
SILENCED VOICES: MEN, CRIMINAL JUSTICE, AND THE STRUGGLE AGAINST GENDER BIAS

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ABSTRACT

The coin has two sides but the lawmakers and the society have chosen to see just one side of the same ie. Female centric. The times are changing and so is society.

Men are victims in the same manner that women are, but society ignores male victimization because there is a preconceived belief that only women are subjected to abuse and harassment by males, not the other way around.

There are numerous laws protecting women, but none protecting men. Presumption and assumption are causing the toll and the same to be borne by males and trans genders, though indirectly it affects females also. Not just the legislature but the judiciary has also been sensitized towards the crimes faced by females and not males. Various judgments have shown a one-sided approach. They have not just neglected but even have failed to acknowledge that the crimes are faced by men and trans genders too.

There are various provisions in family law, both Hindu and Muslim personal law and other laws which postulate a biased approach. However, the focus of the research will be solely in the context of Criminal Law. Indian Penal Code 1860 and the various amendments made in 2013 and 2018, all sightlessly focus on the woman as a victim, and never even once did it occur to the law framers that the very same offenses in which they are considering males as perpetrators, females are equally capable of doing the same still they are not made punishable for it.

INTRODUCTION

India as a nation has a multitude of races, religions, castes, a variety of customs, beliefs, social norms, sex, etc. Patriarchy is a predominant feature of India Society, which exists regardless of community, caste, or religion. Patriarchy promoted inequality on the grounds of sex, which later on developed rules, regulations, customs, and beliefs thus forming a mindset or mentality. The dominance of men didn't exist behind closed doors but beyond that too. The plight of females in the ancient days was not less than that of commodities or cattle who were transferred from father's hand to husband and from husband's to son. She was treated like a burden and a liability to the family whose prime and only job was household work, reproduction, and nurturing of children. She was insignificant, unimportant, disregarded, considered inferior, weaker sex, oppressed, vulnerable, and a second-class citizen. It was engraved in her mind that she needs protection from males and ironically that protection can only be provided by males. Women suffered exploitation and discrimination at every step of life. Indian society suffered a prolonged inbred disease of male domination which went on for generations naturally and subconsciously. She was subjected to orthodox superstitious customs like sati, dowry, child marriage, polygamy, female infanticide, etc. Education, Empowerment, Control, Power, and Opportunities seemed unattainable and unthinkable.

Women encountered social, political, economic, and cultural discrimination at every stage of life. Socially, they were never treated equally to men. They were guided by societal norms, had no role in family planning, not given sanitation facilities, medical facilities, education, or nutritious food. Early marriages, menstrual taboos, the purdah system, high mortality rate, honor killing, killing on the pretext of witchcraft, and genital mutilation were common issues faced by women. Politically, there is low participation, no representation or role in policy framing, political posts, elections, etc. Economically, fewer employment opportunities, discrimination in the workplace, gender pay gaps, no role in the management of finance, lack of funds, difficulty in availing loans, lack of vocational skills, no rights in family property, etc. Culturally, the prevalence of a patriarchal society, extra burden of household chores, no role in family planning, sole responsibility of child nurturing, socially specified roles, domestic responsibilities, less freedom, mobility, and exposure were a few major hurdles in the way of women empowerment.

INDIAN PENAL CODE, 1860

Indian Criminal law aims at preserving social order and solidarity. It not only sets norms for human actions but also prohibits human conduct that reveals disregard for these norms. It is proscriptive and mala prohibita in nature. Indian Penal Code, 1860 is an official comprehensive code under the Criminal Law of India. It is a substantive law, which specifies various offenses and gives punishment for the same. The First Law Commission drafted the Indian Penal Code, chaired by Thomas Babington Macaulay. The draft was a combination of simple codification of the law of England and a few essentials from the Napoleonic Code and Louisiana Civil Code of 1825. Code came into force on 1st January 1860 after undergoing numerous revisions and amendments by Barnes Peacock.

RAPE

Rape is sexual violence against the will or without the consent of a person. It is an offense affecting the human body, laid down under Chapter XVI of the Indian Penal Code, 1860. Sections 375 to 377 are pertaining to sexual offences.

