre case, a two-month-old baby was hauled into a police station.<sup>9</sup>

In recent times, the number of divorces per year in India has increased manifolds, and one wouldn't be wrong to infer that this provision is one of the significant reasons for that. It is being rampantly misused disgruntled woman assisted by unscrupulous lawyers to torture their husbands and in-laws, to an extent that slowly but surely, it is making a mockery of the sacred institution of marriage. By virtue of the irrevocable and non-bailable nature of this offence, a necessary implication which comes to the fore is that the possibility of marriages being restored once a complaint is lodged under this section is extremely bleak.<sup>10</sup>

The Supreme Court of India itself has labeled the misuse of section 498a as “legal terrorism” and stated that “many instances have come to light where the complaints are not bona fide and have been filed with an oblique motive. In such cases, acquittal of the accused does not wipe out the ignominy suffered during and prior to the trial. Sometimes adverse media coverage adds to the misery. “This statement was further corroborated through a study conducted by The Center for Social Research which suggested that 98 percent of the cases filed under IPC section 498a are frivolous.<sup>11</sup>

The judicial recognition of blatant misuse of these laws is not new. Way back in 1987 in *Balbir Singh vs. The State of Punjab*<sup>12</sup> court had said that the amendments introduced in the penal code are with the laudable object of eradicating the evil of dowry, such provisions cannot be allowed to be misused by the parents and the relatives of a psychopath wife who may have chosen to end her life for reason which may be many other than cruelty. The glaring reality cannot be ignored that the ugly trend of false implications in view to harass and blackmail an innocent spouse and his relative's i.e. fast emerging. It is the time to stop the unhealthy trend which results in unnecessary misery and torture to numerous effected persons and sometimes not just ruined their life but also social status of the family.

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<sup>9</sup>RaghaviViswanath, *Misuse of Sexual Harassment Laws in India*, LEX-WARRIER, <http://www.lex-warrier.in/2015/04/misuse-of-sexual-harassment-laws-india/>.

<sup>10</sup>*Ibid*, Page 3.

<sup>11</sup> Uma Challa, *Gender Biased Laws in India Engender Injustice*, WORDPRESS, <https://uchalla.wordpress.com/2006/12/20/gender-biased-laws-in-india-engender-injustice/>.

<sup>12</sup>*Balbir Singh v. State of Punjab*, (1987)1 CRIMES-76.

In *Saritha vs. R. Raamachandra*<sup>13</sup> it was said, that the court would like to go on the record that for very trivial issues the educated women are approaching the courts for divorce and restoring to proceedings against in laws under 498-A IPC and this is nothing but misuse of the beneficial provision intended to save the women from unscrupulous husbands. It has taken a reverse trend now. In some cases, this kind of actions is coming as a formidable hurdle in the reconciliation efforts made by either well-meaning people or the courts. And the sanctity attached to the marriage through conciliatory efforts till last, are being buried neck deep.<sup>14</sup>

Suggestions have been made to amend the provision that has oft-been termed diabolic. The Malimath Committee on Criminal reforms (2003) suggested that the offence under Section 498-A be made compoundable and bailable. This view was reiterated in the 243<sup>rd</sup> Law Commission Report. Justice CK Prasad in his judgment in the case of *Arnesh Kumar v State of Bihar*<sup>15</sup> also highlighted the pressing need to balance the interests of the woman as well the stability of the family.

However, unfortunately in India, as is usually the case, emotions involved with regard to protecting women seems have taken over all sense of rationality and practicality amongst the legislators, who continue to stand firmly in support of this provision. Government officials argue that despite this provision being in place, women continue to be harassed in their households and the numbers are only increasing. Therefore, scrapping or amending this provision is not the solution. However, there is a major contradiction here. What they fail to realize is if harassed women indeed used the law then we should see a decrease in the number of cases of harassment over time. Considering the stringent consequences imposed by the law and the inordinate delays inherent in the legal system, no ordinary citizen, male or female, would be impudent enough to risk being implicated under this law for the sake of satisfying their monetary or even sadistic desires for that matter.

The fact is that many women who are actually beaten up and harassed by their husbands and in-laws rarely file 498a or resort to other dowry related laws, because this is a problem more prevalent in rural areas, where women who are subjects of such cruelty are unable to fend for themselves since they lack the necessary economic and moral support from their

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<sup>13</sup>*Sarita v. R. Ramachandra*, (2003)D.M.C. 37 (DB).

<sup>14</sup>Shambhavi Mishra, *Misuse of "Gender Biased Laws"*, ROSTRUMLEGAL, <https://rostrumlegal.com/journal/misuse-of-gender-biased-laws/>.

