

Favoring Women by Divesting Men: An Overview

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ABSTRACT

Gender neutrality means treating both the genders alike in the eyes of law without any differentiation in rights, dignity, policies and laws. It is a situation where both genders co-exist together without conflicting interests. The issue with gender is that it espouses how we ought to be, instead of conceding how we are. This article is an attempt to signify the need of gender neutral laws due to dilated abuse and manipulation of women-centric laws. Gender neutrality calls for the concept of parity between the sexes without any discrimination. Men and women in uniformity should be bestowed upon with the same privileges.

Keywords

Gender Neutrality, Gender Neutral Laws, Parity, Uniformity

INTRODUCTION

Due to the patriarchal structure of the society, the legislature is oriented towards women empowerment since they are considered weaker section and are prone to exploitation and vulnerability. The current pro women laws came into existence since offences against them were snowballing. There are diverse laws for the fortification of women such as The Protection of Women from Domestic Violence Act, 2005; The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013; Dowry Prohibition Act, 1961; Section 498A; 304B;497;354; 509 of Indian Penal Code, 1860, etc.

There is a basic dogma that men are dominating, insensitive and stronger than women but the scenario has metamorphosed and many pro women laws are being ill-used which evidently denies fairness to the actual sufferer. The Indian constitution's fundamental notion underlies the concept of equal treatment of all irrespective of caste, sex, age, race, etc. but the factual situation is completely caustic. Sadly, there are no gender neutral laws in India which are already been enforced in around 77 countries across the globe [1]. Men do not have many rights to approach the court of law in case any crime is done against

them. The very essence of civil liberty certainly consists in the right of every individual to claim protection of laws, when he/she receives any injury- Chief Justice John Marshall [2].

Gender neutrality isn't anti-feminism or bolstering men but a mode to move towards an egalitarian society. Is it appropriate to protect one sex at the cost of other? Is enacting pro female laws a continuous reminder to every woman that she is incapacitated and needs extra privileges? Or do we need a society where there are no gender roles and no gender feels superior to others? True women empowerment would be done only when the object of the law is fulfilled in an apt manner and the real sufferers are being helped.

LAWS TO BE LOOKED INTO

A- SECTION 498A AND 304-B IPC (Cruelty and Dowry Death) and DOMESTIC VIOLENCE ACT,2005

1- 498A AND 304-B, IPC

Due to augmented exploitation, pestering, dowry deaths, bride burning, suicides by women etc. efforts were made by the lawmakers to help the naive women from misdeeds. By the Criminal Law (amendment) Act, 1983, Section 498A [3] was inserted in the Indian Penal Code 1860, to curb the instances of cruelty and harassment done against women in the four walls of the house by her husband and in-laws and Section 113-A [4] was added in Indian Evidence Act, 1872 which deals with presumption as to abetment of suicide by married woman. Similarly, Section 304-B [5] of IPC deals with dowry death and Section 113B [6] of the Indian Evidence Act, 1872 states the presumption as to dowry death. These sections were introduced to uphold the interest of women due to amplified crime against them. These offences are **cognizable** (the police has the authority to arrest the accused without a warrant and start an investigation with or without the permission of the court), **non-bailable** (the arrested person has to apply for bail before the magistrate/court) and **non-compoundable** (a compromise cannot be done between the accused and the victim).

The present situation has reversed as the educated and independent minded women are exploiting the law at their own whims and fancies. Many women file complaints involving false accusations of cruelty and harassment by her husband and in laws, taking the advantage of legal loopholes the accused are thrown behind the bars without proper investigation, evidence and trial and thus these laws have become the easiest tool to hassle them.