Rape is considered an exercise of control and authority over the body of another in terms of sexual color. It is an act to fulfill sexual desires against the will of another. Clauses 359 and 360 of Macaulay's Draft Penal Code were put in sections 375 and 376 of IPC. The definition of rape has gone through a few amendments since its formation. Law commission reports, —National Commission for women⁸⁷ and social activists performed a huge role in transforming rape laws in India. In spite of numerous changes, it still follows the outdated concept of rape. Rape is a gender-specific offense in India wherein there is a preconceived notion that women are victims and men are perpetrators of this offense. Indian law fails to acknowledge that males and transgender can get raped too. Rape is an act of dominance and lust, which is possessed by any individual, it is not synonymous with males being the offenders. Rape is a violation of oneself, which can be committed by and against any member of society irrespective of sex. The dogmatic and traditional approach needs to be done away with by making rape a gender-neutral offense. *According to Former Justice V.R Krishna Iyer* *Rape is about command and power and not for sexual gratification*. It's an act of violence taking place through sexual means.⁸⁷ The intention or the objective of gender-neutral rape law is to safeguard the rights of men, homosexuals, heterosexuals, gays, lesbians, transgender, bisexuals, and people belonging to other sexual identities from sexual violence against their consent.

In —*Sudesh Jhaku v. KC Jhaku*¹, Jaspal Singh, J of Delhi High Court surfaced his desire to make rape a gender-neutral offense. Rape is not just a crime against women. He further laid down that men who go through sexual assault must have the same protection as that given to women and women who are offenders should be made punishable as conventional rapists. Understanding rape as sexual assault and not as gender specific offense will improve rape law and reduce mythical ideologies that have made rape laws a way of strengthening the position of females as sexual objects.

SEXUAL ASSAULT/ HARASSMENT

—Sexual Harassment is unwelcoming or uninvited sexual overtures, verbal or physical behavior of a sexual nature from one person to another. Sexual Harassment takes place through various verbal, non-verbal, and physical activities. Conduct can be considered sexual harassment if it is improper or offensive, showing pornography against will, pressurizing for sexual favors, exhibiting or making the victim touch the sexual organ of the offender, purposely touching, inclining near, restricting, or pinching, unwelcoming sexual looks or signs, passing sexually colored comments, etc. It makes the victim feel humiliated and startled. It causes a psychological impact and leaves dark blotches on the mind of the victim. Offenders can be of any gender or sex and have any kind of relationship with the victim. It can also be termed as eve teasing. In *DIG v. S. Samudiram*, it was held that Sexual Violence is a euphemism that must attract penal action against the offender². It has become a perennial problem in India.

The aftermath of the Nirbhaya Rape Case led to the formation of the Justice Verma Committee for making amendments to Criminal law and ascertain recommendations to curb violence. Various new offenses like sexual harassment, voyeurism, stalking, assault or use of criminal force on women with intent to disrobe, acid attack, etc were introduced by the Criminal Law Amendment Act, 2013. Justice Verma Committee proposed gender-neutral language for sexual offenses in India and laid down clarification for the interpretation of the word ‘unwelcome’ thus, the committee suggested the following explanation to be inserted into the definition of sexual harassment: —In determining whether the behavior or the act complained is unwelcoming, subjective perception of the complainant needs to be examined. This explanation is gender-neutral in nature, but all the efforts went down the drain as the

¹ (1996) 62 DLT 563

² (2012) 11 SCALE 420

suggestions were not acknowledged by the government because of the opposition of women activists, social workers, and NGOs which led to the formation of gender-specific laws.

Stalking

Stalking is a criminal offense that means unwelcomed or repeated surveillance of an individual by a person or a group of persons. It is persistent unwanted harassment of another which often leads to horrific crimes like murder, acid attack, sexual harassment, other sexual offenses, and intimidation. It causes annoyance, fear, anxiety, and psychological impacts on the victim. It can be a pattern of repeated events, continuing for days, weeks, or years which makes the victim feel dreadful. Psycho-social effects on the victim are long-lasting, complex, and traumatic. Stalking is a form of harassment. In most cases, stalking involves following the victim and frightening them, through unsolicited advances, persistent phone calls, letters, emails, text messages, graffiti, notes, and presents, they harass their victims.³ Stalker often tries to initiate contact or exercise power or dominance over the victim. Offenders might even spy or observe the victim silently for days thereby causing loss of control and stress to the victim. Stalking affects the victim and the victim's near and dear ones. Stalker generally becomes obsessed with the victim and starts a pattern of behavior by making the victim aware of his/her existence.

Stalking is a criminal offense under the Indian Penal Code, 1860, added in the year 2013 by the Criminal Law (Amendment) Act, 2013. Before the amendment, it was included under the head of harassment. Stalking is a serious offence and takes place very commonly in India thus there arose a need for a specific provision for the same. Indian law recognizes not only offline ie. Physical stalking but online too which can take place on various mediums. Justice Verma Committee recommended the addition of the offense of stalking to ensure an element of privacy and security in the lives of individuals.

