



‘IS INDIAN PATRIARCHICAL SOCIETY READY FOR GENDER EQUALITY LAWS? - BOONS AND BANS OF GENDER NEUTRALITY IN INDIA.’

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INTRODUCTION

“A gender-equal society would be one where the word ‘gender’ does not exist: where everyone can be themselves.”¹

Even though the Constitution of India 1950 which is considered as supreme law of land confers “Right to Equality” to all persons irrespective of any form of discrimination under its Article 14², equality in terms of gender has always been a mirage image in the Indian patriarchal society. Women constitute almost 48.5% of the population in India i.e., almost half of the population of India, however is still considered as unequal when it comes to their comparison with men. From the very beginning women have been conferred with an inferior position to men in the Indian society and the infamous practice of Devadasi and Satipratha are significant examples of the same. It is not out of place to mention that women have always been considered as the “House Makers” while men are always considered as the “Bread Earners”. There has always been a long lost presumption against the women that- “women are weak and fragile, they are meant to serve household needs only while men are muscular, strong and responsible for the maintenance and welfare of women. Women’s role was restricted to being a daughter, wife, mother above all a Homemaker.

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Position of women in Ancient India:

1. **Satipratha:** Also known as Wife burning alive along with dead husband. Sati was introduced by the invasion of Aryans in India in 1500 B.C. Even the Rig Veda quotes to supports this horrific practice “*Let these women, whose husbands are worthy and are living, entre the house with ghee (applied) as corrylium (to their eyes). Let these wives first step into the pyre, tearless without any affliction and well adorned*”. This practice was however banned by the Indian reformist Raja Ram Mohan Roy in 1829 and eventually Sati Prevention Act 1920 was enacted to criminalise any type of aiding, abetting, and glorifying of sati.
2. **Davadas Pratha-** “Traditional form of Prostitution”. This practice essentially involved the girls between the age group of 18-36 years, who dedicated to the worship and service of a deity or temple for the rest of their life, they used to dance to please their deity, soon thereafter this act took a form of prostitution wherein these girls were dedicated to the life of sex work in the name of religion. However with the passage of time this practice was also forbidden. Despite that the practice of davadas is still prevalent in modern India in the form of Human Trafficking and prostitution.
3. **Female infanticide-** Vedas recommend that father of a daughter is obligated to give huge amount of dowry to her husband at the time of her marriage due to this reason the birth of a girl was a burden to a family. Moreover women who gave birth to a girl child were referred as cured and were ashamed for giving birth to a girl child. Therefore the practice of Female infanticide came into picture, wherein whenever a girl child was born, the same was killed instantly, Hence it was the most convenient way to get rid of a girl child. With passage of time it was understood that there is a need to curb this illegal practice of killing girl child, hence the female Infanticide Prevention Act 1870 was passed in British India. Subsequently abortion was made illegal except in certain circumstances under Medical Termination of pregnancy Act 1971 and in 1994 Pre-Conception and Pre Natal Diagnostic Techniques Act 1994 was passed to prohibit the sex determination of the foetus.

¹ Gloria Steinem

² 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 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth



4. **Wife Burning-** Husband were at liberty to accuse the wife of infidelity and adultery and in case the innocent wife would protest to such allegation the council of village elders would order an ordeal by fire wherein the wife would had to pass through fire to prove her innocence, in case the wife dies or suffers burns, the same was regarded as a proof her of guilt. This practice is no longer in practice in Modern India.
5. **No rights in property-** Women were not given any rights in the property. This changed with the codification of Hindu Law and subsequent amendment in Hindu Succession Act in the vide year 2005.
6. **No education to women-** women were declared to be unfit for study. This also changed with the liberal interpretation of fundamental rights and various other Government welfare programs.
7. **Not allowed to work-** Their role was limited to home makers. This changed with enacted of various women friendly legislations which allows female to work in a protective environment.

In the view of above it is evident that there has been great shift in the role of women in the Indian society. Women are no longer left at the mercy of their male counterparts. With the passage of time many successful attempts have been made by the Legislation to confer equality of status to women, as given to the men in Indian patriarchal society, which not to mention also has led to its mass miss usage and abuse by women who often stoop down to use these beneficial legislations which are meant to protect their interest against the men to take their personal vendetta.

