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EXPLOITATION OF GENDER BIAS LAWS- A COMPARATIVE ANALYSIS OF MEN'S RIGHT IN INDIA, UK AND AUSTRALIA

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ABSTRACT

Discrimination against men is real and it is a matter of great concern. Yes, there are laws for the protection of the rights of the women but what about men? Gender neutral laws is a matter of great concern and the need of an hour. When we talk about India it fails to provide gender neutral laws. There are so many sections in IPC where the rights of the men are betrayed, for example section 375 where men can't be raped, this law doesn't care about consent and will of the man. India has strict laws regarding dowry, but if a wife missus the dowry laws to harass husband and his family then there is no provision to punish her. So, if society says demand of dowry is wrong then it is also wrong to demand a groom having 6-digit salary and a separate home as well. Same if wife cheats her husband betray him and sleeps with another man, she will not be punishable.

The present paper by comparing and contrasting the legal provisions, aims to examine the legal scenario and aims to draw and analysis between violence against women by men in countries like US, Australia and India and thus also focuses how the Indian judiciary fails in protecting the rights of the men.

INTRODUCTION

The right to live with dignity and freedom and being safe from all crimes and assaults is one of the fundamental rights and as well as a human right. Crimes like homicide, rape, domestic violence, suicide, adultery, abduction, sexual harassment at workplace, child abuse and many other of these crimes have always thought of in parallel with females, but in this era of 21st century there exist another face of the coin. We all talk about equal opportunities and equality between all genders but when it comes to Indian Constitution it is far from reality. It is very true that there was a time when there was a great need of making provisions for women's but unfortunately some of the provisions are clearly needed for men. There are plenty of laws which are in favour of female and for the protection, but these laws are somewhere acting against the males. There are even many situations where a male is considered to be somewhere. There are

also several laws which are not in favour of men but no action is being taken against them. All have focused mainly towards the women's safety and women's protection and so sometimes the men have to suffer a lot.

Therefore, in the absence of any systematic data with more men falling prey to violence and fake acquisitions by women, it is important to understand and examine the issues of violence against women. With the changing gender roles and arise in the feminist movement article mainly predicts that this will lead to gender bias against men and even to society at large and even threatened the relationship between both the recognize gender. In the present article, it attempts to draw an analysis of the violence against men by the women in various countries including India and does reflecting the failure of Indian Judiciary and legislature while deciding and drafting gender neutral laws.

The society have been divided into many parts and many communities in the name of colour, Creed, caste, Gender and many other such factors, but it is our duty to bring equality among them.

INDIAN STATUES

In a recent study which was made, it was found that out of 222 Indian men being surveyed 16.1 % had been coerced into having sex. Despite male rape has not being researched as widely as female rape, there are still several statistics to suggest that men are raped and the prevalence of male rape is wider than is generally presumed. Male rape happens but is very rarely reported. But in countries with neutral rape laws, reportedly have the lowest rate of rape in the world. Therefore, in IPC there are various provisions which are considered as anti-bias laws.

IPC¹

RAPE

According to the definition of rape which is given under section 375 of IPC, a woman can only be the victim to the crime of the rape and only a man can commit the criminal offence of rape, further a woman shall not be punishable even as an abettor in cases of gang rape. Even when a man is being raped by another man, he has no power to initiate proceedings with respect to the same.

Crimes like rape has no cast, colours, creed, age, nationality and even gender or sexual orientation.

OTHER ASPECTS OF RAPE.

¹The Indian Penal Code, 1860 (Act 45 of 1860)

- i) A man having sexual intercourse without a woman's will - No guideline as to prove a woman's will here. She might have had consensual sex and still allege rape with a vindictive attitude.
- ii) If a man has sex with a woman after promising marriage, he can't break up with the woman. If he does, according to the laws in India, he's a rapist. Reverse the genders and if a girl does the same, it will be labelled as 'women empowerment.'
- iii) Age of consent: There is no age of consent for males. If a boy of 16 and a same-aged girl has consensual sex, the boy will be charged with rape.

DOWRY DEATH².

When we look at the Indian society the general propaganda that is followed by this patriarchal society is that every unnatural death of a women is followed by dowry death. Therefore, when we looked at IPC it is silent on the definition of dowry death which results in misuse of dowry death provision and as it is made believe that all Indian men have the thirst to commit violence against their wives in demand of money and property.

Justice Saldana's remarks are a testimony to the way these laws are being misused to compress the Innocent citizens³.

"... we need to sound a note of caution that the police and investigation authorities should not improperly and technically jump to the conclusion that they merely because that has occurred that ipso facto to criminal offences has been committed there are many consequences of these charges are extremely Grave because the accused has been and the family members are placed under arrest these are serious social and economic repercussions".

The supreme court in the case of **Sushil Kumar Sharma Vs Union of India⁴**, observed that such provisions are basically intended by the women to use it as a weapon against the innocent husbands.