Section 354 D of Indian Penal Code¹¹⁸ lays down the definition of stalking

Section 354 D which incorporates the definition of stalking, begins with “**Any man**” who trails, links, tries to foster personal interaction, and monitors online **any woman**. There exists a predisposition that it is only males who commit stalking, they will be considered as offenders.

³ Netto, Ivan S. (2012). *Do we need a law in India for stalking?* Indian Journal of Psychiatry. Jan- Mar; 54(1): 92–93.

The definition of stalking includes physical as well as online stalking.

SECTION 498 A

In India, women were traditionally regarded as a chattel. She suffered a lot of atrocities in the past in the garb of religion and customs. She was regarded as a weaker sex, and inferior, and her status in the society was low in comparison to her counterpart. Despite the fact that marriage is a holy, sacrosanct, and revered institution in India, our inherent male domination has resulted in women's subjugation after marriage. There was a dual treatment given to women, on one side she was considered as powerful, the epitome of strength, and vigor, and was worshipped on the contrary she was beaten, battered, and snubbed. Women were subjected to harassment and cruelty at the hands of their husband and their relatives. Indian Penal Code (hereinafter IPC) is a substantive law that defines offenses. Section 498A IPC was not introduced originally. There was only chapter 8 which comprised offences against marriage. Section 498A was added in 1983 by the Criminal Law (2nd Amendment) Act of 1983. It was created to protect married women from suffering abuse at the hands of their husbands or their family. It was framed with a benevolent social objective to mend the stature of women in society. It acted as a check on the rampant cases of cruelty. It was like a breather for women across India from assault and abuse at the hands of their husbands. This section had a dual effect on society, it gave women power and confidence to fight back against brutality and taught a lesson to cruel husbands and their relatives. It acted as a warning mechanism for like-minded individuals. Section 498A saved vulnerable women from abusive husbands and unreasonable demands of their family members. It also upheld the constitutional provisions and values.

Judicial Pronouncements

There happens to be no question that offenses against women or cruelty against women do not take place. This section was made with the benevolent purpose of protecting women but these days misappropriation of section 498A is rampant. By stating the extent of increasing misuse of this provision, there happens to be no intention that section 498A IPC should be declared unconstitutional or that it is no good in law. It has helped thousands of vulnerable women, but the purpose was to use it as a shield and not as a sword to humiliate and torture the husband and his relatives. The plea is that the same protection must be available to the husbands against cruel wives and their relatives. Misuse of any law is bad in the eyes of the court but the weapon of law should be accessed by all in the cases of distress.

Courts have repeatedly recognized the misuse of section 498 A in numerous cases, including *Rajesh Sharma v. State of Uttar Pradesh*⁴, *Anju vs. Govt. of NCT of Delhi*⁵, and *Preeti Gupta v. State of Jharkhand*⁶. In *Sushil Kumar Sharma vs Union of India and others*,⁷ it was held that section 498A is not unconstitutional, in fact, formulation of guidelines must be done for innocent persons who are victimized by dishonest people making false accusations. If the offense is not made out, strict actions must be taken against the wrongdoers. The court further stated that

—It is important to remember that the main goals of all legal systems are to establish the truth, punish the guilty, and defend the innocent. There are a plethora of cases indicating the misuse of this provision by the wife thereby leading to false conviction or acquittal/release of the innocent husband. Even if the proceeding against the husband is quashed his life gets destroyed because of mental stress, trauma, and loss of reputation on the professional front and within family members, sometimes it also leads to suicide. All this can be seen as cruelty against the husband. It is not just the husband who suffers but the misuse of this provision happens to be draconian for the parents and relatives of the innocent husband too. There lies a genuine question if the same acts are committed by the wife what and where does the remedy lie for a husband? On the same ground of —cruelty— why can't men file a criminal case against their wives? Why can only civil proceedings be initiated against the wife ie, as a reason for divorce based on brutality?

Indian Judiciary has time and again recognized cruelty against men at the hands of a wife. However, no strong measure has been laid down by the government or the judiciary. They haven't set up any deterrent effect or provide an alternative resort to the husband in case he doesn't wish to seek divorce.

- Uttarakhand High Court, In, *Anita Gaur v. Rajesh Gaur*⁸, held wife's mental cruelty to her husband is a sufficient reason for divorce, making mental cruelty no less so than physical cruelty. The cruelty committed by the wife was not a sole instance of cruelty as she indulged in repeated acts of cruelty and misbehavior with her husband.

