

GENDER (IN) EQUALITY AND BRUTALITY: A VIEW FROM MEN'S LENSES

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Abstract:

After the brutal Nirbhaya gang rape witnessed by India, the entire focus was shifted to women's protection. In the process of providing stronger protection to women what we have ignored is the problems faced by men as a consequence of the steps taken for women. This paper is an attempt to look at gender roles from the point of view of a man. While there are serious discussions pertaining to women empowerment (which is necessary, considering the amount of growing atrocities against women), victimisation of men is a topic that is not much discussed in India. Probably, this is due to the 'typical' notion of 'masculinity' prevalent in our society, and the popular filming of men as being physically stronger than women. The research paper starts by discussing the discrimination against men under Indian laws. It will then try to look into the reason for such discrimination besides giving a bird's eye view of the domino-effect of masculinity on both the sexes. The paper also will be analysing the present situation with respect to the given topic by referring to various newspaper articles and available (though scanty) statistics on the same. The discrimination against men would be dealt in detail by the author while distinguishing between gender neutralism and gender protectionism. The views of the Hon'ble Supreme Court has also been cited in places where required. The motto of this paper is to encourage gender neutrality and appeal for the abolition of gender blindness.

During the course of validating and analysing resources that the researcher has relied upon, it has been strongly felt that the ambit of this area of law is underdeveloped, especially in India, and still people abstain from discussing openly on such topics. And therefore, the researcher has found in the course of looking for information that the information is unorganized and scattered. The researcher will be working on the available information through the resources previously categorized to emphasize on the relevant issues pertaining to the topic.

There are essentially two kinds of resources used for the completion of this research paper – Secondary (Articles – Both online and offline, Journals, and Encyclopaedias) and Tertiary resources.

Keywords: *Egalitarianism, Gender Discrimination, Masculinity, Men, Victimisation*

1. HYPOTHESIS

The choice of the topic is clearly indicative of the fact that the researcher feels that the topic is less discussed. Victimation of men is a rare topic about which people talk. And the researcher is of the opinion that there are a lot of instances where men are discriminated when compared to men. The loopholes in the law, and the legislations aimed to protect women, as Art. 15 (3) empowers the State to make 'special provisions' for women¹, of the Indian Constitution are misused by women. This however, will prove to be detrimental for the society. And there is no reason for not treating the men, equally at par with women. The aim of the country should be to ensure that there is no law which renders the men to be discriminated on the grounds of their gender.

INTRODUCTION-

Every other day, when we open the newspaper, we can see at least one news on the atrocities against women. Since time immemorial, women have been subjected to infinite forms of discrimination and have always been dominated, by the patriarchal society peopled in India. Women, have succumbed to these atrocities for a long time, but after the feminist movements, their grievances have been brought to the forefront. Although we cannot say that the crimes against women have decreased, but we can assure that everyone is aware of the discrimination, atrocities and violence faced by them. But when it comes to men, most of us are not aware of their grievances and problems. This paper addresses some of the problems faced by men.

I am quite sure that some of the readers of this article might completely disagree with me, or accuse me of being an anti-feminist,

or someone advocating men's movements, or a misogynist. However, I would like to clarify here that I am neither anti-feminist, nor misogynist. This contention would be proved towards the end of this paper when I talk about equal rights for all. I do not believe in subjugating the rights of men while advancing the cause of women, or vice versa. Rather, feminism, according to the researcher means women having equal rights as men, not rights super ceding men. People who advocate greater rights for women when compared to rights of men are called feminazis. They try to achieve superiority over men. The researcher, simply, firmly believes in providing equal treatment to both the genders. As a feminist myself, I understand, and to some extent share, the reluctance in discrimination faced by men, but also believe that addressing the problems faced by men is equally significant. This is not, by the least, an attempt to malign the character of a woman.

Although the stigma of discrimination and violence is towards women, men also fall prey to discrimination and other forms of atrocities faced by men. It is very often that people openly talk about men's rights. Rights of women and duties of men are frequently talked about. What about rights of men and responsibility of women? Where is the forum in which we talk about it? We do not have an answer to this question.