However still on many fronts women have not been conferred with an absolute equality and privileges as enjoyed by men in the Indian society. And gender neutrality and equality in India still remains a long pending goal or aspiration in India. This article aims to highlight the extent and impact of gender equality in India and to see all the positive as well as negative aspects of conferring equality status and special privileges to women in India.

LAWS IN FAVOR OF WOMEN IN INDIA

A. Constitutional Protection under Constitution of India 1950

Constitution of India provides variety of rights and privileges to women to protect their moral, social, and financial interests through its Part III which deals with enforceable Fundamental Rights and Part IV which are unenforceable directive principles of the state policy.

Article 14- Equality before law and equal protection of law to all persons.

*Air India Etc .v. Nergesh Meerza & Ors.*³Supreme Court struck down the provision of Air India employment rules which provided a condition of termination of services of a married working Air Hostesses upon their pregnancy for being in violation of Article 14.

Article 15(3)- Forbids discrimination based on sex or gender.

In *Githa Hariharan v. Reserve Bank of India*⁴ Supreme Court gave liberal interpretation of word “After” used under Section 6 of the Hindu Minority and Guardianship Act 1956 which provided mother only after Father can act as Guardian of a child. It was held that Mother could act as guardian for all intents and purposes in temporary absence of the father.

Article 16- Confers equality of opportunity to both men and women in terms of public employment.

In *Maya Devi v. State of Maharashtra*⁵ a requirement for a married woman to get consent of her husband before applying for a public employment was held to be unconstitutional and invalid.

Article 21- Right to life and personal liberty, its liberal interpretation In *Maneka Gandhi v Union of India*⁶ a wide interpretation was given to Article 21. In view of which now Article 21 includes right to terminate pregnancy of women under certain circumstances as in *State of Haryana v. Smt. Santra*⁷ it was held that an unborn child rights are inferior to that of mother to preserve her own health.

³ AIR 1981 SC 1829

⁴ AIR 1999 SC 628

⁵ ISCR 1986 743

⁶ AIR 1978 597

⁷(2000) 5 SCC 182



*Surajit Singh Thind v. Kanwaljit Kaur*⁸ It was held that allowing medical examination by way of finger test of a rape victim for testing her virginity amounts to violation of her right to privacy and personal liberty enshrined under article 21 of the Constitution.

*Vishakha v. State of Rajasthan*⁹ It was held that sexual harassment of women at her workplace not only violates her Article 14 and 19 but also violates her right conferred under Article 21.

*Sakshi v. Union of India*¹⁰ It was held that rape is a crime against humanity and amounts to violation of women's right to life and personal dignity under Article 21.

However recently in *Independent thought v Union of India*¹¹ Supreme Court held that Marital Rape on wife even if is forceful does not constitute rape and is not in violation of Article 21.

Article 23 and 24- Forbids exploitation in form of Human Trafficking, and all forms of forced labours.

In *People's Union for Democratic v. Union of India*¹² It was held Article 23 read with Article 24 is of wide connotation and prohibits not only *beggar* but all forms of forced labours.

*Gaurav Jain v. Union of India*¹³; it was held that there is an emergent need to eradicate gender discrimination. It was held that eradication of prostitution in any form is integral to social weal and glory of womanhood and measures should be taken to eradicate such prostitution from its very root. It further made mentioning of establishing of separate centres for the children of such women who are engaged in the field of prostitution so that those children so not grow up in the undesirable atmosphere that is detrimental to their upbringing and mental as well as physical wellbeing.

Article 39- State to secure equality to both men and women in terms of providing adequate means of livelihood and to secure equal pay or equal work to both men and women. In *Randhir Singh v. Union of India*¹⁴ It was held that even though Article 39(d) which talks about equal pay for equal work is not enforceable as fundamental rights by courts of law, nevertheless it owes its origin to Article 14 of the Constitution. Therefore Article 39(d) read with Article 14 can be enforced as fundamental rights by the courts of law.