⁴ 2017 SCC 821

⁵ [CRL. REV.P. 730/2016]

⁶ (2010) 7 SCC 667

⁷ (2005) 6 SCC 281

⁸ [First Appeal No. 115/2016]

- Supreme Court, In, *Joy deep Majumdar v. Bharti Jaiswal Majumdar*⁹, held that the degree of bearing differs from one spouse to the other, and the Court should consider the parties' backgrounds, educational levels, and social standing when determining whether the cruelty charged is sufficient to justify termination of marriage at the request of the victimized party. Malicious claims against the husband which lost him his work and reputation are not an attempt to save the marriage but a definite case of mental cruelty.
- Supreme Court, in *Mayadevi v. Jagdish Prasad*,¹⁰ ruled that The courts will not hesitate to grant divorce on the grounds of mental cruelty in situations where emotional or mental torture was inflicted on either spouse, not just the wife. This simply means that a husband can obtain a divorce if the court finds sufficient proof that he was the victim of his wife's mental torture. In one instance, the husband requested a divorce on the grounds that his wife had tormented him and his kids by denying them food and engaging in other harsh behaviors. The husband received both mental and physical abuse; as a result, divorce was granted.
- In *Mr. X v. Ms. Y*,¹¹ the Delhi High Court held that unsubstantiated criminal complaints against the husband caused immense mental agony and on the same basis, he was entitled to divorce. An unfounded allegation with no shreds of evidence to support the claim causes mental cruelty to the spouse. The wife made several contradicting claims in her written statement, complaint, and affidavit. Her testimony was disregarded by the court and later held that parties in such situations cannot be expected to live together.

CONCLUSION

Law is the torch bearer of justice and equity. It seeks to maintain order, protect liberty, and resolve conflicts. Justice is not a birthright of a specific gender. Men do have rights, and the law must offer them an acceptable remedy otherwise the equity law itself gets defeated. Criminal activity remains a criminal activity regardless of gender, hence legislators must not link it to gender for providing undue protection to one at the cost of another. Inequality creates a sense of abhorrence and a ruckus in the society. Punish the offender, not target one because of the gender. Instead of focusing just on gender, the crime or criminal conduct must be accounted for in determining the culpability. With advancements in time, there must be

⁹ [Civil Appeal No. 3786/2020]

¹⁰ AIR 2007 SC 1426

¹¹ MAT. APP(F.C) 247 of 2019

amendments in laws, or else the law would find its place just on paper in black and white. It would be treated as a toothless tiger, mirage, or a gate with a lock but no boundaries where anyone would barge leading to disrespect and mockery of fundamental and human rights. *Auegan suam turpitudinem non est audiendus* signifies that if a person claims or avowals of his or her own debauched behavior he or she must not be heard in court. Nobody should be permitted to exploit others unfairly or to use the law to intimidate innocent individuals.

Gender neutrality is the recognition of reality. The pursuit is not to bring men above women or vice versa but to make them stand on equal footing. Terms such as offender, accused, guilty and perpetrator are gender-neutral. Criminal offense is a wrong done to society as a whole and thus must be devoid of straight jacket definitions and presuppositions of offender and victim. Stagnancy in the mindset, behavior, and attitude has tarnished our judicious approach and rational thinking. Giving weight and leverage to one at the cost of another always promotes distress and commotion in society. If the law stresses a gender-specific approach it directly encourages feelings of animosity towards the other gender thus leading to a disturbed society.

In an age where gender equality is the norm and gender equal justice the dictum, all is not well in India as some of the criminal laws defeat the very purpose of justice itself and democracy dies in darkness. The goal of a gender-neutral law is not to lower the standard of women in society; it is all about equality, which is a fundamental principle of our Indian Constitution. It is not simply about competition or winning or losing. If a wife is wronged, she has the right to hold the husband and his family accountable under criminal or quasi-criminal law, which may result in simple or rigorous incarceration; yet, if a wife commits the same wrong against the husband, it is either not recognized, an alternate or civil remedy is provided to the husband. Men, women, and transgender need to be protected alike. Laws that are based on gender are like two-edged swords. When progressives overdo positive discrimination, leaving males stranded on the shore, conservatives sometimes use it to protect culture. It's time to put the tool on hold and eliminate extreme gender-based privileges. There lies no competition or opposition between men and women but there lies a quest for equality so that men, women, and transgender can come on the same pedestal. Misuse of law and filing of fake cases is rampantly done by women these days thus serious actions are required to prevent innocent people from suffering the sadistic pleasure of enraged women. Legal terrorism at the hands of women needs to be controlled or else it would lead to a chaotic society.

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