



A study of Indian criminal law

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Abstract

Men and women should have equal political, economic, and social rights, according to feminism. Even while they support equality, feminists insist that it must be practiced in its substantive, not merely formal, sense. Since decades, women have fought for their identities and rights; perhaps there will never be an end to this fight. Their efforts were not in vain, though, since there has been a significant improvement in women's status compared to then. Several female activists have committed their entire lives to bringing about these improvements, some of whom have also perished in the process. Feminism is a dedication to eradicating the idea of dominance in society and reorganizing it so that people's self-development can take precedence over imperialism, economic expansion, and material desires. It is not merely a fight to abolish male chauvinism. Feminism in India is greatly influenced by the legal system. To protect women from the unfairness they experience from society, new laws have been enacted and thousands of feminist groups have changed and amended existing laws. The analysis refutes the notion that gender-specific rules already in place for women violate the fundamental right to equality and should be changed. Laws that are gender neutral do not make any distinctions regarding the gender of the offender or the victim. These regulations apply to everyone, regardless of gender. There aren't many laws that are gender-specific, but those that are usually apply to women in situations like rape, domestic abuse, and so forth.

Keywords: Indian criminal law, constitution of India, section, article, legislation

Introduction

At this point, researchers have agreed on what sex, gender, and related concepts signify or suggest, as well as the role of jurisprudence in their evolution. By now, the researcher also has an understanding of how and why history chose to mould around the network of human sex and gender, along with witnessing their success story ^[1], succeeded in terming themselves as an inseparable component of individual way of life and have become that fundamental stone on which morality of society begins to have a noticeable corporal manifestation and in a peculiarly plain manner is specifically effecting criminal law and its implementation.

The prior work and analysis done thus far have the potential to significantly expand this list of questions. However, due to the restrictions and scope of this work, the researcher has limited the analysis to Indian criminal law, with an emphasis on the Indian Penal Code of 1860, followed by the

Code of Criminal Procedure of 1973 ^[2], and the Indian Evidence Act of 1860. With the background written down by the researcher in the preceding chapters, the researcher is moving forward in the analysis of Indian criminal law and its procedure with a single understanding of the fundamental criminal legislation of India:

1. Indian Penal Code, 1860.
2. The Code of Criminal Procedure (1963)
3. Consider the scope and limitations of this work based on the Evidence Act of 1872.

However, progress cannot be made without an understanding and analysis of the Constitution of India, 1950 in this area of sex and gender addressed by this work, since it is the parent Act of all Indian laws and gives them with a soul on which to rely. To assess the presence of gender equality and, more importantly, gender neutrality in

¹ S. Atran, In gods we trust: The evolutionary landscape of religion (OxfordUniversity Press, United Kingdom,2002).

<https://multiresearchjournal.theviews.in>

² Simone De Beauvoir, The Second Sex (H. M. Parshley trans., 7th edition, 1971).

Indian criminal law, researchers will first examine the Constitution of India, 1950, to determine how the issue of sex and gender has been addressed in the constitution, as well as the character of constitutionalism on Indian soil.

Constitution of India, 1950

The constitution is the body of text that establishes the fundamental values of a country's legal system¹. It is the seed from which the entire tree, including its different twigs related to law and legal practice, grows. It is the body that gives birth to a country's constitutionalism, which is the spirit of law that responds to the desire for fairness and equal rights. Because the focus is on the legal system of the land, the analysis is limited to India to determine if gender and sex in the form of equality or neutrality are present or appear to be absent from the country's major text. According to the preamble, the major pillars of the constitution are justice, liberty, equality, individual dignity, sovereignty, socialism, secularism, democracy, and the republic. However, given the restrictions and scope of the job^[3], the most crucial pillars to consider are dignity, equality, liberty, and justice. Now, you may wonder why just three principles are used for extensive examination. The reason is that when we discuss the execution of law, particularly criminal law, the primary focus is on justice, human dignity, equality, and liberty. As a result, in the context of Indian criminal law, these phrases will be the primary research topics for this project. These principles are specifically granted under the fundamental rights of the Constitution of India, 1950, which is part III of the legal text book. According to judicial precedents, these fundamental rights are the basic rights of human life, and if they are not granted for whatever reason, human life is worthless. When read together, these fundamental rights explained and written under Articles 12 to 35 of the Constitution of India, 1950 bestow basic dignity on human life in order to develop, bequeath, revere, and accept human eccentricity, which is again part of a basic structure as described in the preamble of the constitution, which is part and parcel of the main text of the constitution as notified in *Kesavananda Bharati v. State of Kerala*. This preamble, which appears before this constitution, describes the undefined basic structure of the constitution, and no legislative modification under Article 368 (3) of the constitution can change this basic structure definition^[4]. However, due to time constraints and breadth, the researcher has limited the analysis of the Constitution of India, 1950 to Articles 14, 15, 16, 19, 20, 21, 22, 25, 26, and 39, which are the ones dealing with the doctrine of equality and justice under consideration in this work.