Article 42- State to secure maternity relief to women workers.

Article 51(A) (e)- Mandates to citizens to renounce practices which are derogatory to the dignity of women.

Article 243- Provision for securing 1/3rd seats for women in the election of Panchayats, Municipalities etc.

B. Protection under various Legislation

Indian Penal Code 1890

Section 228- Makes disclosure of identity of the rape victim a punishable offence.

Section 292-294 prohibition on sale, publication and distribution obscene material that is derogatory to women.

Section 304B- Punishes for dowry death In *Rajbir v. State of Haryana*¹⁵ Sc took a serious note of cases concerning dowry death and directed Registrar general of all High Courts to add Section 302¹⁶ to all the trials of Dowry death so that death sentence could be in such heinous and barbaric crime against women. In *State of Karnataka v. M.V. Manjunathgowda*¹⁷ It was held that the act of Dowry Death is crime against the society and no leniency should be granted to the perpetrator.

Section 313- Punishing for causing miscarriage of women and **Article 315-** Punishing Act done with intent to prevent from child being born alive, or to cause it to die after birth, this Section aims at eliminating the practice of Female Infanticide. In *Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India*¹⁸ A concern was expressed for misuse of modern science and Technology in preventing the birth of a girl child. A direction was made to concerned authorities to strictly monitor the ultrasound activities that are used for sex determination.

Section 326 A and B- Voluntarily causing grievous hurt by use of acid, etc., Added vide 2013 Amendment¹⁹ In *Laxmi v. Union of India*²⁰ It was held that a minimum compensation of Rs. 3,00,000/- to be made to the victim of acid attacks.

⁸ AIR 2003 P H 353

⁹ AIR 1997 SC 3011

¹⁰ AIR 2004 SC 3566

¹¹ W.P. (c) No. 382 of 2013

¹² AIR 1982 1473

¹³ AIR 1997 SC 3021

¹⁴ AIR 1982 879

¹⁵ AIR 2011 SC 568

¹⁶ Punishment for Murder

¹⁷ 2003, 1 SCALE 30

¹⁸ 2003 7 SCALE 345

¹⁹ ACT 13 of 2013, sec. 7 (w.r.e.f. 3-2-2013)



Section 354, 354A, 354B, 354C, 354D- Assault or criminal force with intent to outrage modesty of women, punishment for sexual harassment, Assault with intent to disrobe, Voyeurism, Stalking.

Section 366- Kidnapping, abduction of a woman to compel her for marriage.

Section 375, 376, 376A, 376B, 376C, 376D, 376D, and 376 E punishing for sexual offence of committing rape. However rape so conducted upon a woman must be without her will and consent. It is pertinent to note that offence of rape can only be committed against a woman and never against a Man.

In *Deelip Singh v. State of Bihar*²¹ It was held False promise to marry will not *ispo facto* make person liable for rape if the prosecutrix is above the age of 16 years of age and impliedly consented to the act.

Section 497- Adultery is an offence which is committed only by a man, the wife is not punishable for being an adulteress, or even as an abettor of the offence, despite being consenting party to the crime. In *Yusuf Abdul Aziz v. State of Bombay*²² It was held that Section 497 is not ultra virus of Article 14, 15 and 21 on the ground that only a man is liable for it and not women. It was held that sex is a reasonable and sound classification accepted by the constitution, which provides that state can make special provisions for women and children vide Article 15(3) of the Constitution. Reason for such differentiation is that condition of women in India is very unhappily from those of other countries already they are too much depressed and framers of constitution were not inclined to throw additional weight of penal law upon them.²³

It is not out of place to mention that Ranbir Penal Code 1932 which is applicable to the state of Jammu and Kashmir has taken more progressive view upon the offence of adultery and makes even a wife responsible for the offence of adultery.