OUTRAGING MODESTY

²Section 304B of IPC

³State of Karnataka v/s T. Balarama, CrI.A.no. 589 of 2003

⁴JT 2005 (6) SC 266

There are many provisions which are only protecting women from crimes like sexual harassment⁵outraging modesty⁶, disrobing⁷, voyeurism⁸, stocking⁹.The present offences can only be committed by a man against a woman.The present situation has become so incredible for men to survive that even if a man accidentally touches a woman at a public place and the women protest slightly, the man shall be prosecuted for committing the crime even without being giving a chance of being heard.

Therefore incident in New Delhi in August 25, where a girl name Jasleen Kaur posted a picture of a guy on a motorcycle and claimed that he passed abusive comments on her. When further the investigation was made it was found that Jasleen was guilty as he exploited the power given by law. These are such of the related examples which prove that males are also being harassed by women. Harassment does not come only by the way of physical harassment but can also be a mental harassment which is done to males.

DOMESTIC VIOLENCE AGAINST MEN

When looking towards the Preamble of the domestic violence act, it provides an effective protection to the women's, therefore it lacks in the provisions related to violence against men. There are many fake cases registered by the wives and in many cases the wives are not able to provide any evidence in support of the allegations. Domestic violence against men is a very frequent thing which is not reported due to the non acceptance of the society, since it has been believed that only women's can be subjected to domestic violence by her husband and in-laws. Therefore, there are no provisions made in support of the violence against men.

MALE TRAFFICKING

The society only favours that trafficking can be done only with women and thus we fail to highlight that even men are being targeted. If we look at the early stages cases and media coverage of the trafficking it could be figured out that the commercial sex exploitation of men and boys have been a relative lead to a new concept, therefore it is hard to ignore the fact that men and boys are subjected to sexual exploitation equally with the number of female victims. It is therefore more than thousands of male victims in a number.

In the state of Tamil Nadu, Gujarat, Maharashtra, West Bengal and Rajasthan where cases have been reported at a high rate. The basic and the main purpose of human trafficking given, are for forced marriage, forced labour, sexual exploitation and domestic servitude.

⁵Section 354A of IPC

⁶Section 354 of IPC

⁷Section 354B of IPC

⁸Section 354C of IPC

⁹Section 354D of IPC

There are many traditions and Customs which hardness the kind of toxic and dangerous environment for these young men, one of such is “*LaundaNaach*” which is often seen in various States where boys being the age of 15 to 25 are taken in the areas of Bihar and Uttar Pradesh to perform a dance.

Section 10 of the ITP facilitate female offenders whereas there is no such provision for males. In India this provision is basically based on the presumption that females can be only the victims of prosecution, where it forgets that the dignity of man is also an important part. The males on the contrary are considered to be the dominant and the conception is formed that males cannot be victimized.

FOREIGN STATUES.

UNITED STATES OF AMERICA

In United States the National Violence Against Women Survey carried out by the department of justice in the year 2000, survey that 16000 people have been reported physically assault by the current or former spouses in which 8000 were men and 8000 werewomen.

IMMORAL TRAFFICKING

Under the UScode¹⁰ it provides that section 1583, it provides with criminal liability of any person who kidnaps or carries away any person for the purpose of selling into involuntarily servitude. Further the sections 1590 and 1583 also deal with trafficking of any person with the male or female for the purposes of involuntary servitude and selling of any person into any condition of involuntary servitude and willfully holding to involuntary servitude respectively.

RAPE LAWS

The US Court provides a vast interpretation of the laws¹¹ related to rape therefore according to the definition clause of the court:

- Section act not only covers penetration by penis but also includes penetration through other forms like genital, opening by hand or any object etc.
- Sexual contact means the intentional touching either directly or through the clothing of the genital or growing breast and talks of any person with an intent to abuse, humiliate,harris the person or gratify the sexual desire of any person.

¹⁰The Code of Laws of the United States of America

¹¹S- 2246 of The US Code

According to Section 2241, 2242 and 2244, both males and females can commit the offence of sexual abuse. They fail due to lack of specific legislation in the state of USA. The cases of male rape are not much highlighted as compared to that of women rape cases

DOMESTIC VIOLENCE

According to the code “domestic assault” can be understood as any act committed by any spouse on the person with whom he she is cohabiting or has cohabitated. Therefore, under the domestic violence act in the USA, Section 117¹², not discriminating on gender provides equal liability of both the sexes for any assault, sexual abuse done against a spouse.

STALKING¹³

According to the provisions of stalking any person who intends to kill, harriss or cause injury on bases under surveillance and other person and engages in conduct that causes a reasonable fear of death or serious bodily injury in the mind of the victim. It therefore provides for the culpability of any person who causes or attempts to cause or would be reasonably believe expected to cause substantial emotional distress to any person as provided by the provisions.

AUSTRALIA

According to the figures given by the Australian Bureau of statistics personal safety survey which is used extensively by domestic violence organisations, the survey released a report in 2012 which served around 17000 men and women in which it was reported that 33% of the people has experienced domestic violence who weremen.

DOMESTIC VIOLENCE

Domestic violence which has been defined by family Law Act 1975¹⁴, includes violence between partners of both sexes including same-sex relationships. It also refers to violence that occurs between people who have or had an intimate relationship in domestic settings. It also includes sexual abuse, emotional abuse and stalking.

