



A Feminist Discourse regarding Criminal Law and Women in India.¹

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Abstract

Man and woman possess the same degree of physical and mental autonomy. However, social perception is seriously erroneous in this aspect. The legal system is not an exception either. Women continue to face discrimination in spite of their rights being protected by the Indian Constitution² and numerous other laws. Throughout, this pattern is apparent. Since men founded the majority of significant institutions, it stands to reason that they have a male perspective on and comprehension of women's circumstances.³ A housewife's domestic duties are seen as "unproductive." When it comes to similar job, working women are paid less than their male counterparts. Their freedom of mobility is frequently restricted by their own family's superiors in the name of tradition.

The goal of feminism is to identify and comprehend how women are treated in the legal, political, social, and economic spheres. Criminal laws that pertain to women's rights address a range of offenses against them, as discussed in feminist theory. It is acknowledged that new rights progressively come out of the old ones' wombs.

In India, the feminist movement is mostly liberal feminism, which demands the same rights as men. Nonetheless, women can achieve their unique goals through the dismantling of the patriarchal. In India, women who are victims of statutory crimes or non-strict violations of their fundamental rights do not receive compensation. Although there are laws in place to protect women, their interests are not adequately safeguarded by them because of negative political, economic, legal, and social effects.

(A) Indian women are the oppressively dominated by the patriarchy, marginalized, and silenced others. The legal system frequently ignores their points of view.

For instance, section 375 of the Criminal Law (Amendment) Act, 2013 states that a man may engage in sexual assault. With her consent, when the guy knows he is not her husband and her assent is provided because she believes he is another man to whom she is or considers herself to be lawfully married, is described as "Fourthly" under the circumstances occurring under the seven descriptors. Unfortunately, widows and single women, who make up large portions of society, will not be granted this protection. Additionally, we discover that it is not natural for other family members to dominate women in
It was previously accepted that a husband had the proprietary right over his wife and even the authority to impose physical punishment, despite Aristotle's assertion that women are incapable of reason. Manu, an Indian jurist, asserts that women should be under the control of their father when they are young, their husband when they are old, and their son when they are old.

This archaic idea is no longer relevant in the context of the Constitution's equality guarantees for men and women. By way of a magistrate's court order, the Domestic Violence Act, 2005 offers redress for crimes against women's life, limb, and property. Under the Protection of Women from Domestic

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² Article 15(3) of Indian Constitution makes special provision for women and children. Article 42 provides for maternity relief. Article 51(e) renounce practices derogatory of women

³ "Women in India, as is well known, have never been treated well even at home or while at work." --- The object and Reason of "The National Commission for Women Act, 1990.



Violence Act, 2005, women who have experienced abuse may also request necessary assistance in filing a complaint under section 498A of the Indian Penal Code. Exception-2 of the Section 375 of the Criminal Amendment Act, 2013 states that "sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not a rape."

Therefore, the legislature assumes that there is no possibility of violence in a wife and husband's married life when the wife is fifteen years old or older. The relevant query in this case is whether the husband can still refer to the wife as his "Own wife" when evidence of violence has been proven.

There are many instances where it is clear that women's voices are missing. "Indecent representation of women means depicting the figure of a woman, her form or body or any part thereof in such a way as to have effect of being indecent, or derogatory to denigrating women, or is likely to deprave, corrupt, or injure the public morality or moral," according to Section 2(C) of the Indecent Representation of Women (Prohibition) Act, 1986.

A) Physiological variations:

The argument that men and women differ physiologically is typically used to justify discrimination and inequality against women in the areas of social, economic, political, and cultural advancements. The primary barrier to envisioning a future where men and women have equal rights is this widely held belief. In actuality, no domestic task is in fact reserved for women! Humans and women can perform a wide range of household tasks due to similar physiological capabilities. There is no physiological justification for believing that women's capacities are less than those of males, nor for using this argument to support the notion that women are subject to unfair discrimination. Despite how uncomfortable it may be for them, men who accept this fact will stop undervaluing the work done around the house, which will eventually lead to a rise in respect and acknowledgment for women in the home. To eradicate this kind of injustice, structural and attitudinal change are desperately needed.