Indian penal code (1860)

With this analysis, the researcher is now looking at the examination of the criminal law and its procedures that exist in India such that:

1. Does gender affect criminal law in India?

³ Stacey Young, "breaking silence about the B-Word: Bisexual Identity and Lesbian-Feminist Discourse in closer to home" in Elizabeth Reba wise(ed.) *Bisexuality And Feminism* (Seal press, seattle,1992).

⁴ Stephen Whittle, "The Becoming Man: The Law's Ass Brays", In *Reclaiming Genders: Transsexual Grammars At The FIN DE SIECLE* 15, (Kate More & Stephen Whittle eds., New York, 1999).

2. Does a person's gender affect the criminal procedure in India?
3. Does the definition of sex and gender in Sections 8 and 10 of the code limit it to men and women? Why is it so focused on the concept of third biological sex, often known as intersex?

Before we begin with the provisions of the Indian Penal Code, 1860, some historical facts and findings must be considered. It is a well-known fact that the Indian Penal Code of 1860 was the work of the Legislative Council under the Viceroy of India, led by Lord Thomas Babington Macaulay, who was also in charge of developing formal education in India, which was required to be a replica of the British education system. Lord Thomas Babington Macaulay had a mixed feeling in his mind while drafting this code^[5]; on one side of the scale, there was a need for codification of criminal law in India; on the other, there were Indians who, according to the common yet strong belief of British lawmakers, were divided based on religion, caste, morality, sex, and gender and desperately needed respite from justice.

Code of criminal procedure, 1973

Given the scope of this research, which is to examine the presence of sex and gender in India's criminal legal system, the researcher goes on to analyze the Code of Criminal Procedure, 1973 (hereinafter referred to as the code) from the formulation of the statement of objects and reasons itself. It has been stated that the aim behind this Code is to apply the theory of natural justice in order to offer a timely and fair trial. The goal of this procedural section of the legislation is to prescribe the procedures to be followed during a criminal trial. The entire prologue and testimonial of objects and rationale read together sheds no light on concepts of sex and gender, so anyone can argue and believe that sociology and biology play any role in this procedural wing of law. However, the researcher's curiosity persisted, and an analytical move toward the provisions of this Code was made, where the spirit of human biology was felt in the formulation of legal sections that are supposed to grant security to existence and independence of a person in light of the *modus operandi* recognized by law under Article 21 of the Nation's constitution. Unlike the code's analysis^[6], which includes biology of sex and sociology of gender in a significant number of sections, the Code only devotes a few sections to the biology of the female body and its sociological role in society. Starting with:-

Proviso to section 46 (1)

This provision outlines the procedure for arresting a woman. According to the clause, her custody is inferred only upon oral notification by the arresting officer, and a male police officer is not permitted to touch the female offender's body when placing her under arrest. However, the question of whether the term "woman" here refers simply to biological females or includes trans women or transgender people is

⁵ Thomas Lacquer, *Making Sex: Body and Gender from Greeks to Freud* (Harvard University Press, USA, 1990)

⁶ Valerio Marchetti and Antonella Salomoni *et al.*(eds.), *Abnormal: lectures at college de france.* (Verso, United Kingdom, 2003).

one of interpretation and persistence.

Arresting women (section 46(4))

The provision of law includes the arrest of women after dusk and before morning. And if the case requires an immediate arrest, a police officer who is likewise biologically female must be there. This section focuses on the arrest of women who are biologically female; her sociological function is not discussed. The question now is whether the presence of this part does justice to transgenders and preserves their decency when they are detained for any breach of the law, given that the majority of them still identify as women.

Search for women (section 51(2))

It depicts the procedure to be followed when searching the body of a female, where it is indicated that it can only be done by another female, but with strict regard for decency. However, the section makes no attempt to define or trace what constitutes decency. However, in *State of Punjab v. Baldev Singh*, it was held that whenever a female is searched, it must be done by another female police officer only, and her initials and designation must be noted in the personal search memo; failure to do so will result in a violation of women's dignity.