There was a report which was made by Australian Institute of Health and welfare in 2018 which revealed that one in six women and one in nine were physically or sexually abused before the

¹² US Code

¹³Section 2261A of US Code

¹⁴"Family Law Act 1975". *Legislation Australia. Commonwealth Government of Australia*. Retrieved 5 Aug2016.

age of 15, therefore the same report also revealed that 9000 men employed homelessness service in 2016-17 due to the domestic violence¹⁵.

The however include and define the conduct that is harassing or offensive which may cover some situations of intimidation.

STALKING

There is no such offence of stalking define under this Commonwealth law. Therefore, a Court may grant an order or pass an injunction for the protection of person under section 68 B or section 114 of family Law Act 1975 which is connecting and which constitutes stalking. Section 60 and 62 of the crime acts does not include stalking which is a great element of an offence. Therefore, there is no such definition of stalking or stock in the Act.

RAPE

Under the common law was defined as and knowledge of a woman against her will and was subject to narrow and restrictive definition of sexual intercourse. It is been extended in all jurisdictions but with resulting in consistently across jurisdictions¹⁶. In the country the act of penetration of the genitalia¹⁷ by pennies or object or any part of a body or mouth¹⁸ is included which is not gender specific.

¹⁵Australian Institute of Health and Welfare 2018. Family Canberra Act 2601: Australian Institute of Health and Welfare 2018. 2018. ISBN 978-1-76054-302-0.

¹⁶For example, there is some inconsistency between jurisdictions with respect to penetration of vagina/female genitalia or anus by a body part or object as well as penetration of the mouth by a penis. Western Australia is the only state in which the penetrative sexual offence includes the use of a victim's body for penetration of the offender in the definition of penetration/sexual intercourse: Criminal Code (WA) s 319(1).

¹⁷In some jurisdictions it is specified as penetration of the vagina or anus: eg, Crimes Act 1900 (ACT) s 50. Penetration of a surgically constructed vagina is not included in legislative definitions in Western Australia or the ACT, nor is it included with respect to penetration of a surgically constructed vagina by an object in Tasmania (Criminal Code (Tas) s 1). For other jurisdictions, see Crimes Act 1900 (NSW) s 61H(1); Crimes Act 1958 (Vic) s 35; Criminal Code (Qld) s 1; Criminal Law Consolidation Act 1935 (SA) s 5(3); Criminal Code (NT) s 1.

¹⁸For example, in NSW, it includes 'sexual connection occasioned by the penetration to any extent of the genitalia ... of a female person or the anus of any person' by 'any part of the body of another person, or any object manipulated by another person': Crimes Act 1900 (NSW) s 61H(1). See also the definition of sexual penetration in the Model Criminal Code: Model Criminal Code Officers Committee—Standing Committee of Attorneys-General, Model Criminal Code—Chapter 5: Sexual Offences Against the Person (1999), app 2, cl 5.2.1.

In the crime act the meaning of sexual assault is that a person who has sexual intercourse with another person without the consent of that person. Therefore, the age of consent in the country is 16 years old.

COMPARATIVE ANALYSIS

As per the studies made and Research done it could be analysed that Indian men are far from achieving general neutral laws as compared to the countries like US and Australia where males enjoy equal rights and privileges as provided to the females.

When it comes to offences like rape, stocking, domestic violence, molestation, India has a very specific and unlimited approach which results in unilateral paradigm of law, which only focus is to protect and females. Unlike India the other two countries have a very wide and flexible approach towards the male victims. In India the laws on domestic violence¹⁹ does not recognises the male victims for the crime against the male in the domestic sphere, where in US and Australia it not only recognises the violence against their partners but also penalizes the offence done by their spouses.

In India the criminal offences of rape and sexual assault has been considered as a mockery of male victims, whereas when we look into US and Australia they have been provided with stringent acts and punishments in their statutes. In India when it comes to offences like sexual offences against men these criminal acts are not even recognised, they are neglected. However according to the legislation of the other two countries the rape is considered as a sexual assault with different degrees which does not discriminate between the victim and perpetrators.

When we look into the criminal offence of stalking, US provides series of outlook towards the stalkers and have strict provisions related to it, whereas in Australia it does not have distinct position till now. Further if we look at the laws on trafficking India fails to address such immoral acts related to male victims. Therefore, in the countries of US it highlights the problem but does not contains any such provisions related to trafficking.

Conclusion

Men should be given an equal and a proper legal platform like that of women to share their trauma, their fears and their grievance. The fear of false accusation and not being given a chance to be heard is one of the main reasons why men has a tape to come forward with their grievance. Man should not be discriminated on the basis of the gender; they should be motivated to come and talk about their problems on a legal platform. Cruelty subjected be of any nature whether emotionally, physically, economically, should be treated equally. Legal platform is the only mechanism which is available to respond to the victims, therefore it should not be gender bias and should be treated for gender equality. In the present paper it is said that the sexual intercourse

¹⁹Protection of Women from Domestic Violence Act, 2005 (Act 43 of 2005)

of penetration should be a broad term and not gender specific and it should also be made more consistent across the jurisdictions.



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