<sup>15</sup>*Arnesh Kumar v. State of Bihar*, S.L.P. (CRL.)No. 9127 of 2013.

natal families. In fact, one could safely assume that a vast majority of these women are absolutely clueless about the existence of a Penal Code in India, and the fact that they have any legal recourse. Therefore, essentially, the objective of this provision is far from being fulfilled. Through IPC section 498a, the Government is actually protecting those women that indulge in perjury, blackmail, extortion and harassment of their husbands and in-laws.

In order to rectify this situation with immediate effect so that there are no more baseless allegations leading to disrupting of families, some measures need to be adopted with immediate effect:

- No arrest before final Judgment/Order in case of a complaint under 498A
- Implement recommendations of Law Commission and “Malimath Committee” to make 498-A bailable.
- Pass necessary orders to stop arbitrary arrest of elderly persons, children and pregnant sisters.
- Punishment for those filing false cases under 498-A, 304-B, Dowry Prohibition Act and related laws.
- Direct the Union Government to bring in amendments to make IPC 498-A “Gender Neutral” so that those husbands and in-laws who are harassed can also make complaint under this IPC section.

### **Sexual harassment of women at workplace act, 2013**

Another legal breakthrough is the Sexual Harassment of Women at Workplace Act, 2013 that was enacted after more than a decade of deliberation and re-examination. The landmark judgment of the Court in the Vishakha case was accompanied by a set of guidelines, in lieu of India’s international and constitutional commitments (such as the Convention on Elimination of All forms of Discrimination Against Women and the right to safe work environment and right to freely practice one’s profession enshrined in Articles 19(1)(g), 15(3), 21 and 14).

The Act has been infamously considered to be the torchbearer of an anti-men legislation operating under the artificial garb of being pro-women, for several reasons, Firstly, the Act is not gender neutral and men are prohibited from seeking protection under it. The employer is deemed vicariously responsible for acts of sexual harassment committed by

his employees in places like taxis, hotels and also the offices of clients, where the level of authority and supervision exercised by employers ranges from little to none.<sup>16</sup> The investigation Committees set up under this Act have similar as those of a civil Court, however, its members do not require legal authorization from a court before exercising those powers. The arbitrariness of such norms is worsened in the case of the Local Complaints Committee where the Presiding Officer should be ‘committed to the cause of women’ (used in Section 4 and Section 7 of the Act), a subjective standard that can be neither justified nor disproved. Moreover, the existence of such a criterion indicates pre-determined gender favoritism and this transgresses the general accepted benchmark of neutrality.

The Act is not within the purview of the Right to Information Act. Hence, specific information of unfounded complaints or distorted cases will not be accessible by public. As per Section 15 of the Act, action will be taken for false complaints. However, if the complaint is not substantiated, then the woman will be provided complete immunity. Furthermore, the identity of the complainant woman will not be disclosed even in cases of untrue allegations. The reimbursement imposed under the Act repudiates the principle of equality before the law as it is awarded progressively, proportionate to the income earned by the respondent.

The tyrannical disposition of the legislation has caused it to face intense criticism and backlash of numerous experts. The Central Administrative Tribunal, in a bench comprising of Judges KB Suresh and PK Pradhan, adjudicating upon cases of sexual harassment at the workplace, characterized Section 4 and 7 of the Act as ‘unconstitutional’.<sup>17</sup> The Bench held that the legislation was ‘double-edged’ and the Vishakha Committees found sufficient leeway for manipulation. The horror of penalization coerced even the higher ranks of authorities to expel their workers even before deliberating the merits of the complaint.

### **Domestic violence act**

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<sup>16</sup>Burt Phoenix, *India's new "Sexual Harassment at Workplace" law*, AVOICEFORMEN, <https://www.avoicemen.com/feminism/feminist-governance-feminism/indias-new-sexual-harassment-at-workplace-law/>.

<sup>17</sup>Preeti Gupta vs. State of Jharkhand and Another, Criminal Appeal no. 1512 of 2010.

The Domestic Violence Bill asserts that it will safeguard women from Domestic Violence which includes physical, verbal, emotional, sexual and economical abuse. According to the law an aggrieved person is defined as “any woman who is, or has been, in a domestic relationship with the respondent...” and a respondent is defined as “an adult male person who is, or has been, in a domestic relationship with the aggrieved person...”

Thus, the law wrongly perceives domestic violence as an act which can only be committed by a man on a woman in a household shared in the past or present. While this law is extremely biased against men, many proponents of the law are claiming that it is in the best interest for women. The following are some gross inconsistencies in the law that proves that the DV Act is not good for women either.

There are multiple instances where a daughter-in-law and/or her blood relatives commit Domestic Violence (as defined by the law) against her mother-in-law, sister-in-law or any other females related by marriage. In addition, mothers or step-mothers abuse their children (who include daughters or step-daughters) physically, verbally, emotionally and economically and vice versa. In such a scenario, the law does not provide any remedy to female victims of Domestic Violence. Thus, the law can only be used by a wife or a girlfriend (present or former) and their relatives/friends against a man and his family.

