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“Gender Discrimination”- An Analytical Study on Men Should Also Get Equal Rights in Comparison with Women

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ABSTRACT

Inequality on the ground of gender or Gender discrimination is the most basic issue from the very beginning. Even though society thinks that women suffer from the inequality prevailing in society. All traditional gender stereotypes are making men suffer more than women. Societal pressure and expectations affect a man's health. All the aspiring feminists are talking about equal rights, but they never pay much care about equal responsibilities. An incident brought light to this problem. A man filed a petition in the Supreme Court because he was directed to pay monthly allowance to his wife after divorce. This case made people realise that sexual abuse and harassment are a man's issue too.

But societal expectations about what it means to “be a man” cause a survivor to suppress his trauma. Irrespective of the fact that there are no law or rules to support men, there are many laws which are made to blindly trust women. All these problems faced by men are so neglected that there are not enough resources to study even on the internet.

Keywords: Gender Discrimination, Constitution, IPC, CrPC.

I. INTRODUCTION

Mard Har Dard Sahekar Bhi,

Apna Dhairya Khota Nahi,

Musibat Kitni Badi Ho,

Par Wo Baat-Baat Par Rota Nahi

Meaning:

Men Even in Pain

Never Lose Their Patience,

No Matter How Big the Problem Is,

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But They Never Cry on a small things.

Before going in depth of the topic Researcher wants to explain the concept of Gender discrimination. It describe as, the condition in which Countries are treating their citizens differently only because of the reason that they are not same by their Gender i.e male, female and other. Broadly discrimination made between male and female rather than on the basis of their individual skills, capacities or capabilities.

Gender discrimination is the major issue throughout the world but this paper deals with the Gender Discrimination in the territory of India. Most of the Research Papers, Books, Articles, etc focused on the male dominance Society and female is considered as weaker section which is very true if we see from the Ancient perspectives where women were suffered a lot. She was considered as slave, no respect given to them. After many steps taken by the freedom fighters, unsung heroes, etc through different movements, propagandas, etc women got their rights along with this there was many camps through which women were aware about their rights. Different Legislations also passed by the Parliament for the protection of the Women Rights such as Section 498 A of IPC 1860, Domestic Violence Act, Maternity Benefit Act, Sexual Harassment at Workplace Act, etc., But India is one of the countries who believe in reforms. This Country never accepted retributive theory (Eye for an Eye). So Researcher thinks that in recent India there is need of the Amendment in all the legislations to give equal rights to the men also. Nowadays maximum women misusing their rights for the sake of their benefits. Researcher don't want to say that, to take away the rights of the women, but only that give the equal rights in the Statutory Provisions to the men also. So that both men and women get the equal opportunity in the interest of justice.

Discrimination should be avoided for both Genders. Country will be developing only when every citizen will be successful in every aspect. It is not about the success or rights of the women only. What about the men? Whether they are not human beings? Whether there is no violation of Human Rights? Whether it is not Gender Discrimination as focused only on the one gender of the Society and ignores the other?

Researcher is not questioning on the legislations made for the benefits of the women as it was a need of that era. But the provision for the Amendment under Article 368 of the Indian Constitution was included by the drafting committee with the object that, as time changes situations will be changed and hence according to the situation Parliament can Amend or make the Laws.

Now India is at the position where it is in need of the laws for the men as well. So for the same

Parliament needs to take a action and amend the Laws as per the situation of India.

Women have several rights under different legislations to file a complaint against the men if any immoral activity committed against her, but men is not allowed to complaint if any unlawful activity committed with him.

Women can claim the maintenance from her husband under various family laws, under Criminal Procedure Code even if she is capable to maintain herself, but at the same time men is not allowed to claim any maintenance from his wife even he is not capable to earn or maintain himself.

Women have a right to file a domestic violence case against her husband and in-laws, but again men don't have such rights.

There are many illustrations which are the practical reality of the India as there is discrimination between men and women. Recent India is giving more preference to women oven men. Due to which men are suffering and their rights are also getting violated.

The purpose to write a paper on this topic is to stretch the focus of citizens and Government over the important unresolved issue of Gender discrimination from the perspective of the men.