2. NEED FOR MEN'S RIGHT IN PATRIARCHAL SOCIETY-

The first question that the researcher faced during the course of research was that "*Is there really a need for men's law in a patriarchal society like India?*" This portion of the project would be dealing with the answers to the above question. This will be done by referring to real life case studies.

Similar to the discrimination against women

¹ Article 15(3), Constitution of India, 1950

Art.15 (3): "*(3) Nothing in this article shall prevent the State from making any special provision for women and children.*"

, victimisation of men is not anything new which has suddenly propped up during these days. It existed from a long time, but the discrimination against women was more prevalent, and that is why though discrimination against men is prevalent, yet, it is invisible. Also, men abstain from publicly saying that they have been tortured by women.

It has existed from old ages; even in the *Mahabharata* it can be found. King Shantanu wanted to marry Ganga. She told him that she would marry him on one condition, that he must never ask her where she is from or the true nature of her origin. He must also never question her on any of her actions - good or bad. He must stand by her on all counts, and the day he acts against any of these conditions, she shall leave him. When the first child was born, Ganga took to the child to the Ganges and cast it into river - immediately drowning and killing the new born. Shantanu saw it but he could stop himself from asking Ganga any question mindful of the promise he made to her. As the years passed, Ganga gave birth to 6 more children and to each one, she did the same.

An argument to this by feminists would be that the Indian mythologies contain more instances to show the male-domination in our society from the age of Ramayana and Mahabharata. For example, the Kauravas publicly undressing Draupadi, Ram's *agnipariksha* to Sita and Ravana abducting Sita suggest women were portrayed as lustful fancies of powerful men. But, the grievances of women are being addressed these days and the perpetrators being punished. Media has played a rather major role in bringing all the female discrimination to the forefront. However, media has failed to bring the discrimination of men in a proper way. We can find such articles only in regional newspapers, never is it seen in the national newspapers.

Also, in the present time, there has been an increase in the atrocities suffered by men. Men are sexually exploited, false rape and

dowry cases are filed against them, harassed and always threatened. The only option that they are left with is divorce. Even when they seek divorce, they are charged with false molestation cases.

3. GENDER BLINDNESS

This section of the paper has been titled as gender blindness because it will be trying to establish a clear distinction between gender biased, gender blind and gender neutral laws in India. Given the increasing number of heinous crimes everyday against women and their vulnerability, special protection of women is necessary and we cannot deny that. Art. ... of the Indian Constitution mandates the State to make special provision for women and children. However, in the course of enacting special laws for women, it is to be noted that cynical misuse of the laws do not take place. These laws which are made to protect women should not pose a threat to men. Basically, the laws which are made to save a life should not in the course of saving a life, take or ruin another life.

Now, according to me, gender blindness means those laws which are not in consonance with gender equality. This is because such laws, *inter alia* seem to have presumed men to be the perpetrators and women as the victim. Besides, the language, words or phrases used in many provisions also seem to show that such crime can only be committed by men, and not women- thus discriminating men on the grounds of their gender.

The first example of a gender blind law in India would be 498A, which is popularly known as the anti-dowry law. This law was made with the bona fide intention to combat the menace of dowry deaths and harassment to a woman at the hands of her husband or his relatives². This provision of law has left a plethora of loopholes for its misuse. It is more misused, than used. Sec 498 is the most

²In **Onkar Nath Mishra & Ors vs State (NCT Of Delhi) & Anr on 14 December, 2007**

abused law in the history of Indian jurisprudence. It is widely used as a tool of extortion and intimidation by women, thus rendering a large number of families completely terrorised and ruined. Although this law has been successful in many cases in punishing the dowry seekers, it has also given absolute power to a woman with 'oblique motives'³ to file a false complaint, because, as per this provision, all a woman is to do is to file an oral or a written complaint, she can give the name of her husband or any other person in her in-laws without giving any evidence of the truth of her statement. Adding to the problem is that the accused is presumed to be guilty and imprisoned, unless proved innocent. The charges are non-bailable(until there is a court hearing), cognizable (police may arrest without a warrant) and non-compoundable(prosecution cannot be withdrawn or settled between parties). The Hon'ble Supreme Court has said that 498 'has lent it a dubious place of fright' by 'disgruntled wives.' And, it has also referred to the false cases filed under this section as the *new legal terrorism*⁴, and the provision is intended to be used a shield and not assassins' weapon⁵. Today this law has turned draconian in nature and we hear tales of it being misused by several women who use it as a tool to extract more money out of men in divorce proceedings which has earned several men the tag of an ATM machine⁶.

