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Gender-Specific Laws in India- A Prevailing Legal Terrorism

Abhishek Mantri¹

Abstract

In the growth of the rights for women in the society, has been led to the growth of need for gender natural laws, or the men's rights protection bill against the false cases as well as against the sexual harassment of men at work place. As there are only limited laws which supports the men in a fake case which is filed against him. The litigation over the previous two decades has rendered males so stupid that they are readily exploited by women empowering. Yet, in the legal system, gender neutrality refers to equality and the preservation of one's rights regardless of gender.

When it comes to violence, women in India are always the center of attention. A man is always seen as the offender in the cases of rape, dowry death etc. as the burden of proof relay on the men to proof his innocence. In this research paper we will be discussing the misuse of the gender specific laws in India and we will see the presidents which made the gender inequality by giving more rights to women. The purpose of this article is to examine whether it is necessary to change a few laws in India from gender-specific to gender-neutral.

Keywords – Gender, Terrorism, Judiciary, Women, Constitution.

I. Introduction

We have been taking about the gender equality for several decades now. The Indian constitution talks about the right to equality² but on other hand the legislation and judiciary had created a large number of laws which favour's women and they are mostly against men in nature. However, it is true that at one point of time there was immense need

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² India Const. art. 14.

creating the laws to empower women in India, as at a point of time women was very weaker section of the society and the laws were created to protect them from facing discrimination from the patriarchal society. But today there is immense need for the men's right protection bill, as the laws created to protect women's rights are now getting as Prevailing Legal Terrorism.

In **Sushil Kumar Sharma v. Union of India**³, The Supreme Court stated that complaints under Section 498A of the Indian Criminal Code (IPC) were being made with a personal vendetta in mind. It was stated that ... by misusing the provision, a new form of legal terrorism may be unleashed. It was also mentioned in the verdict that the legislature should find means to adequately penalize people who make frivolous complaints.

II. Laws That Typically Favour Women

- 1. Protection of Women from Domestic Violence Act, 2005**⁴ - It is a law which protects women from any kind of domestic violence such as physical, mental, verbal, sexual, emotional.
- 2. The Dowry Prohibition Act, 1961**⁵ - It prohibits giving or attempting to take dowry from women before, during, or after their marriage. This statute prohibits the taking or giving of dowry to the bride or bridegroom and their family at the time of marriage.
- 3. The Indecent Representation of Women (Prohibition) Act, 1986**⁶ - Its goal is to prevent women from being misrepresented in commercials, publications, writings, paintings, figures, or any other way.

³ [2002] 3 SCC 533.

⁴ Protection of women from Domestic Violence Act, Act of parliament, Act no. 43, 2005, (India).

⁵ The Dowry Prohibition Act, Act of parliament, Act no. 28, 1961, (India).

⁶ The Indecent Representation of Women (Prohibition) Act, Act of Parliament, Act no. 60, 1986, (India).

- 4. The Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redressal) Act, 2013⁷** – This legislation provides protection from sexual harassment of women at work in order to ensure the safety and rights of women at work.
- 5. Immoral Traffic (Prevention) Act, 1956⁸** – It ensures that women are not trafficked for prostitution as a method of making a living.
- 6. Equal Remuneration Act, 1976⁹** - It ensures that men and women are compensated equally for performing the same or equivalent tasks. There shall be no gender disparities in recruiting or service conditions. Its purpose is to avoid job discrimination against women.
- 7. Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994¹⁰** - This statute prohibits sex selection before or after a woman conceives. It will decrease the number of undesired and illegal abortions in the country.
- 8. Maternity Benefit Act, 1961¹¹** - This statute governs women's work and the maternity benefits stipulated by law. It stipulates that a woman employee who has worked in a company for at least 80 days in the 12 months preceding her projected delivery date is entitled to maternity benefits such as maternity leave, nursing breaks, medical allowance, etc.
- 9. India Penal Code –**
 - 9.1. Section 304B – Dowry Death¹²**
 - 9.2. Section 375 – Rape¹³**

⁷ The Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redressal) Act, 2013, (India)

⁸ Immoral Traffic (Prevention) Act, Act no. 104,1956, (India)

⁹ Equal Remuneration Act, 1976

¹⁰ Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, Act No. 57 1994, (India)

¹¹ Maternity Benefit Act, Act no. 53,1961, (India)

¹² Indian Penal Code, section 304B, Act of Parliament, 1860, (India)

¹³ Indian Penal Code, section 375, Act of Parliament, 1860, (India)

9.3. Section 376 – Punishment for rape (*in this section it is clearly mentioned that only men can do this offence, and no women will be liable under this section*)¹⁴

9.3.1. Related case law- *Priya Patel vs. State of M.P.*¹⁵

Note: detailed case laws are discussed below.