In *Arnesh Kumar v. State of Bihar* [7] the Supreme Court referred "Crime in India 2012 Statistics" published by National Crime Records Bureau which showed that the rate of charge sheeting u/s 498A was as high as 93.6 percent while the conviction rate is only 15 percent which is the lowest across all heads. In *Savitri Devi v. Ramesh Chandra* [8] the Delhi High Court observed that the provisions of 498A have been mishandled to an extent that it is devastating the foundation of marriage and is perilous for the society at large. In *Sushil Kumar Sharma v. UOI* [9], the Supreme Court remarked that in many occasion, complaints under s.498A were being filed with an oblique motive to wreck personal vendetta and this section was termed as "legal terrorism". "Section 498A of IPC is one of the most abused laws in the country" [10] says Minister of State for Home Affairs Haribhai Parthibhai Chaudhary.

Justice Saldana remarked that anti-dowry laws are being misused to the baleful of faultless citizens and stated "we need to sound a note of caution that the police and investigating authorities should not improperly and technically jump to the conclusion that merely because death has occurred that ipso facto a criminal offence has been committed. In as many as 44% of these cases prosecution is thoroughly unjustified." [11]

As per the data depicted by NCRB the number of people arrested u/s 498A IPC in the year 2013 were 2,22,091 out of which conviction was only of 1,078 persons and 5,761 remained under trial. Similarly, 13,133 persons remained under trial and 5,308 were convicted out of 23,864 persons arrested under section 304-B of IPC [12]. "Viewed from the perspective of radical feminist mastermind behind women-centric laws, immediate arrests and incarceration provide instant "justice" (read revenge) to "victim" (read disgruntled women)." [13]

2- THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

Section 3 of the act defines domestic violence which comprises of harms or injures which endangers the health, safety, life, limb or well-being of the aggrieved person and includes physical abuse, sexual abuse, verbal and

emotional abuse and economic abuse; or any unlawful demand for any dowry; or threatening the aggrieved person or any person related to her [14]. The term respondent means any adult male person who is or has been in a domestic relationship with the aggrieved person and an aggrieved wife or a female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner [15].

"The provisions of the act does not afford the accused to explain his stand for the reason that even if a woman is living separately from him, she can still accuse her husband or anyone claiming under him of continuing to threaten her, since the provisions of the act have a presumptive value the accused is left defenseless and women falsely accuse their husband and in-laws to gain wealth via compensation." [16] "The Madras High Court observed that this act suffers from inherent flaws which tempt women to misuse their provisions and men to dread being prosecuted under the law without any rhyme or reason." [17]

A study conducted by National Family Health Survey 2004 depicted that about 60 lakh or 1.8 percent women have perpetrated physical violence against husbands without any provocation and an estimate of 3 crore men are encountering violence done by their wives and her relatives [18]. "Violence against even one human being is violence against all."- Pope Benedict XVI. But again, an aggrieved can only be a woman under this act.

"It is better that ten guilty escape than one innocent suffer."- William Blackstone. Many times husband, old parents and other relatives are fallaciously arrested merely because of untruthful accusations which causes worry and desolation to them and even the society excruciate them.

B- SECTION 497 IPC (Adultery)

Adultery means voluntary sexual intercourse of a married person with a person other than the offender's husband or wife [19]. Section 497 [20] of Indian Penal Code makes the act punishable with imprisonment up to 5 years or fine or both but a wife cannot be punished as an abettor.

Law of adultery is biased against both men and women. Only a man can file a case for adultery against the man with whom his wife has sexual intercourse. A woman cannot be prosecuted on the ground of adultery. The consent of the woman is irrelevant and the man becomes the "offender" and the woman a "victim". Thus, a woman is immune to adultery charges irrespective of the fact that she consented to it and was an equal participant in the

offence. Also, this law is biased against women too as a wife cannot file a case against her husband or against the woman with whom her husband has sexual intercourse.