Another gender-blind law is the provision for *assault or criminal force to woman with intent to outrage her modesty*⁷. This section prescribes punishment for doing the abovementioned act; however, it does not include the conduct of a woman outraging the modesty of a woman. The Shorter Oxford

English Dictionary (Third Edition) defines the word "modest" In relation to woman as follows: "Decorous in manner and conduct; not forward or lewd; shame fast" Hence (in later use also of men) scrupulously chaste. "*Modesty*" Is defined as the quality of being modest, and in relation to woman, "womanly propriety of behaviour; scrupulous chastity of thought, speech and conduct"⁸. Also, the Hon'ble Supreme Court has opined that "*The essence of a woman's modesty is her sex*". When a female can possess the element of modesty (which is the attribute of her sex¹⁰) or decency from her very birth¹¹, then why cannot men also possess the same attribute from birth? This answer to this question needs to be introspected.

Similarly, under [Section 354 A of the Indian Penal Code](#), a man can serve up to 3 years of imprisonment for sexually harassing a woman, but there is no such law made for men who are sexually harassed.

Also in the law on stalking¹², stalking is defined¹³ in a language which shows men as perpetrators and women as victims. The law itself says it's an offence only if it's a man doing it, and only if the victim is a woman.

⁸[Major Singh Lachhman Singh vs. The State](#), AIR 1963 P H 443, 1963 CriLJ 390.

⁹[State Of Punjab vs. Major Singh](#), 1967 AIR 63, 1966 SCR (2) 286

¹⁰ [Ibid, Bachawat J](#): The essence of a woman's modesty is her sex. Even a female of tender age from her very birth possesses the modesty which is the attribute of her sex.

¹¹ [Supra note 10](#).

¹² [Stalking is defined us 354D, IPC, 1860](#)

¹³(1) Any man who—

1. follows a woman and contacts, or attempts to contact such woman to foster personal interaction repeatedly despite a clear indication of disinterest by such woman; or
2. monitors the use by a woman of the internet, email or any other form of electronic communication, commits the offence of stalking;

³[Sushil Kumar Sharma vs Union Of India](#) And Ors on 19 July, 2005

⁴ [Supra note 3](#).

⁵ [Ibid](#).

⁶<http://www.oneindia.com/india/interview-men-are-not-atm-machines-for-their-ex-wives-1666306.html>

⁷ Sec.354, IPC

The rape law, as provided in Sec.376 of the IPC is very popular and needs no introduction. The provision considers rape on women only, by men. There is no room for adult male victims. It does not consider the other way round, i.e., man being raped by a woman. One key area identified in female rape is the role of newspapers in dispelling or fuelling rape myths¹⁴. Although the news channels, especially the national newspapers and news channels do not cover such cases. The Police also are reluctant in filing a complaint; rather it makes a mocking the masculinity of the complainant. This also leads to a lack of numerical evidence and under-reporting of male rape. Thanks to Section 377 of the IPC which penalises all acts of non-consensual carnal intercourse, in turn including male on male rape. Many state agencies like the police are still using a woman-focused model of victimisation when dealing with male rape victims, when a specific male-focused model of victimisation is required, as male rape victims experience rape differently to female rape victims, for example, males may question their 'masculinity' if they were raped¹⁵.