1. Second gender.

Women's Disparities:

Women are excluded from the power structure that governs society, decides on development concerns, and steers peace endeavors solely because of their gender. Furthermore, the discriminatory practices against women based on race, color, and ethnicity that are common in various nations exacerbate the status inequality of women.

2. Basic opposition:

Any attempt to improve women's status and abolish prejudice against them is met with irrational resistance from society as a whole. In actuality, it leads to the inefficient use of women's skill and the squandering of priceless human resources, both of which are crucial for the advancement of society and the expansion of peace. Society's guardians are blind to the fact that when women's skills are underutilized as a result of prejudice, society ultimately loses out.

3. The extensive lag between changes in legislation and their successful implementation:

Lack of political and administrative will prevents legislation measures intended to support women's marital or family status from being effectively implemented, allowing discrimination and exploitation to remain unchecked. It is unfortunate that, in these situations, most important people are perceived as being willing to step up and assume personal responsibility for bringing about the necessary reforms. Due to socioeconomic disparities, which also impact women's access to and understanding of the law, as well as their capacity to use all of their legal rights without fear of coercion or incrimination, not all



women benefit equally from the law as a remedy. Consequently, the advancement of women's rights to equality is hampered by the lack of knowledge about these rights.

B. Introducing legislation while fully cognizant of the interplay between custom and the legal system:

Traditional customs in civilizations can and do occasionally clash with the legal system. For instance, something that may be against the law may be acceptable under customary norms. In these situations, some inconsistencies should be expected, and care should be taken to make sure that the legislation does not explicitly or implicitly discriminate against women in any way so that their right to equality is completely upheld.

(C) It is not natural for family members to dominate women.

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This archaic idea is no longer relevant in the context of the Constitution's equality guarantees for men and women. By way of a magistrate's court order, the Domestic Violence Act, 2005 offers redress for crimes against women's life, limb, and property. The women who have been violated may also provide the necessary assistance to make a complaint under section 498A of the Indian Penal Code in accordance with the Protection of Women from Domestic Violence Act, 2005.

(D) It is necessary to implement a victim compensation program for female criminal victims.

The mere payment of compensation for the infringement of basic rights is insufficient, since criminal complaints are typically brought before trial courts. Section 357A of the Criminal Procedure Code is insufficient to provide compensation to women who have been victims of crime; instead, legislation along the lines of Criminal Ordinance 1944 (for providing compensation of crime such breach of trust and cheating etc.) has to be adopted. This clause states that the amount of compensation to be awarded is naturally discretionary. Rather, a more thoughtful piece of legislation is proposed here under the name and style of "Compensation Scheme for Women Victims of Crime against Women." Moreover, pay plans ought to include provisions for interim compensation rather than paying only at the conclusion of the trial.

(E) Women who commit crimes should get a combination of all punishments

(*suigeneris*), with a focus on reformative measures.

Article 15(3) of the Indian Constitution mandates that specific legislation be made for women victims. It is necessary to implement a number of policies for women, including expulsion, public censure, community service, and disqualification from office.

SUMMARY AND RECOMMENDATIONS

There is a lot of discrimination against women in society, and the legal system is no exception. Both knowingly and unconsciously, we commit these transgressions. After closely examining each of the thesis's chapters, it is possible to get the conclusion that, despite the fact that the Indian gynocentric laws have recently undergone many positive revisions, there are still a number of implementation gaps. Legal feminism is a relatively new idea in the legal system that has been given shape by groundbreaking rulings, laws, and legal publications that highlight the perspectives of women in the legal system. The



Indian Penal Code, in conjunction with additional penal acts such as the Dowry Prohibition Act of 1961 and the Sexual Harassment of Women at Workplace, addresses a variety of offenses perpetrated against women in India. The Indian legislature has recently recognized domestic violence against women as a public health issue that affects the state's overall well-being, rather than a private matter involving individual citizens. This further conclusion suggests that women in India are not treated as persons before the law in a variety of situations, in violation of Articles 14, 15, and 21 of the Indian Constitution. Although there are shortcomings, certain corrective actions have been taken to address domestic abuse. Reformative approaches are sine qua non and further authorized by Article 15 (3) of the Indian Constitution, even when they involve punishing female offenders and offering psychological therapy to female victims. Furthermore, the State's compensation plan does not favor women specifically, and payment is made solely following the conclusion of the trial.