The 42nd Law Commission's Report recommended modification in the present law for punishing men and women equally. Later in 2003, Justice Malimath Committee suggested to make this section gender neutral since an adulterous liaison cannot take place without the approval of married woman and it would be prejudiced to hold only a man accountable for the offence. Senior advocate Pinky Anand states "It is high time we change this law because it is based on the concept that women are chattel and, therefore, can commit no offence. If a man commits (adultery) it's a crime and if a woman commits adultery, it's not. This cannot go on. The gender bias in the law must be done away with." [21] Justice Aftab Alam and R M Lodha opined that adultery laws are biased against men [22]. It is worth noting that Ranbir Penal Code, 1932 [23] (applicable in Jammu and Kashmir) punishes both husband and wife for adultery.

When this law was enacted women were considered as oppressed and were prone to ill treatment and therefore needed safeguards. Women were considered as "property" of men and thus having illegitimate relations with another's wife was treated as theft, where another man was trying to steal your wife. Today the picture has changed, women are no longer a property of men but have their own individual identity. The legislature should reform the act as the law must be same for all and both the parties should be punished.

C- SECTION 375 IPC (Rape)

Each time we hear the word "rape" the first thought that comes in our mind is the agony and pain of the woman but one cannot rebuff that men too can be a victim of sexual offences. "Male rape" is not recognized in India. Section 375 of Indian Penal Code starts with the phrase "A man is said to commit rape..." which clearly states that only a man can commit an offence of rape and it is always done against women. "There is no room for adult male victims, much less female perpetrators. Although child survivors of both sexes are covered by the Protection of Children from Sexual Offences Act 2012, current rape laws leave out a large swathe of male victims, who cannot come forward for fear of stigma and a lack of legal recourse." [24] The Criminal Law (Amendment) Ordinance, 2013 recommended that the term "rape" should be substituted with "sexual assault" making it a gender neutral crime but it faced strong objections from

women's group and hence the recommendation could not be approved and it still remains gender specific crime.

"According to NCRB 2012 data, 175 men have been kidnapped and abducted for the purpose of illicit intercourse since 2009, 115 men were kidnapped for the purpose of prostitution and most of the kidnappings and abductions of men for the purpose of getting sexual favor have been reported within 18 to 30 years and 30 to 50 years age group." [25]

The existing rape law is continually misused by females to take retribution and threaten her male acquaintances. Justice Kailash Gambhir of Delhi High Court said that "rape law was often misused by women as weapon for 'vengeance and vendetta' to harass and blackmail their male friends by filing false cases to extort money and to force them to marry them." [26] The Delhi Commission of Women in its statistics reveals that 53.2 percent of the rape cases filed between April 2013 – July 2014 in Delhi were found false, out of 2,753 complaints of rape, only 1,287 cases were found to be true, and the remaining 1,464 cases were found to be false [27]. The Jaipur police said that there is an 'alarming rise' in the number of false rape cases being filed in 2016, "We registered 330 rape cases in 2016, which was 18 per cent higher than the figures recorded in the previous year. However, of the 276 cases solved, 43 per cent were false. In several of these cases, a complaint was filed to extort money or implicate an individual" [28].

CONCLUSION AND SUGGESTIONS

"Justice denied anywhere diminishes justice everywhere" - Martin Luther King. The fact that women are assailable and exploited is just one side of the coin, but the present circumstances point out that men too face inconvenience due to the absence of gender neutral laws. Also, the present gender specific laws are being subverted and exploited because of the loopholes in them. These laws must be amended to give equal protection of laws to both the genders and to meet the ends of justice. A crime must be a crime in the eyes of law regardless of the gender of the individual. Are men not entitled to rights and remedies for the wrongs done against them? Or shall we continue to think that men alone are "wrongdoers" and women are the "prey"? The essence is that the culprit should be punished for the acts done irrespective of the gender and this is how we will move towards a society which favors "humanism" and not "favoritism". The widespread maltreatment of the laws and the dearth of gender neutral laws denote the gross malfunction to achieve evenhandedness.