4. GENDER NEUTRALITY V. GENDER PROTECTIONISM

It is very important to chalk out the difference between gender neutrality and gender protection. On the one hand, gender neutrality is important; on the other gender protectionism is also important. It is time to realise the below formulae:-

GENDER RIGHTS= WOMEN'S RIGHTS + MEN'S RIGHTS

We, therefore, cannot deny the basic human rights to any of the gender. If we cannot acknowledge alternative masculinities and

¹⁴ Male Rape: The Emergence of a Social and Legal Issue, By N. Abdullah-Khan

¹⁵ http://www.internetjournalofcriminology.com/javaid_male_rape_the_invisible_male_ijc_jan_2014.pdf

femininities and see the resistance, the strength, of both men and women, we cannot successfully challenge the dominant mode of gender identities and gender relations (which arguably facilitates problematic and dangerous outcomes for both men and women)¹⁶.

Viewed from a man's perspective, she (the woman) challenges patriarchy and disrupts masculinity, because masculinity is structured in binary opposition to femininity (male versus female, strong versus weak), and strengthening the female position means weakening the male position¹⁷.

Over the years, people have formed an opinion that gender means women. Men have never been focussed upon; especially their sufferings have always been ignored or presumed that they do not suffer. Although, on a comparative basis, women have suffered more than men, yet, it does not mean that the so called protectors never fall a prey or they do not need protection. This has led to an imbalance in the understanding of gender roles and gender rights. It has given birth to gender dichotomy.

If we keenly observe the gender roles imparted to us in our childhood, we realize that society has classified human qualities as masculine and feminine. Neither the nature nor God has not done so- this is clear from the text of Rig Veda:-

"O women! These mantras are given to you equally (as to men). May your thoughts, too, be harmonious. May your assemblies be open to all without discrimination. Your mind and consciousness should be

¹⁶ From Boys to Men: Social Constructions of Masculinity in Contemporary Society, By Tamara Shefer

¹⁷ Super Bitches and Action Babes: The Female Hero in Popular Cinema, 1970-2006 By Rikke Schubart, at pg-86.

harmonious. I (the rishi) give you these mantras equally as to men and give you all and equal powers to absorb (the full powers) of these mantras.¹⁸"

The notion of men and women being opposites or at two poles is thus a creation of man. Therefore, with changing times, the notion can and should change. There can be a woman who possesses masculine qualities, and similarly, there can be a man with womanly qualities. A beautiful human is someone who has the best qualities of both man and woman. When I am strong and gentle, when I am rational and emotional, when I am brave and compassionate like Buddha. A man can only be a Buddha if he has feminine qualities also. A Hitler can never become a Buddha¹⁹.

In the case Budhan Choudhry and Ors. v. State of Bihar²⁰, a contention was raised that a provision of law may not be discriminatory but it may lend itself to abuse bringing about discrimination between the persons similarly situated. The court repelled the contention holding that on the possibility of abuse of a provision by the authority, the legislation may not be held arbitrary or discriminatory and violative of Article 14 of the Constitution.

5. CONCLUSION

Men have always been the privileged partners in the binarism of genders, invisibilised by their normativity, yet assumed to be the centre by their dominance²¹. Most of the people are not even

¹⁸ Rig Veda

¹⁹ Renowned women rights activist and gender trainer KAMLA BHASIN talks to Shamsuddoza Sajen, Sr.

²⁰ Budhan Choudhry and Ors. v. State of Bihar, AIR (1955) SC 191

²¹ From Boys to Men: Social Constructions of Masculinity in Contemporary Society, By Tamara Shefer

aware that men are sexually harassed as well. It is very sad to hear learned people commenting that *there are no instances of women raping men*²² and asking *where are the cases of sexual violence against men*²³? Male discrimination should be seen as a social issue, not as a normalisation as it looms across the socio-legal aspects of the society.

The Justice Verma panel had recommended that sexual assault be made a gender-neutral crime. However, it did not happen. I think that making the crime gender-neutral would have helped men who are raped.

Justice Virender Bhat, passing final orders in a false rape case filed in Delhi recently said, "The evil of perjury has assumed alarming proportions in cases depending upon oral evidence and therefore, the time has come to deal with this menace with an iron hand."²⁴

It has been suggested by Groth and Burgess (1980: 810) that because of the scarcity of data on the victims of male rape due to a 'combination of cultural, social, legal and

²² While opposing gender-neutral rape laws, Delhi advocate Vrinda Grover said, "Why should rape laws be gender-neutral? That would be making a mockery of what is actually happening in the country. There are no instances of women raping men. I don't think men are facing serious sexual violence as women. Consider the brutality and intensity of sexual violence against women. Hope the home minister does not put out a bill that delays or obfuscates discussions on the issue".