Though, Researcher being a female writes this content due to the actual reality of the Country. Gender inequality in India is a multifaceted issue that primarily concerns men, that places men at a disadvantage, or that it affects each gender equally.

II. CONSTITUTIONAL PERSPECTIVE

Article 14 of the Indian Constitution speaks about the Right to Equality. "No State shall not deny to any person equality before law and equal protection of laws within the territory of India."

This Article says about the no discrimination even on the basis of sex. No doubt some will contradict on the grounds that there is test of reasonable classification as well. But that classification also expresses that there should be reasonable classification and not intended discrimination.

Equal should be treated equally and unequal should be treated equally. So for the purpose of gender earlier women were included in weaker section as exploited by the men. But now the conditions are changed so there is need of equality.

Men also have a right to enjoy every fundamental right as they are also human beings and not having only animal existence.

Researcher is not against the laws which are in the favour of the women but that laws should include men also. So that men will also exercise their rights and claim the rights if there is any violations regarding the same.

Researcher appreciates some steps which are taken by the Parliament and Judiciary for the rights of the men through amendment in the legislations and judgements respectively.

Many workplaces don't offer men extended parental leave or flexible hours. Men are more likely to drink too much, take unhealthy risks and engage in violence. They are less likely to seek professional help or talk about their problems with friends or family. Men are more likely to commit suicide. This is not good for the development of India.

III. INDIAN PENAL CODE 1860, WITH REFERENCE TO CASE LAW

497. Adultery.—Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

(A) Joseph Shine versus Union of India

The Court unanimously struck down Section 497 IPC. The Bench produced four concurring opinions:

- Chief Justice Dipak Misra (on behalf of Justice Khanwilkar and himself)
- Justice Nariman
- Justice Chandrachud
- Justice Malhotra

Joseph Shine, a non-resident Keralite, filed public interest litigation under Article 32 of the Constitution. The petition challenged the constitutionality of the offence of adultery under Section 497 of the IPC read with Section 198(2) of the Criminal Procedure Code, 1973.

Section 497 IPC criminalised adultery: it imposed culpability on a man who engages in sexual intercourse with another man's wife. Adultery was punishable with a maximum imprisonment of five years. Women though were exempted from prosecution. Section 497 IPC was inapplicable when a married man engaged in sexual intercourse with an unmarried woman.

Section 198(2) of CrPC specified how a complainant may file charges for offences committed

under Sections 497 and 498 IPC.

Section 198(2) CrPC specified that only the husband may file a complaint for the offence of adultery.

The Court reviewed the correctness of the precedents – **Yusuf Abdul Aziz, Sowmithri Vishnu and V. Revathi** – which had in the past upheld Section 497 as constitutionally valid.

This case was first heard before a three-judge bench headed by the then Chief Justice Dipak Misra.

The three-judge bench referred the matter to a five-judge Constitution Bench and noted: ‘Prima facie, on a perusal of Section 497 of IPC, we find that it grants relief to the wife by treating her as a victim. It is also worthy to note that when an offence is committed by both of them, one is liable for the criminal offence, but the other is absolved. ..Ordinarily, the criminal law proceeds on gender neutrality, but in this provision, as we perceive, the said concept is absent.’

On 11 July the Centre filed an affidavit, arguing that diluting adultery in any form will impact the ‘sanctity of marriage’.

The five-judge Bench started hearing the matter from August 1st 2018 onwards. On September 27th 2018, the Bench delivered its judgment, decriminalising adultery.

On November 5th, 2020 the Union of India filed a miscellaneous application asking the Court to provide clarity on how the Judgment would be applied to members of the Armed Forces. This is with specific reference to Section 69 of the Army Act, 1950 which punishes members of the armed forces for committing civil offences. The Union sought to clarify whether this includes adultery practiced by armed forces members.

On January 31st, 2023 a 5-Judge Constitution Bench led by Justice K.M. Joseph passed the final order on the matter. The Bench clarified that while passing the Judgment in 2018; the Court was not concerned with the laws of the Armed Forces and therefore did not stand in their way.