As per Clause 17 of the Act lawfully divorced women and former separated girlfriends/live-in partners can assert their right to reside in the house of their former husband or former partner even though the Act states they do not possess any right, title or beneficial interest in the same. The law can thus force a former wife or former girlfriend on a man’s household and contravene the rights of his present wife or partner. The law does not do anything to secure man’s present wife or girlfriend/live-in partner or even defenseless mothers and sisters under such stipulations. Here, the law favors divorced women and former girlfriends at the cost of the rights of a legally wedded wife/live-in partner and other female relatives that share a household with a man.

According to Clause 19 a man can be expelled from his own house and can be restrained along with his relatives from gaining access to any part of the house in which the plaintiff resides. Through this clause the law indirectly encourages the trespass of property by a girlfriend (past or present) at the cost of the right to residence of a man, his legally wedded wife and any other dependent female members of a family. In the name of protecting a

group of women who allegations have not been verified, the law penalizes virtuous women who are akin to an implicated man.

Undeterred by chronicled evidence that section 498a of IPC has been grossly exploited thereby negatively influencing an ever-increasing number of women (along with men) everyday, no modifications to this legislation have been contemplated till date. As with section 498a of IPC, the Domestic Violence Act is rife with flaws and is certain to be ill-treated. The DV Act by remaining silent on the issue indirectly permits legally wedded women, divorced women and girlfriends (former or present) to subject a man and his relatives to domestic violence and legal harassment. This Act, like Section 498a of IPC has and will in the future result in the bedevilment of many more honest women than it endeavors to protect. The need of the hour is for the Government to come to terms with the reality that IPC 498a and DV Act are ill-executed laws that incriminate ordinary people and violate their fundamental rights. Unless compelling alterations are made to avoid further profanation of these laws, integrity of women will be lost. Furthermore, an excessive burden of fallacious cases will aggravate the setbacks in the judicial process and create a barrier for genuinely aggrieved women to gain timely justice.

Questionable and easily misused laws like IPC 498a and DV Act are already contemplating a prospect of lack of mutual trust and having a negative impact on amicable relationships between men and women in the society. This has caused more and more separated families and bereaving kids of a healthy childhood. Had the Government and other women organizations been genuinely interested in enhancing the living conditions of women in India they would have focused their attention on empowering women by spreading literacy. Learning is the first step towards building self-assurance and gives a person the capacity to fend for oneself. Educating women can also ensure that the forthcoming generations are brought up to conduct themselves with towards others and to be better citizens. The Government and women's organizations can also extend a helping hand to strengthen the reformation of abused women and defend them from further harassment without punishing innocent men. It would be incumbent for the Government and feminist associations to streamline their efforts in alliance with social scientists and therapists to discern human behavior in the context of changing social conditions and standards in India and think about practicable solutions to deal with Domestic Violence and other forms of abuse instead of becoming a menace for ordinary citizens. Proactive

means that can bring about domestic harmony are the only way to ensure family stability and social stability in the long run.<sup>18</sup>

## **Rape**

Section 375 of the Code declares the offence of rape to be committed by a man who has sexual intercourse with a woman against her consent or will. However, the Code fails to envisage the possibility of a vice-versa scenario i.e., a man being a victim of unconsented sexual intercourse with a woman/another man. As remote as the possibility of that happening may be, are we really living in a world of denial where we presume that it is physically impossible for a woman to do so? In fact, a PIL was filed in the Supreme Court in January 2018 requesting a provision to punish women too for offences such as rape and sexual harassment. The petitioner in that case presented to the Bench a bunch of statistics which show that in a recent study, it was found that out of 222 Indian men surveyed, 16.1% had been coerced into having sex.<sup>19</sup>

Next, we have Section 114A of the Indian Evidence Act 1872 which states that in a case where a woman invokes Section 375 of the Indian Penal Code and is claiming to be a victim of rape, and where the sexual intercourse is proved, then the Court shall presume that she did not consent.

Why this presumption? There is no denying the fact that barring murder, rape is probably the most heinous and barbaric crime a woman has to go through, and the Court must treat alleged rape victims with maximum sensitivity, respect and most importantly, dignity. But the word to borne in mind here is “alleged”. The victimhood of the accuser is not yet a proven fact; therefore, a presumption of guilt against an “alleged” rapist is absolutely appalling, and is against the constitutional principle that any person is innocent until proven guilty. Yes, the presumption of guilt is not enough to declare the accused guilty and the Court will hear both the parties at length but let’s face it, a presumption of the judge as to the guilt of the defendant can be extremely difficult to reverse, especially in cases of rape where the sensitivity of the public and the courts towards the victim often takes over rationality and common sense. And there are verified statistics to prove how this provision has backfired. As per the statistics revealed by the Delhi Commission of

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<sup>18</sup> *Ibid*, Page 4.