The law should keep pace with the dynamic and ever changing need of the society; the prevailing laws would become more useful and effectual when revised. "As per the data issued by NCRB, the number of arrests made under cognizable and non-bailable offences against women (Section 304B, 354- assault on women with intent to outrage her modesty, 509- insult to the modesty of women, 376- punishment of rape and 498A of IPC) were 39,038 out of which 15,075 were convicted and 40,739 remained under trial at the end of the year 2013. This means that majority of the prison population has not been proven guilty yet. An excess of 64,133 inmates in our entire prison system has led to overcrowding of the prisons and lack of prison staff. The NCRB statistics also reveals that 84.8% of cases remain pending by the end of 2013 which further over burdens judiciary." [29]

To avoid malfunction of justice following suggestions are recommended-

I. **498A and 304-B of IPC should be made bailable and compoundable-**

The 243rd Law Commission Report suggested that 498A IPC should be made compoundable and bailable. The Supreme Court in the case of *Arnesh Kumar v. State of Bihar* [30] issued various directions to the state governments wherein a checklist has been provided of the conditions precedent prescribed u/s 41 of Code of Criminal Procedure, 1973 and only the Magistrate, after recording its satisfaction in writing may authorize detention. In the case of *Tr. Ramaih v. State* [31] directions were given to the police authorities that no case under Section 498A should be registered without prior sanction of DCP/Additional DCP and the FIR should be systematically scrutinized. In the cases of dowry, proper investigation procedure should be conducted so to find the veracity of complaint. In *Rajesh Sharma & Ors. v. State of U.P. & Anr* [32]. The honorable apex court issued guidelines on misuse of 498A IPC wherein one or more Family Welfare Committee should be constituted in each district by District Legal Services Authority and every complaint received by the Police/Magistrate shall be referred to this committee and till the report of the committee is not received no arrests shall be effected. Also, complaints u/s 498A and connected offences shall only be investigated by Investigating Officer of the area. The personal appearance of family members may not be necessary and the trial court may grant

exemption from personal appearance or authorize appearance by video conferencing.

II. **Rape, Adultery and Domestic Violence should be made gender neutral crimes-**

Rape, Adultery and Domestic Violence should be made a gender neutral crime so that the genuine victims can seek legal recourse. A creditable effort was done by University Grants Commission in 2016 by constituting Prevention, Prohibition and Redressal of Sexual Harassment Regulations wherein males can lodge a complaint against males, females and transgender [33]. In the case of rape, the court must regard all the material facts and evidences to form any conclusion and the sole testimony of the victim should only be relied when corroborated.

III. **Strict punishments for those who file false complaints-**

There should be provisions for heavy penalties and imprisonment in case any frivolous complaint is filed. A noticeable step was taken by a Metropolitan Magistrate of Saket Court in New Delhi, wherein a penalty of Rs. 1 lakh was imposed on a woman for filing a false case under Domestic Violence Act [34]. Also, time bound trials should be done to provide speedy justice to the real victims as 'justice delayed is justice denied'.

IV. **Role of media-**

The media being the fourth pillar of democracy should describe the true picture of the facts and circumstances on how the laws are being distorted. Various debates and deliberations should be organized to aware the citizenry. It should portray women empowerment with the acknowledgment of gender neutrality.

If any women-centric law is misapplied the eventual outcome of it would be the "violation of basic human rights of the blameless accused" and "To deny people their human rights is to challenge their very humanity"- Nelson Mandela. Gender biased law is an obstruction for the advancement of the individual and the entire society. The need of the hour is gender neutral rights and laws and to achieve it we must banish our inbuilt patriarchal norms which have led men to become "silent victims". Proper studies and research should be conducted to recognize the fact that men too face harassment and cruelty. Well-

organized complaint mechanisms should be developed to provide remedies to men. Gender should not divide us but remind us that we exist together for the welfare of all. Amending the laws is just one step to achieve gender neutrality; we must break the shackles of stereotypes- a situation where women don't suffer any distress and men feel free to express. Gender neutrality would come in correct sense only when we advocate male laws with the acceptance that females should also be protected.

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