(B) Gender Discrimination

- Inequality on the ground of gender or Gender discrimination is the most basic issue from the very beginning. Even though society thinks that women suffer from the inequality prevailing in society.
- All traditional gender stereotypes are making men suffer more than women. Societal pressure and expectations affect a man's health.

- All the aspiring feminists are talking about equal rights, but they never pay much care about equal responsibilities.
- An incident brought light to this problem. A man filed a petition in the Supreme Court because he was directed to pay monthly allowance to his wife after divorce.
- This case made people realize that sexual abuse and harassment are a man's issue too.
- But societal expectations about what it means to "be a man" cause a survivor to suppress his trauma.
- Irrespective of the fact that there are no law or rules to support men, there are many laws which are made to blindly trust women.
- All these problems faced by men are so neglected that there are not enough resources to study even on the internet.

IV. CRIMINAL PROCEDURE CODE, 1973 RELATED TO THE GENDER DISCRIMINATION ALONG WITH INDIA EVIDENCE ACT, 1872

In this world, where women are getting equivalent training, business openings, and equivalent wages (in the vast majority of the nations). They are as yet anticipating that men should pay for their extravagant life. This mindset is supported by our Indian law system.

According to **Section 125 Criminal Procedure Code**, the Husband is entitled to provide maintenance to his wife and minor kids even after divorce. This arrangement not just disregards general rights, which is titled in Article 14 and Article 15 of Indian Constitution.

It additionally prompts mental worry because of monetary weight. There is a case that shows discrimination on the ground of gender, without any reasonable clarification. A man filed a petition against the Supreme Court that he has been obligated to provide maintenance to his wife without taking note that he was merely a high school graduate and currently unemployed. On the other hand, his wife with a healthy mind and body, a graduate in English, sociology, and psychology, denies earning a living for herself.

In earlier times, women were not used to working, and then men were in charge of the payments. However, presently when women are giving an intense challenge to men in every segment, they ought to figure out how to take care of their tabs. It is still known that if a man pays the bill then he is a gentleman.

Sexual abuse, rape, and harassment is a major problem. And historically, it was meant and defined as a crime against women. Abuse against men is considered taboo. People still think

that men cannot be raped. Conservative thinking of society that “men don’t cry” and “men are strong enough to protect themselves” is the sole reason why men do not report them being raped or harassed. One out of six men is sexually abused at some point in their lives; it is most probably a low estimate as most men suffer in silence.

Most of the rules and Indian laws exceptionally support females. There is no acknowledgment of male maltreatment and police scarcely record an FIR. At the point when a dissident argues that assault laws ought to be sexually unbiased, women activists revealed that it will lessen the estimation of such laws and it will be confounded for judges in court.

Aside from the way that there are no standards for men, there are laws that are made to aimlessly confide in ladies. Section 113 B of the Indian Evidence Act, 1872 says that if women kill herself within 7 years of marriage, it ought to be implied that it is a direct result of endowment weight from in-laws. As indicated by IPC 498A, men and his family are considered offenders naturally. Women can send their in-laws to imprison in a bogus endowment body of evidence just by recording FIR against them

V. CONCLUSION AND SUGGESTIONS

Researchers reached on the conclusion by this research that men is suffering from mental traumas, major mental health issues, etc due to the lack in the legislations as per the current requirement.

Following are the suggestions to avoid this Gender Discrimination:

1. It is the duty of the state to make the equal laws for men as well.
2. Need to amend some provisions of the Statute and include the word Person rather than women or female.
3. As earlier laws were enacted to protect the rights of the women and to secure their positions and existence, there is need of the laws for the men also.
4. All type of Crimes committed on men as well but judiciary needs to look into it and give the judgement accordingly.
5. Nothing will improve until the mentality of the society remains same that men are person who don’t have any problem and they are the only responsible persons for his family.
6. Rights always come with the duties, so if women got the equal rights as of men, also should share the responsibility as well.

7. India will progress when every citizen will progress, it is not only about the Beti Bachao Beti Padhao but it should be Sabko Padhao Manavta Bachao

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