Section 498A- Husband or relative of husband of a woman subjecting her to cruelty. In *Polavaru Satyanarayana v. Soundaravalli*²⁴ Husband who was prosecuted under Section 498A challenged the very definition of “Cruelty” u/s 498A as arbitrary and delightfully vague and ultra virus of Article 14 of the Constitution. It was held that it is true that expression “Cruelty” is not subject to a precise definition, however it held that there is no vagueness in its meaning and as such is not violative of Fundamental rights of the Constitution.

Section 509- Word, gesture or act intended to insult the modesty of a woman.

Code of Criminal Procedure, 1973

Section 164- Right to privacy while recording statement before Magistrate in a Trial.

Section 164A- Medical examination of the rape victim to be done without any delay. Further under **Section 53(2)** such medical examination is to be done by or under supervision of female registered medical practitioner.

However the report of the doctor is only a proof and cannot act as a conclusive evidence to prove the factum of the rape upon the victim.

Section 154- Police cannot refuse to register an FIR of the rape victim on account that it does not have jurisdiction. Hence even a zero FIR is valid in cases of Rape. It is pertinent to note that even in case of delay police cannot refuse to register an FIR of a rape victim.

Section 51(2)- A special protection to females is conferred with regards to search. In *Kamlabai Jethamal v. State of Maharashtra*²⁵ It was held that when the accused is a women, her search shall be made by another female only with strict regard to decency.

Section 47(2)- Direct search cannot be made by police in the premises of a women who do not appear in public, upon the apprehension that accused is hiding in her house without first giving her notice and reasonable opportunity to withdraw herself from that place.

Section 46(4)²⁶- Except in exceptional circumstances no arrest of a women shall be made after sunset and before sunset. In case of unavoidable situation for an arrest of women before sunset and after sunrise, a prior permission in writing of Judicial Magistrate of First Class within whose Jurisdiction offence is committed or arrest is made, has to be obtained by women police officer.

Section 160- No women shall be required to attend at any place other than the place in which she resides. In *Rukmani Debi v. Jadu Nath*²⁷ It was held that Section 160 does not empower the Investigating officer to require attendance of a women at any place other than the place where she resides. Infringement of statutory limitation does not only render the requisition illegal but jurisdictional too.

²⁰ 2004 4 SCC 427

²¹ 2005 1 SCC 88

²² 1954 Cr LJ 886 SC

²³ Draft Penal Code, Note Q, p. 175

²⁴ Vengarala Yedukondala v. State of Andhra Pradesh, 1988 Cr LJ 1538(AP)

²⁵ AIR 11962 SC 1189

²⁶ Inserted by CrPC (Amendment) Act, (25 of 2005)

²⁷ 1974 CrLJ 1139 (Cal)



Evidence Act 1872

Section 113A- Presumption of abatement of suicide of married women in case she dies within 7 years of marriage. However said presumption is subject to one condition. In *Shyama Devi v. State of West Bengal*²⁸ It was held that if it is not established that the deceased had been subjected to cruelty Section 113 A id not applicable. Therefore for a case to fall under Section 113A it must be proved that wife was subjected to cruelty as defined under Section 498-A of the Indian Penal Code.

Section 113B²⁹- Presumption of law in case of Dowry Death- It provides that when a married woman has been subjected to cruelty or harassment or in any connection with any demand of dowry before her death, the court shall presume that such person has caused the dowry death. The necessity of insertion of this section was amply analysed by the 21st Report of Law Commission³⁰.

C. International conventions and Indian Human Rights

United Nations- Advancement and upliftment of women has always been the prime focus of the work of United States which is apparent from its Preamble which sets a basic goal to give equal rights to men and women.

Universal Declaration of Human Rights- Prohibits any form of discrimination and proclaims that all human beings are born free and equal in dignity and rights without distinction of any kind, including distinction based on sex.

Declaration on Elimination of Discrimination against Women 1979- Adopted by General Assembly and effectively came in force in 1981. It is often referred as “International Bill of Rights of Women”. This convention provides fields where its states parties are required to take steps to eliminate discrimination against women, these fields include, education, employment, health care, economic and social life etc.

Optional Protocol to the convention on Women- basis was to eliminate all forms of discrimination against women, it provided for individual complaint system. India has ratified this convention.