Identification of the person apprehended (section 54a)

This section, established in 2005, makes no mention of human biology or sociology. It basically states that when an identification parade for a mentally or physically challenged person occurs, it must be recorded in accordance with the 2013 modification. Really!! To understand this issue, did the legislature really need 40 years and a horrible tragedy in which a young woman died. In reality, video recording and identification by satellite channel should be made mandatory in order to protect the lives of any witnesses who are frequently threatened as a result of the physical identification process, regardless of their physical biology or sociology.

Examination of accused individuals (section 53 and 53a)

When read together or separately, these parts reveal that an accused of an offence must be scrutinized in order to obtain evidence using DNA profiling, finger prints, nail clipping, and other methods. All of this is described in Section 53, which includes a description of what examination entails. However, in 2005, a new procedure with equal medical examination standards was established under Section 53 A!!! Was it even necessary? Sections 53 and 53A both require the accused to have a medical examination if evidence of the commission of an offense exists. So, where is the difference? If the attention or goal was to specifically target rape accused, a simple mandatory directive in one line would have fulfilled the aim in accordance with the pre-existing legal norm in Section 53. The researcher cannot understand the legislature's fixation with unneeded larger texts of law. It serves no use and merely complicates matters.

Summoning an untraced person (section 64)

This part is an example of patriarchy at its finest. Ironically, the procedural element of the criminal court system

stipulates that if a person cannot be found to serve a summons, one of the duplicates must be left with an adult male member of the family. Present since 1973, it can be argued that, despite Madam Indira Gandhi serving as the nation's prime minister, it was considered that women could not serve court summons. It is difficult to imagine that this clause is still in effect, especially after the Amendment Acts of 2013 and 2018, which included special provisions to improve women's security^[7]. This issue went disregarded by the nation's lawmakers. Actually, the goal of the 2013 amendment, followed by the 2018 amendment, was to protect women rather than empower them, as it appears. If it had happened, this provision would have expired at least five years ago.

Maintenance for wife, children, and parents (section 125)

This portion works for the welfare of women, children, and parents of a man, where men's patriarchal position as guardians of a family is dictated, and where the woman is essentially the benefactor if she is abandoned by her husband and family. The only rider in section 125 is the gender role of the woman; if she chooses to live in adultery or refuses to acknowledge her marital obligations related to the company and conjugal rights of the husband, she will be barred from receiving the benefit of maintenance granted under section 125 of the Code. Nonetheless, such is not the case for men because, according to the Bible, he cannot even seek maintenance from his wife. The noteworthy issue here is that Section 497 of the Indian Penal Code only sanctioned men for adultery, whereas Section 125 penalizes women for the act of adultery. Though section 497 of the Indian penal code no longer liberates men, it continues to sanction women's sexual choices.

Exception to section 154(1)

This provision is a result of the Criminal Law (Amendment) Act 2013, which was revised in 2018 and specifies that in offences connected to sections 326A, 326 B, 354, sections 354 A to D, 376, sections 376 A to E, and section 509, the first information shall be recorded by a woman police officer. Further provisions for the use of technology in cases where the victim is physically incapacitated have been incorporated by the 2013 amendment, which requires that such information be video graphed, saving the victim from suffering during the trial.

Attendance of women at the police station (section 160(1))

This provision creates a separate space for a female who is not necessary to visit the police station or any other location in order to record her statement. In fact, it is the officer in charge's duty to visit such women's homes and record their statements. This simply means that no biological woman can be made to appear at the police station as witnesses. However, there is little information about the attendance of psychological and sociological women.

⁷ VG Padubidri and SN Daftry, *Shaw's Textbook on Gynaecology* (Reed Elsevier Pvt. Ltd., India, 2015).

Recording of statements (sections 161 and 164)

Following the 2013 Amendment Act, only a woman police officer can record a statement from a woman against whom a sexual offence punishable under sections 354 A to D, 376, 376 A to E, or section 509 has been committed or attempted. A specific acceptance of the fragile gender role has been recognized here, which needs her same sex and gender to record her mishap rather than a police officer, who is supposed to assist her in obtaining justice and retribution. Then there is Section 164,^[8] where statements must be recorded with a specific focus on sexual offences and their victims; however, despite the 2018 amendments, no requirements for feminine sex or the magistrate's gender have been made; however, in practice in Delhi, researchers have always seen that these statements under Section 164 are always recorded by Mahila Magistrates. These two norms of trust established by legislation between the police and the judiciary call into question the human inclination itself, highlighting the reality that even entity morals other than sex and gender are under scrutiny.

