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Gender Neutral Laws: Need of the Hour

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ABSTRACT

This article aimed at assessing the sad scenario of Indian judicial system, that has largely avoided the sacred concept of equality and favoured the discriminatory legislation that only favoured only one particular journey. The write-up focuses on how the most of the legislation, that have been framed lack the integrity of gender neutrality and have only focused on providing shield only to victims of one particular gender. The paper has employed various studies and case laws to assess the workings of the laws that prevail in India and how they have failed to provide protection for victims of false accusations. After thorough research, and study, the paper seeks to bring out the need for gender-neutral norms, regulations and laws in order to bring about the right balance in our society. It is also needed, to award justice to victims, in its true sense, to all.

Though John C. Depp, II v. Amber Laura Heard² was a civil defamation trial, however it unfurled the sad reality of the lack of legal protection for men against false pretenses of rape, sexual assault and domestic abuse. Domestic violence against men, is the violence perpetrated against males in marriage or cohabitation. Due to the social stigma associated to the lack of masculinity, machismo and other masculinity derogation, men who are victims of abuse, find it difficult to voice out their woes.

In the past, India was a patriarchal society, however, with time India has come to be a country where both men and women play an important role in bringing about the balance of society. As India was a male dominated society for quite a long period of time, laws were primarily made to protect women at the behest of the fact, that women did suffer at the hands of men through various forms of heinous acts of rape, domestic violence, sexual assault and so on and so forth. Even though, crimes against women have not reduced, however, crimes against men have also perpetually increased with time too. India has stricter laws for women against any kind of violence committed by their spouse or any other person, but, there is lack of legislation for men in this matter.

“Women kills husband, tries to pass death off as due to covid; arrested” - Hindustan times

“Delhi women allegedly kills in-laws, husband was at home during crime” - NDTV

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² (CL-2019-291)

“Gurgaon: 17 year old dies by suicide after being accused of molestation.” - Times Now

These are some of the headlines of leading news channels and newspapers, highlighting how even men are also victims of exploitation. Recently, Brut, India’s leading digital video publisher, reported an incident, whereby, a married man was constantly beaten by his wife with a cricket bat. The man, is a principal of a school in Rajasthan, and reported his ordeal with a recorded CCTV footage. However, since there is no legislation in place for male victims of domestic violence, the incident was registered for FIR under IPC sections concerning mental harassment, grievous hurt, assault and use of criminal force.

In a study of 1000 married men of different age groups from 21-49 years old in rural villages of Haryana, 52.4% of men experienced gender-based violence in India. 51.5% of men have experienced some form of torture or violence from their spouse or close partner in their lifetime. 10.5% of men experienced gender-based violence by their wife or partner in the past 12 months. The most common spousal or domestic violence against men is emotional, and physical violence is the second most common domestic violence against men.

IPV or Intimate Partner Violence is not only experienced by wives but also by husbands. It is the aggression that is displayed in relationship be it current and former spouse or dating partners. It may be physical, verbal, sexual or emotional. Physical abuse involves any act where one uses physical force with their own body or object to inflict harm on another. Verbal abuse is a type of mental abuse whereby a person uses words to manipulate, insult, undermine, ridicule or degrade another person, affecting their psychological well-being. Any act involving sexual acts committed by one person on another, without consent is called sexual abuse. Emotional abuse is a form of psychological abuse wherein a person exposes the other, to such treatment or behaviour that may affect the latter’s emotional well being and result in psychological trauma.

There are three levels of IPV:

- LEVEL I: pushing, shoving, grabbing, throwing objects to intimidate, or causing damage to property and pets
- LEVEL II: kicking, biting, and slapping
- LEVEL III: use of a weapon, choking, or attempt to strangulate

IPV can take place across different age group, genders, sexual orientations, economic or cultural statuses. Men do suffer emotionally, physically, and mentally at the hands of abusive spouses. However they find it difficult to come out and talk about it, due to the capricious and

biased social response. They feel ashamed, as they feel that they will be judged. They feel that society will think of them 'as less of a man' if they come out and voice out the abuse being meted out to them. The society has played a crucial role in framing gender biased roles and forming stereotypes against genders.

Gender is a socially constructed idea or connotation related to certain human behaviors, actions and rules concerning the sociological terms of 'masculinity' and 'femininity'. This concept of 'gender' has given rise to rigid gender roles, especially in India. This in turn has given rise to various gender biases and stereotypes. Men who face abuse in the forms of domestic violence, false accusations, and so on and so forth are hindered from getting justice due to the gender biased laws constructed in our Indian constitution which are only in favour of women.