Years pass while cases are dragged out, and acid attack victims are left without temporary respite. The West Bengal government's 2012 program, which was designed under 357A of the Code of Criminal Procedure, values a life only at two lakh rupees. Regretfully, the program makes no mention of offenses like molestation or stalking. Therefore, proper implementation and reinforcement of restorative justice are crucial in ensuring justice for women.

International Obligations:

National policies ought to be created in accordance with international commitments.⁴ Women ought to have easy access to trustworthy data and sympathetic guidance.⁵

Since many of our social laws are not properly implemented, they are essentially dead legislation. Parliament is frequently accused of passing laws pertaining to social change merely to appear "modern" and keep up with the West. This tendency also appears to affect the Medical Termination of Pregnancy Act. Many women continue to seek abortion care outside the purview of the Act for a variety of societal reasons or a lack of knowledge regarding the legality of the procedure. Even after abortion regulations have been liberalized for over 35 years, there are still 5.5 million illegal abortions out of 6.7 million induced abortions performed overall. The maternal death ratio is still 546 per 100,000 births.

This means that the Act's core goal is undermined by the high rates of maternal illness and mortality. It is past time to start a conversation about the need to amend the current Abortion Act and rewrite its provisions with women's perspectives in mind. The medical lobby is anticipated to fiercely oppose any such action.

RECOMMENDATIONS

1. First and foremost, real efforts must be undertaken in this direction to raise the nation's women's knowledge level. A significant proportion of women in our nation, particularly those living in rural areas, lack awareness of their legal rights. Given this, it is not reasonable to anticipate that they will subsequently claim or enjoy it!

2. Another crucial need for reducing crimes against women is the proper application of human rights.

3. Both boys and girls should receive appropriate sex education in schools from a young age. If that is the case, they will have little trouble adjusting to the subsequent changes in their body and mind, both psychologically and physiologically.

4. Guardians, educational institutions, and municipal bodies should work together to start sensitization campaigns in order to potentially eradicate this kind of crime from the foundation of society.

5. Politicians should educate them about the rights' provisions and act as their true representatives.

⁴ India is a signatory to International Conference on Population and Development (ICPD), Cairo, Sep. 1994.

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6. More sensitivity and promptness from the police are needed.⁶
7. The prosecution must move more quickly.
8. Prison officials must prioritize conducting appropriate therapy programs on a regular basis.
9. The press should take advantage of every chance to raise knowledge of the law.
10. It is imperative that more women serve in the legal profession, the police force, the judiciary, and other related fields.
11. In light of the findings, the Indian Penal Code's Section 304 B needs to be written more precisely.
12. The Indian Penal Code's Section 477 should be changed to add a penalty for destroying a girl child's adoption paperwork.
13. The Criminal Amendment Act of 2013's Section 375 should be changed to penalize a husband for having forced intercourse with his wife.
14. Data from all throughout the nation should be gathered into a repository to document the amount of compensation awarded to women who have been victims of crime.
15. The Indian Constitution's Article 32 states that Parliament has the authority to grant writs to local courts. The Parliament should put this authority into effect so that local trial courts can handle serious offenses against women that violate their fundamental rights. After all, economically and educationally disadvantaged women cannot, for practical reasons, petition the High Courts of their States, much less the Indian Supreme Court, in order to obtain justice.

⁶ Supreme Court recently in a verdict (*Lalita Kumari v. Govt. Of U.P. and others*) laid down that F.I.R in a cognizable case must be registered.