10. Constitution of India –

10.1. Article 14 – Equality before law for women.¹⁶

10.2. Article 15(3) – Prohibition of Discrimination on grounds of religion, race, caste, sex, or birth place. (3)- Nothing in this article shall prevent the state from making any special provision for women and children.¹⁷

10.3. Article 51A (e) – Fundamental Duties- To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.¹⁸

10.4. Article 243D – Reservation of seats. (3) Not less than one-third (*including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes*) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat. (4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide:

- *Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the*

¹⁴ Indian Penal Code, section 376, Act of Parliament, 1860, (India)

¹⁵ 2006 SCC 263.

¹⁶ Dr. H.G. Kulkarni, Erratic Dimensions of Law Vol:118, Cri LJ, January (2012), p.29.

¹⁷ Constitution of India, Article 15 (3)

¹⁸ Constitution of India, Article 51A (e)

Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

- *Provided further that not less than one-third of the total number of offices of Chairpersons in the 97 Panchayats at each level shall be reserved for women:*
- *Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.*¹⁹

10.5. Article 243T – Reservation of Seats. (3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality. (4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.²⁰

III. Case Laws Which Had Given Women Exclusive Rights

1. Priya Patel v. State of MP.²¹ –

Facts of the case- In this case, complaint was lodged by the prosecutrix alleging that she was returning by Utkal Express after attending sports meet. Upon reaching her destination Sagar, she met accused Bhanu Pratap Patel (husband of the accused appellant) at the railway station and told her that her father has asked him to pick her up from the railway station. Since the

¹⁹ Constitution of India, Article 243D

²⁰ Constitution of India, Article 243T

²¹ 2006 SCC 263.

prosecutrix was suffering from fever, she accompanied accused Bhanu Pratap Patel to his house. He committed rape on her. During the commission of the rape, his wife, reached there. The prosecutrix requested the appellant to save her. Instead of saving her, the appellant slapped her, closed the door of the house and left place of incident. Bhanu Pratap Patel was charged for offences punishable under Sections 323[3] and 376 IPC, the appellant, as noted above, was charged for commission of offences punishable under Sections 323 and 376(2)(g) IPC.

Judgment by the court- The Court precisely held that the non-ambiguous language of section 375 of IPC expressly mentions that the act of rape can only be performed by a 'man' and not by any person. Thus, a woman cannot commit rape.

The court further ruled that a woman cannot have an intention to rape, as it is conceptually inconceivable and therefore, she can neither be held for rape, nor gang-rape. The court further held that the expression in furtherance of their common intention as appearing in Explanation I to Section 376(2) IPC, relates to intention to commit rape. A woman cannot be said to have an intention to commit rape. And therefore, a prosecution cannot be launched against a woman for gang rape.

2. **State of Rajasthan v. Hemraj & Anr.**²² -

Court held that women present at the time of offence does not share the common intention, and according to the Sec. 375 and 376 of the Indian Penal Code, 1860 the rape can only be done by men and hence it is impossible to convict women for the charges of rape.

²² (2017) 12 SCC 362.

3. **Christian Community Welfare Council of India v. State of Maharashtra**²³ –

Decision by the Bombay high court- The police cannot arrest women without the presence of the lady constable in no case, and the court also stated that the women can only be arrested during the day time, which means that the police cannot arrest women after sun set and before sun rise.

The highest court did point out that it is important to safeguard the woman who is being sought out for arrest by the police from wrongdoing on their part. However, the Supreme Court stated that it would not always be feasible and practicable to have a female policeman present when the need for such an arrest arises.

As a result, Section 46 of the Code of Criminal Process of 1973 was amended to include sub-section 4 and the Cr.P.C. (Code of Criminal Procedure) Act, 2005, was created.

Section 46 (4): Save in exceptional circumstances, no women shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the judicial magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

4. **Chander Bhan v. State (2008)**²⁴ –

The Delhi High Court had determined there is no iota of doubt that most of the complaints are filed in the heat of the moment over trifling fights and ego clashes. It is also a matter of common knowledge that in their tussle and ongoing hostility, the hapless children are the worst victims.