Beijing Conference 1995- This conference considered violence against women in public and private life as human rights issue.

It is pertinent to note that Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) Committee in 2004 stated that even after 25 years of adoption of various conventions for the protection and equal rights for women, no country in the world has achieved total equality between the sexes both in law and practice.

Impact on India: In *Apparel Export Promotion Council v. A.K. Chopra*³¹ Supreme Court observed that the message of International instruments and conventions is loud and clear i.e. to take appropriate steps to prevent discrimination of all forms against women besides taking steps to protect the honour and dignity of women. Hence these International conventions casts an obligation on the Indian State to gender sensitise its laws and the courts are under an obligation to see that the message of the international instruments is not allowed to be drowned. Courts are under the obligation to give due regard to international conventions and norms.

D. Protection of Women from Domestic violence Act, 2005

This act was enacted after India’s rectification of Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW). This act aims at providing effective protection to women who are victims of violence occurring within the family, by their family members. Under this act the word “Violence” has been defined in a wider sense so as to include both physical and mental violence upon the women. The court under this act is empowered to not only grant protection orders to the victim against the accused but can also grant compensatory or financial relief to the victim to maintain and sustain herself. In the recent years this act has reached new dimensions with the cases like *Indira Sarma v. V.K.V. Sarma*³² Wherein the SC held that Live In Relationships are also relationships in the nature of marriage, therefore the act of Domestic Violence against women has applicability on them also.

E. Sexual harassment of women at workplace (Prevention, Prohibition and Redressal) Act

Enacted on the guidelines of Article 14, 15 and 21 of the Constitution of India and upon the guidelines issued in the infamous case of *Vishakha v. State of Rajasthan*³³ This act was enacted to afford protection to the women at workplace and to provide a concrete platform for redressal of such kinds of issues faced by women all over India at their workplaces. This act imposes certain obligations upon the employer to ensure that women are not

²⁸ 1987 CrLJ 1163 (Cal) (DB)

²⁹ Inserted by Dowry Prohibition (Amendment Act 43 of 1986)

³⁰ Law Commission of India, 21st Report on “Dowry Deaths and Law Reforms”, 10th August, 1988

³¹ AIR 1999 SC p. 625

³² 2013(14)SCALE448

³³ *Supra* note 9 at 4.



subjected to any hostility at their workplace. However this act suffers some major drawbacks, as despite the fact that act of sexual harassment is a criminal offence, this act has imposed a limitation of 3 years for a victim to file her complaint.

F. Protection under various Labour laws such Factories Act 1948, Maternity Benefit Act 1861, Equal Remuneration Act, 1976 etc.

Women constitute 50% of our population and if they do not come out and work, then our country will never grow at the pace we all envision it to grow, and for that very reason, governments over time have taken special care to enact and amend laws to ensure greater participation of women in the growth story of India³⁴

These Labour acts are considered as social welfare acts aimed to protect the interests of women workers in India. Under these acts women enjoys various kinds of protection. These acts provide various provisions which ensure Physical, Mental, and Financial safety of the women workers.

G. Indecent representation of women (Prevention) Act, 1986

This act prohibits any form of indecent representation of the women through any form of media, such as advertisements, radio, publications, and paintings or in any other manner. This act is backed up by the provisions under Section 292-294 of the Indian Penal Code³⁵.

H. Property laws favouring women-

Earlier women did not own any property or inheritance rights as such under Hindu Law. Due to weak enforcement of law their rights in the property were highly restricted and limited. Whereas men continued to enjoy vast amount of and variety of rights to hold, dispose or manage the immovable properties. With the passage of time it was recognised that women are not given their due when it comes to property rights in India. “Women’s struggle for equality in society is exacerbated by the withholding of property and land rights for them”³⁶. Conferring property rights to women plays an important role in strengthening the women in a society. On the basis of such assertions legislature passed Hindu Succession (Amendment) Act³⁷ 2005 which successfully converted women’s limited ownership rights into absolute ownership rights, entitled women to act as coparcener of a Joint Hindu Family etc. However this amendment also falls short of the teeth to the fact certain states like Karnataka, Andhra Pradesh, Maharashtra, etc., have amended the Hindu Succession Act³⁸ whereupon they have altered and curtailed women’s rights. It is further not wrong to suggest that legislative acts also lacks its implementations on places, where customs prevails, which is pertinent from the fact that a large population of women living in rural area are still not entitled to own, alienate or manage immovable property on their own.