<sup>19</sup> Harish V Nair, *Men Victims too: PIL in Supreme Court wants women punished for rape*, MAILTODAY, <https://www.indiatoday.in/mail-today/story/men-victims-too-pil-in-supreme-court-wants-women-punished-for-rape-1142456-2018-01-12>.

Women, a feminist organization based one of India's biggest crime hubs and also its national capital; out of all rape complaints in Delhi between April 2013 and July 2014, 53.2% were found to be false cases where the woman ultimately admitted guilt to filing such a case simply out of spite and in fulfillment of her personal vendetta.<sup>20</sup>

### **Gender neutralization of sexual harassment laws**

The above paragraphs indicate that the feeling of being scapegoated by most gender specific criminal laws in India is not one which is new. However, in the recent past, the unrest amongst male masses has tremendously multiplied, to an extent where one Mr. Sanjiv Kumar, a human rights activist, filed a PIL in the Delhi High Court seeking to challenge the existing IPC provisions with rape, domestic violence etc. as they recognize men as perpetrators and women as victims. The Delhi High Court referred the matter to the Supreme Court, in which The Chief Justice of India DipakMisra not only denied granting what the applicant had asked for, but he came down quiet harshly on the "narrow-mindedness of a certain class of men, who are living in a mythical world where they believe that gender equality must be practiced in its absolute sense". Other famous lawyers throughout the country have also firmly believed that India cannot implement gender-equal laws because it would further worsen the position of women in the society because till date the social status of women is not equivalent to that of men, and therefore law has but no choice except to interfere. They feel that such positive discrimination of certain criminal laws in favor of women is the need of the hour and is within the spirit of the Constitution. Further, they are of the opinion that if at all gender neutralization were to be adopted in India, it would result in a lot of frivolous complaints against women and thereby become a nuisance for them.

However, I personally believe that this decision to discard this PIL is in extremely poor taste, and India might have just thrown away the one chance it had of reviving the status of men. Why shouldn't a man who is genuinely a victim be recognized by law as being one? Why should lack of numbers or probability be a valid justification to deprive honest men of the compensation they deserve? If frivolous complaints are what the Judiciary really fears, then it's the execution of these laws which needs to be tightened.

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<sup>20</sup> India Today, *53.2 per cent rape cases filed between April 2013-July 2014 false, says DCW*, INDIATODAY, <https://www.indiatoday.in/india/north/story/false-rape-cases-in-delhi-delhi-commission-of-women-233222-2014-12-29>.

Nevertheless, what's good enough a reason for a woman to file a complaint should be one for a man to do so as well.

## **Conclusion**

While the aforementioned examples are to a certain extent indicative of the magnitude of the menace of gender-biased laws, there are various other specimens of such oppressive laws having an inherently prejudicial approach towards the innocence and moral righteousness of men. Laws in India have undergone fundamental changes to tackle crimes against women. Unfortunately, these provisions are being abused. In light of this misuse, former Supreme Court Judge, KT Thomas pointed out, "Whenever you make a law very stringent on account of pressures from emotionally surcharged social reactions, there is a real danger of its misuse."<sup>21</sup>

Undoubtedly, a woman needs to enjoy every liberty that a man does, and for that to happen, if the legislators must adopt a pro-women approach, then so be it. But the noblest of intentions, when their execution is over-done, the results are often dreadful. Operating under the virtuous idea of creating a society with a pro-women mentality, many of these laws have overtime gradually lost their purpose of being, and seem to have become anti-men and therefore, in practicality we aren't really eradicating gender inequality. That is something which will prevail for eternity, difference being that now onwards we will have a different set of sufferers.

It's time that the Indian parliamentarians stop shying away from the harsh reality, and that is the fact that today Indian men find themselves on the right side of society, but on the wrong side of law. Wherever possible, all the women-centric laws should be gender-neutralized, and allow the Courts to adopt a sensitive perspective towards a particular gender only in cases where it deems necessary to do so. And in cases where such neutralization may not be feasible, special laws must be enacted to extend the same benefits to men. Lawmakers must pledge to reduce victims, not replace them. This practice of looking at an entire segment of the society with tainted glasses due to the questionable character of a few humans has to stop immediately. It's time people look on the other side. Opinions must be a result not of unrestrained generalization, but of careful individualistic assessment. Otherwise, like today we have the #MeToo movement by

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<sup>21</sup>Shivaji Sarkar, *Pro-Women Must Not Be Anti-Men*, THEPIONEER, <http://www.dailypioneer.com/columnists/oped/pro-women-must-not-be-anti-men.html>.

women trending on social media; I am afraid someday we might witness the #NotMe movement by Indian men.