²³ (2014) 10 SCC 697.

²⁴ 2008 SCC OnLine Del 247.

IV. The False charges against males are becoming common in India

There are several cases when it is clear that women are abusing their legal rights to protection and harming defenseless males. One such instance was a young guy who killed himself a few years ago; at the time, the story was extensively reported. The aforementioned event happened one week after the guy was cleared of all allegations of domestic violence. Even though there was insufficient evidence at the time of his arrest, he was still detained in an effort to bring the lady to justice, prove that laws protecting women were necessary, and expose males as the true offenders. Afterwards it was discovered he was innocent. Yet when he went back to his regular schedule, he discovered that nothing was the same. Due to the incident, he lost his Job, and everyone continued to treat him like a criminal, and making nasty remarks. He committed suicide because he was unable to cope any longer.

Similar to this, Jasleen Kaur, a student at St. Stephens College at Delhi University, uploaded a picture of Sarvjeet Singh on Facebook on August 23, 2015, alleging that he had harassed her and said offensive things. As soon as the post got viral, the individual was taken into custody. Everyone praised the woman, including renowned Bollywood celebrities and Mr. Arvind Kejriwal, the Chief Minister of Delhi. Although, the commissioner of the Delhi Police had also offered a 5000-rupee monetary prize. The media and the general public referred to the youngster as a national harasser and pervert. He had the moniker Delhi ka Darinda. Kaur, who is 23 years old, relocated to Canada immediately after her article went viral in order to obtain a degree in human resources. Singh had to go to the police when he needed to leave the city. He was battling to keep his job in the interim. During the investigation, it was discovered that Jasleen was the one who had abused Sarvjeet verbally and misbehaved around him. Sarvjeet was exonerated of all charges in the molestation case four years later, in 2019.

A recent social media video that went viral depicts a woman called Priyadarshini Yadav fighting with a cab driver named Shaddat Ali in Lucknow, Uttar Pradesh. The woman can be seen hitting the driver more than 20 times in the footage. The event, according to the police, took place on July 30, 2021. The girl can be heard screaming that the cab driver had struck her when questioned why she was beating Ali. She could be seen moving along the busy street in another social media video that was taken from Surveillance footage from the signal. Saadat Ali Siddiqui, the cabbie, said that the woman crossed in front of his vehicle on the night of the event despite though the signal was green. He instantly hit the brakes, according to Saadat Ali, and the woman then pushed him up against the car. She even shattered the car's side mirrors and smashed his smart phone. She had even filed a police report (FIR) accusing Shaddat Ali of hitting her with his automobile. Shaddat was even detained and imprisoned. The truth finally came to light after the Surveillance footage was posted on social media. Social media users and internet users criticized her and began calling for her arrest. Ultimately, she was the subject of a FIR.

V. Conclusion

There should be rules protecting women's safety and security, as well as laws protecting the human rights of males. This article's main worry and issue is that women in India have historically abused laws that are discriminatory towards them, and it's time to alter that. Our present laws require certain fundamental adjustments and amendments, such as making crimes like stalking, rape, harassment, and dowry gender-neutral.

This legislation should use the term victim to refer to both men and women, not simply women as it does at the moment. The Nirbhaya Act need to provide protection for both men and women. The Petition of suffering victims may be given another look by the Supreme Court of India, and action must be made to help them. If a woman is found guilty

of making a false claim or lying, she must receive the same punishment—equal time in prison—without any consideration for her feelings. As the word gets out in this way, fraudulent cases will undoubtedly decline. In only one year, it's expected that the number of bogus charges filed would drop by roughly 80%.

The Indian Judiciary system should give a message to the society the laws and sections exist to protect women and not be misused by them. Moreover, courts should take Article 14 and 21 as the basis to provide equal rights protection to men. Article 14 stands for equality before law along with equal protection by the law. Article 15 stands prohibition of any kind of discrimination on the basis of region, race, caste, sex, place of birth, etc. Article 21 stand for the personal liberty of life of every person. Keeping these articles of the constitution in mind, the Indian Courts must take adequate steps to protect men from fake cases. Promotion of gender-neutral laws in India and National Men's Commission are the need of the hour for the Indian society to be just and unbiased.²⁵

²⁵ Nishant Kumar, *Misuse of Anti-Dowry Laws to Blackmail Husband*, Independent Media Centre India, (2006), p. 6.