I. Special Grounds of married women-

These grounds and privileges are conferred to a married woman under:

Hindu Marriage Act 1955³⁹ which provides separate and special grounds for divorce to a woman, Right of residence and to claim maintenance etc.

Hindu adoption and Maintenance Act 1956⁴⁰ provides provisions of maintenance of women and daughter. This act further allows a single women or widow to adopt a child which earlier was prohibited.

NEED OF GENDER NEUTRALITY

Recently the in the judgement of *Shafin Jahan v. Asokan K.M.*⁴¹ the division bench of Kerala High Court observed that “a girl aged 24 years is weak and vulnerable, capable of being exploited in many ways and her marriage being the most important decision of her life, can be taken only with active involvement of her parents. This Judgement in the case better known as *Hadiya’s* case raised a major question as an adult women’s consent was undermined by the court on the decision of her own marriage on the ground of instance of her father’s Protective approach.

³⁴ <https://sheroes.com/articles/5-laws-every-working-woman-should-know-about/MTI1NA==>

³⁵ Act No. 45 of the 1860

³⁶ V.V. Krishnan

³⁷ Act No. 39 of Year 2005, dated 5th September, 2005.

³⁸ Act No. 30 of Year 1956, dated 17th. June, 1956

³⁹ Act No. 25 of Year 1955, dated 18th May, 1955

⁴⁰ Act No.78 of Year 1956, dated 21st December, 1956

⁴¹ 2017 SCC Online SC 925



Further in *Mahmood Farooqui v. State of Delhi*⁴² Delhi High Court held that in cases of rape where the women and accused are known to each other, instances of women's behaviour are not unknown (where) a "feeble" "No" may mean "yes". In this case court gracefully disregarded the recommendations of the Justice J.S. Verma Committee.

In *Shayara Bano v. Union of India*⁴³ better known as Triple Talaq case, the Apex Court took a turn of positive activism whereupon it rendered Triple Talaq as being unislamic and unconstitutional, whereas it should have been rejected per se on the ground that its practice promotes gender based discrimination.

These are the instances where even the judiciary fell short of achieving gender equality in the Indian society. Following are some instances⁴⁴ which highlight as to why India needs gender sensitisation and equality:

1. 20% of students who stopped schooling after primary education, near 70% of these students were females.⁴⁵
2. 70% of the rural land is still owned by men and woman are left at their mercy and largely hesitates to ask men for their share in property.
3. According to Census of India 2011, literacy rate of females is 65.46% compared to males, which is 82.14%.
4. Only 11.4% of women are on corporate boards in major public companies- Reason- due to economic restrictions and domestic responsibilities.
5. Median wage of women in India is 27% less than that of men.
6. India still ranks an abysmal 127th out of 146 in the United Nation's Gender Inequality Index.
7. As per 2011 census around 8 million female fetuses had been aborted in the previous decade.
8. Disturbingly increasing cases of dowry death cases in India.
9. Marital Rape despite being an offence of Rape is not recognised as rape in India⁴⁶.

MISUSE OF PROTECTIVE UMBRELLA BY WOMEN- USE OF LAWS AS WEAPON INSTEAD OF PROTECTION BY WOMEN

In *Rajesh Sharma v. State of Uttar Pradesh*⁴⁷ the Apex Court took a note of gross misuse of Section 498-A⁴⁸ of the IPC and diluted the strong effect of such penal provision on the ground that some women use such a provision to wreak vengeance on estranged husband and in-laws vide this judgement SC restrained police from effecting immediate arrest upon the complaint from women about cruelty in matrimonial home and instead ordered setting up of a committee to examine such a complaint.

In *State of Delhi v. Jitender Kumar and Anr*⁴⁹ Delhi High Court directed trial court to proceed against the prosecutrix who filed a false complaint of rape.

