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THE DOUBLE STANDARD: GENDER EQUALITY AND CRIME- Piyush Arora¹**Abstract**

Gender equality is a constitutional ideal embodied in the Article 14, 15, 21 of the constitution of India². The legal system historically had adopted laws and protective measures for the women to remedy long term discrimination and the violence faced by the women in the country. But the concerns emerged when regarding the double standard in the criminal system where there is the unequal treatment of male and transgender victim. There are many provisions such as Rape, Domestic Violence, sexual harassment, dowry, cruelty and maintenance are the gender specific which are there for women only and talks about women as a victim and men as the intruder or the perpetrator. These provisions create a substantive question of law on the equality and the equal protection of laws. In today's era of transparency and equality the laws should be equal to all and the gender specific laws made for women must contain some penal provision for those who are misusing these laws and provisions. This paper is critically examining the concept of the gender equality in the criminal jurisprudence and to analyses the existence of the double standard with regards to the Indian legal system. This paper also argues that the equality must not become a source of discrimination against any gender and advocates a balanced framework that protects the vulnerable sections and ensuring equal justice for all the people.

Keywords: Indian Legal System, Gender Equality, Women Protection Laws, Criminal Law

INTRODUCTION

The gender equality is one of the main fundamental pillars in a democratic society. The constitution gives the citizen right to equality before the law under Article 14. The Article 15

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² Constitution of India

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of the Indian Constitution prohibits the discrimination on the grounds of sex, religion, race, gender etc. while 15(3) of the Article empower the state to make special provisions for the women and children. Historically, the women in the country had suffered economic, social and legal disadvantages. Various laws were made to provide additional protection to women against violence and exploitation. However, as the changing society the concerns have risen regarding the existence of double standards in the criminal law. Several provisions in the statutes recognize the women as a victim and the men as an offender or the perpetrators, which make the men and transgender victims get sidelined from the legal protection. The realities of criminal justice and the criminal law reveal the presence of the double standards in the treatment of the men and women. The concept of gender equality, which is deeply rooted in the principle of justice and human rights that individuals should neither be privileged or disadvantaged on the basis of gender. Therefore, the issue of the gender equality and crime extends ahead the protection of the single gender over another.

THE CONSTITUTIONAL FRAMEWORK OF THE GENDER EQUALITY

There are different provisions in the Indian Constitution which provides for the foundation of the equality provision which are as follows:

Article 14: EQUALITY BEFORE LAW

- The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15: PROHIBITION ON THE GROUNDS OF RELEGION, RACE, CASTE, SEX OR PLACE OF BIRTH

- The state cannot discriminate against any citizen on the grounds only of religion, race, case, sex, Place of birth or any of them.

- Article 15(3) allows the state to make special provisions for the women and children.

Article 21: RIGHT TO LIFE AND LIBERTY

This Article protects the life and personal liberty and has been interpreted to include dignity and privacy of the individuals. The Supreme Court of India has consistently held that equality

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does not mean the identical treatment but requires reasonable classification. However, this type of classification should not become arbitrary or discriminatory.

HISTORICAL BASIS FOR THE GENDER SPECIFIC CRIMINAL LAWS

The Indian Criminal Laws were made against a downtrodden condition of women and because of the patriarchal social structure that women faced in the society. Since, the ancient time the women faced a struggle in the society for their rights. These conditions led the government to establish laws with respect to this societal issue.

The Domestic violence, Dowry Harassment, sexual exploitation, economic dependency, limited access to justice made the formation of these laws for the women in which particularly address women as a victim and husband as an accused. Consequently, the laws such as the section 498A IPC now 85 BNS, Protection of women from domestic violence Act, 2005, Sexual Harassment laws, Rape Laws, were primarily made to safeguard women. These laws played an essential role in empowering women and addressing gender – based violence but the social transformation of the recent decades had led to questions regarding their exclusivity.

These laws which were made for the development of the women in the society slowly turned into a one sided mechanism which is used by women and these laws does not give any protection to the male, transgender community which ultimately creates a bias in the society that laws are the only protective towards women centric crimes. The major change the law makers should have to do was to make these provisions unbiased so that the transparency should be made in the society.

THE DOUBLE STANDARDS IN THE INDIAN CRIMINAL LAWS

*** RAPE LAWS -:**

- The provisions under the Bharatiya Nayaya Sanhita, 2023 the section 63 and 64³ which talks about the rape provisions under the law mentions that only a man can commit rape and only women can be a victim under the law. The transgender and male victims are excluded from the ambit of the rape laws.

³ Bharatiya Nayaya Sanhita 2023, sections – 63, 64.

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- This type of gender – specific framework assumes that men are always perpetrators and women are always victim, these types of assumptions generally ignore the circumstances where the male and transgender are always seen as perpetrators.

* DOMESTIC VIOLENCE -:

- The Protection of women from the Domestic Violence Act, 2005⁴ was made to protect the women from the violence that they face after the marriage in their matrimonial home by the In-laws. This law is only women centric and only gives protection to women and not to the men, if there is any victim of the physical abuse, emotional cruelty, economic violence then there is no protection for the men under these laws. By these laws it is creating arbitrariness in the society between the men and women in the society. These laws create a legal imbalance in providing justice to male victims and to access specialized remedies available to women.

SECTION 498A IPC (85 BNS) AND THE ALLEGATIONS OF MISUSE

- The provision of 498A IPC now 85 of BNS⁵ talks about the provision with regards to the cruelty provisions under the law in which it talks about the cruelty that is faced by only women in the society but this provision does not talk about the cruelty that is being faced by the men by the women in the society especially the mental cruelty by the women to their husband.
- Famously the case of **SHIVANGI BANSAL v. SAHIB BANSAL TRANSFER PETITION (C) NO. 2367**⁶, in this judgment the dispute arose from a matrimonial issue between parties following a breakdown of marriage. Under this case the Supreme Court give a judgment that these types of cases where there is an apprehension of false facts there should be no direct arrest and the police have to give a cooling off period to the person against whom the case is being filled and that cooling off period should comprised of Two months. And a private three member committee will be made that will investigate the matter and will report to the officials and if the matter of the facts were suit correct then the officials will take action.

THE BHARTIYA NAYAYA SANHITA, 2023 AND GENDER NEUTRAL LAWS

⁴ Domestic violence Act 2005,

⁵ Section 498A IPC now section 85 BNS talks about cruelty,

⁶ Shivanghi Bansal v. Sahib Bansal Transfer Petition (C) no. 2367.

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The replacement of the IPC that is Indian Penal Code, 1860 by the BNS Bharatiya Nayaya Sanhita, 2023 was seen as an opportunity to modernize the existing criminal laws. However, many provisions concerning the Rape laws, sexual offences, outraging modesty, these laws are still continued to be gender specific. Scholars have criticized the exclusion of the male and transgender victims from these provisions. Thus, despite comprehensive reforms, the non-induction of the gender neutral laws for male and transgender provisions in the modified laws.

The laws modified by the legislation should have been made gender neutral as in the recent time these laws are being required by all genders due to the level of exploitation in the society with the use of these gender specific laws which are creating a bias towards women and neglect the rest in the society.

CONCLUSION

The debate on the gender equality and the crimes in India highlights the tension between protective discrimination and the equal treatment in the society. The women centric laws emerged from the genuine social necessities and continue to play a crucial role in combating violence against the women. However, the existence of gender specific criminal provision which have raised to the double standards and unequal access to the justice for the male counterpart and transgender victims in the society.

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