Even though our Constitution guarantees the sanctity of Equality under Article 14, the laws that prevail even today are laced with loopholes of inequality and gender biases. In the middle of the 20th Century, strong feminist movements brought forward the atrocities that women had to face, however, times have changed, now there is also a need to bring forth changes in the draconian laws which are prejudiced against only men.

The Indian Penal Code, is the main criminal code, which prescribes all the cases and punishments that an Indian citizen is liable to be charged with, if he/she commits the crime. Even though, Equality has been bestowed on all citizens, the laws, enshrined in our IPC has been somewhat biased. The stereotype that "all violence is male generated" has created a range of legislation which have, only favoured a particular gender and failed to enshrine the sanctity of equality. This creates a division between genders in society and also shields women perpetrators of violence. Some of the provisions, of the Indian Penal Code, which have failed to provide an umbrella of equality to both genders:

- Section 498 A

It is defined that if the husband or the relative of the husband of a woman, subjected such woman towards cruelty would be punished with imprisonment for a term which might extend to 3 years and may also be liable for fine. The 2003 Malimath Committee reported, there has been a gross misuse of this section. Many women, have used this section, as a "weapon rather than a shield". This has been observed by the Apex Court in the Sushil Kumar vs. Union of India, where the Supreme Court observed that the complaints filed by the wife under Section 498A were based on personal vendetta. They use it as a form of blackmail against their husbands and their in-laws.

- Section 375

This Section is defined as “If a man has sex with or without the consent of a girl under eighteen years of age, then it amounts to rape. This section is absolutely silent, on rapes or sexual assaults committed by women on men or minor boys or in the instances of men sexually assaulting other men. Our Criminal Code, does not provide any provisions, to protect men from sexual violence. They have not provided, any means, to protect men from various forms of assaults.

- According to Section 304B,
 - ✓ If a woman dies as a result of burns, bodily harm, or some other unusual circumstances,
 - ✓ Within seven years of her marriage, she had a child.
 - ✓ If she has been subjected to cruelty or abuse by her husband or any of his relatives in connection with a dowry demand, such husband or relatives shall be punished by imprisonment for a period of not less than seven years, but which may extend to life imprisonment.

Such Provisions show how laws have been framed only in favour of women. These offenses are non-bailable, cognizable, and non-compoundable., thus making it very difficult for men who are falsely accused to get justice. The Indian legislators, have time and again, turned a blind eye to woes of those men who have tried to seek justice. National Crime Records bureau, have reported that only 15% of dowry abuse accused were found guilty and nearly 200, 000 people including, 47, 951 women were arrested on unfounded dowry abuse charges.

Recently, a 17 year old boy from Gurugram, committed suicide, after a girl made false accusations against him on Instagram. Similarly, Vishnu Tiwari ³of Lalitpur, spent 20 years in jail for a crime that he never committed. In September 2000, he was arrested after, a woman, her husband and her father-in-law falsely accused him of raping the woman whilst, she was, five months pregnant. He was charged with physical and sexual assault. After 20 long tumultuous years of fighting for justice, Allahabad High Court accepted the truth and granted him justice.

In this way, women take undue advantages of the laws that are granted to them for their own protection. They use it to their advantage, thus misusing the holy sanctity of Justice. This shows, how the Indian Judicial system, has loopholes which need to be fixed right away. Such prejudiced laws have become tools against men and their families too. Equality has been the main goal of Feminism, and Equality can only be achieved in true sense only if gender

³ Vishnu Tiwari Vs the State of Uttar Pradesh

neutrality is established at the very core of our criminal code, that is, the Indian Penal Code. We need to establish all kinds of stereotypes that have been prevailing in this society, so that men can come forward with their problems, without being judged on the basis of their manliness. Human rights and equality, are two pillars of the social web, to which all, regardless of genders should have access to. Only Gender-Neutral laws can provide such an access, thus they are the need of the hour.

“Gender-neutral reforms are not designed to make gender irrelevant in our understanding of sexual violence; in fact, gender is central to any understanding of how and why sexual violence occurs. What is clear, however, is that while females are the main victims of sexual violence and males the main perpetrators, one still has to consider how sexual assaults beyond the male-on-female paradigm are to be labeled by the criminal law.”⁴

⁴ quoting American Law Institute, *The Model Penal Code and Commentaries: (Official Draft and Revised Comments)* (Philadelphia: American Law Institute, 1980) at 337 Google Scholar (art 213, s 213.1, cmt 6)).