Since the laws favour women and holds strong presumption in their favour, a trend started among women to use these laws meant for their protection as a weapon to satisfy their personal vendetta by filing false rape cases.

Recently Delhi Commission of Women (DCW) through its report revealed shocking statistics which showed that about 53.2% of the rape cases that were filed between April 2013 and July 2014 in Delhi were found to be 'patently false'.

In a recent case the Madras High Court was constrained to tell the family courts not to treat husbands like "armless soldiers" and order them "in a mechanical manner" to pay maintenance to wives. Where they have parents to support, the maintenance amount awarded to a wife has to be reasonable. Frequent instances of misuse of the law have forced courts to dilute legal protection secured for women over the years. Women approaching the police/courts for reasons other than the pursuit of justice or redress of a grievance have hurt their own cause.⁵⁰

⁴² CRL.A., 944 of 2016

⁴³ Writ Petition (C) No. 118 of 2016

⁴⁴ https://en.wikipedia.org/wiki/Gender_inequality_in_India

⁴⁵ Gaurav Siddhu, "Who makes it to secondary school? Determinants of transition to secondary schools in rural India". International Journal of Educational Development.

⁴⁶ Independent Thought v. Union of India, WRIT PETITION (CIVIL) NO. 382 OF 2013

⁴⁷ Special Leave Petition (Crl.) No.2013 of 2017

⁴⁸ Husband or relative of husband of a woman subjecting her to cruelty

⁴⁹ CRL.L.P. 364/2017

⁵⁰ <http://www.tribuneindia.com/news/editorials/misuse-of-law/443664.html>



CONCLUSION- BALANCE HAS TO BE MADE- GENDER EQUALITY V. THREAT OF OVER EXCESSIVE PROTECTION

Gender equality does not mean feminism or attack patriarchies, it simple means treating both men and women equal in equal circumstances. However our society has always been patriarchal and men centred, women are the species whose lives are not independent but revolves around men. However whenever an outrage has emerged for granting equality to the women or to protect them from exploitation of men, the same in most of the cases has resulted in making women more powerful than men, to the extent that they use such protective laws to attain personal objectives. One such example of the said assertion is enactment of 2013 Criminal Amendment⁵¹ which was passed in haste as a result of public outrage on 2012 brutal *Nirbhaya Rape case*, which apart from strengthen rape laws in favour of women, has largely resulted in increasing the number of false cases filed by women against men to satisfy their personal vendetta, outrage and differences. Hence the balance between the genders has not been achieved so far and gender neutrality is far reaching goal for the Indian society.

Indian Laws have presumed that women cannot be offenders of crimes such as rape, stalking, sexual harassment, acid attack etc. Further women are not held liable for the offence of adultery despite being equally responsible.

Recently a Public Interest Litigation (PIL)⁵² was filed in the Supreme Court contending “Crimes like rape and murder do not see age, caste or even gender or sexual orientation. Rape is seen across the extremes of age, sex and geographical boundaries. Thus, it is only the development and application of a gender neutral law that will be effective in improving the reporting and registering of such crimes. The said PIL was filed to make offences like Adultery, Rape, Stalking etc as gender neutral on the ground that crime does not see gender, and women commit the crime for the same reasons as men do. However it is unfortunate that the same was rejected by the Apex Court terming it as “Imaginative Petition”, In fact Chief Justice Deepak Misra who heard the Petition quoted provisions like rape were “women protective” and cannot be used to make women perpetrators.

No doubt women are still considered as vulnerable and weak section as against men in Indian society and a strong protection should be conferred to them to enhance their status in the society, however at the same time such laws in protection of women should not be drafted in such a manner so as to give only a one sided presumption in favour of a women.

The ideal hypothesis to achieve gender neutrality in India would be to protect and safeguard women by making gender equitable laws and at the same time proving for statutory safeguards so as to keep vigilance on the misuse of such protection by some women for personal vengeance or gains.

⁵¹ Act No. 13 of 2013

⁵² Rishi Malhotra v. Union of India, 2nd February, 2018