²³ D. Geetha, a Chennai based lawyer specializing in women's issues said, "Where are the cases of sexual violence against men? Tackling sexual violence against women and the way they are treated in our society is the need of the hour. They are vulnerable at home, work and even in police stations. Rather than working for gender neutral law, we should work to strengthen the justice delivery mechanism for women."

²⁴ <http://www.tehelka.com/2015/10/laws-give-liscence-for-legal-terrorism-deepika-narayan-bhardwaj/>

psychological issues, male rape remains one of the most unaddressed issues in our society²⁵.

We had our traditional patriarchy but now we have modern capitalist patriarchy, which is very powerful. Because we live together, we are not enemies. Justice comes after the rape of a woman. I am more interested in preventing a rape. How will I prevent rape? By changing the mindset of boys and men. By changing the mindsets of families who do not control their boys. We need to work much more on ourselves. I felt when those five men raped a woman that I was responsible for producing five rapists. They are not borne. We produce them. We know rape is not a crime of sexuality but it is a crime of power. We have to work on implementing our laws. We have to really change everything because everything is patriarchy²⁶.

Gender equality is the bedrock necessities of all equalities. Gender equality is a public and social commitment. And, therefore, we are all together responsible for a solution. Gender inequality is indispensable if we want development.

Gender is used as a way to construct our children's reality. Gender communication to children: colour- pink/ blue, crying, toys

Men's Rights and Men's Issues are not limited to false dowry cases. Our main concern is male hatred in the society and socially accepted discrimination against men²⁷.

There have been several changes in order to combat false cases. For example in the Domestic Violence Act, not only men, but women can also be prosecuted. The Supreme Court has held that a woman can also be "perpetrators and abettors of domestic violence" and therefore, they can also be punished.

If there can be He for She, then why cannot we have She for He? We (men and women) are not enemies of each other, and we have to support each other in cases where required.

It is well settled that mere possibility of abuse of a provisions of law does not per se invalidate a legislation. It must be presumed, unless contrary is proved, that administrative and application of a particular law would be done "not with an evil eye and unequal hand" -(*Thangal Kunju Musaliar v. M. Venkatachalam Potti, Authorised Official and Income-Tax officer and Anr.*)²⁸.

Sweden has already set up the world's first rape crisis centre exclusively for men. [Sodersjukhuset hospital](#) in the country has started a 24-hour care for men and boys who have survived rape and sexual violence²⁹.

As observed in *Maulavi Hussein Haji Abraham Umarji v. State of Gujarat*,³⁰ *Unique Butle Tube Industries (P) Ltd. v. U.P. Financial Corporation and Ors.*,³¹ and *Padma Sundara Rago (dead) and Ors. v. State*,³² while interpreting a provision, the Court only interprets the law and cannot legislate it. If a provision of Law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary.

The situation in India is slowly changing. About 498A, the Apex Court has ruled in a case that *the attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive*³³. It has directed the state government to ensure that police do not resort to arresting in all offences punishable up to seven-year jail term including dowry harassment cases.

²⁸ AIR (1956) SC 246

²⁹ <http://www.youthkiawaaz.com/2016/06/male-survivors-of-sexual-violence/>

³⁰ [2004] 6 SCC 672

³¹ [2003] 2 SCC 455

³² [2002] 3 SCC 533

³³ *Arnesh Kumar v. State of Bihar*, 2014 Indlaw SC 425; (2014) 8 SCC 273; AIR 2014 SC 2756; 2014 CRLJ 3707; 2014 (210) DLT 599; 2014 (2) G.L.R. 1848; JT 2014 (7) SC 527;

²⁵ Male Rape: The Emergence of a Social and Legal Issue, By N. Abdullah-Khan

²⁶ Kamla Bhasin

²⁷ <http://www.oneindia.com/india/interview-men-are-not-atm-machines-for-their-ex-wives-1666306.html>