Medical examination for women (section 164a)

This clause is the outcome of a 2005 modification that specifies that a 'woman' who has been raped may only have herself medically checked if she or another person competent to grant consent on her behalf expresses so. It is important to remember that this provision exclusively helps women in cases of rape under Section 375, not Section 377. Similarly, this provision of law does not apply to incidences of sexual assault under Section 377 based on the sexual orientation of the LGBTI community, and as a witness in her practice, if the woman refuses to have her medical examination, it becomes a very heavily relied mitigating source for the accused to prove/argue his innocence in court.

Complainant other than the aggrieved lady (sections 198(2), 198a, and 198b)

All of these sections establish a course of action for marriage-related violations. In the substantive law, which is the Indian penal code, we can observe under sections 497 and 498 that only the husband is the aggrieved party if there is adultery or enticing of a married lady. What astonished the researcher the most is that even in procedural law, this patriarchy plays its part extremely well.

Section 198(2) allows any individual other than the husband to be the aggrieved party if the husband was not present at the time of the act. Though court authorization is required, the procedural law has also developed the idea that women's sexuality belongs to their husbands or family. However, this ludicrous rule of law was tossed out the window by the Joseph Shine decision, which removed adultery as an offense from the legal textbook, despite the fact that adultery remains a reason for divorce. However, before the cry of gender inequality is raised, the researcher would like to call attention to Section 198A of the law, which allows the woman and her relatives to commence prosecution of offences under Section 498A against any other person connected to her by blood, marriage, or adoption. However,

the effect of this provision has been brought down by the supreme court in *Rajesh Sharma v. State of UP*^[9] where no arrest can be made until the committee put forward its report to the authority concerned, but yet again in *Manav Adikar* judgment, the apex court withdrew from the guidelines issued earlier, which has eventually brought the ball back in the court of police and the prosecutrix and her relatives, which kind of highlights the tug of war happening between them. Then there's Section 198 B of the Code, which was added by the Criminal Law (Amendment) Act of 2013, which specifies that under Section 376B, cognizance of the offence can only be obtained by a wife's complaint against her husband.

Section 357c addresses the treatment of victims of sexual assault:

As a result of the Criminal Law (Amendment) Act of 2013, this section requires hospitals, regardless of its governance share, to give free treatment to victims under sections 326A, 376, 376A, and E. The researcher does not analyze the section to find the presence of sex and gender for the purpose of this work; rather, in the researcher's opinion, this provision is a blot on the morality and public order that the Indian Constitution of 1950, the Indian Penal Code of 1860, and the Code of Criminal Procedure Code of 1973 are collectively attempting to protect. Safeguarding a life is a basic essential duty that must be fulfilled not only by hospitals but also by individuals as their top priority. However, due to procedural complications, we Indians have forgotten fundamental and unwritten norms of humanity^[10]. As a result, in 2013, this provision was included, which was later amended in 2018, to emphasize in writing the duty of hospitals and the general public to save lives rather than fixating themselves on the procedural component of the law in order to avoid liability and maximize profits.

Probation for the criminal (section 360(1))

This section discusses the release of an offender on probation because he or she is under the age of 21 and has demonstrated good behavior after being admonished for the act committed. What is significant to note here is that the legislature uses the term "person," which, according to Section 11 of the Indian Penal Code, refers to an artificial creature, among other things. If logic is relied on, it gives the impression that it applies to everyone regardless of sex or gender, but further analysis reveals that women have been treated as a separate class entirely, and her age is not even taken into account when the benefit of probation is supposed to be granted, as is the case with biological males.

Death to life only for women (section 416)

This clause requires a high court to commute a death sentence to life imprisonment only if the perpetrator is a woman and pregnant. This clearly demonstrates the hypothesis of this paper, which claims that law is sex- and gender-based. It relies on the biology of a woman's body. There is no consideration or mercy required for a guy who is sentenced to death yet has a pregnant wife.

⁸ "LGBT Terms and Definitions." University of Michigan. available at: <https://lbbtrc.msc.edu> (last visited on October 29, 2015).

⁹ <https://www.hrc.org/resources/bisexual-faq> (last visited on October 29, 2015).

¹⁰ <https://www.speakingtree.in/blog/rep-punishment-as-per-manusmiriti> (last visited on November 1, 2015).

Bail provisions (sections 438-439)

After the Criminal Law (Amendment) Act 2018, provisions for anticipatory and sessions bail in cases of rape against teenage girls came to an end, and no anticipatory bail under Sections 376(3), 376 AB, 376 DA, or 376 DB can be given under Section 438. The researcher here appreciates the legislation's attempt and aim, but she is also concerned that this inclusion will lead to male exploitation, and that this aid, whatever it is, will only work if the victim is biologically female. There is no indication if the sufferer is male or intersex. Though Section 377 of the IPC is still in place to protect the rights of males and all other sexualities considered to be outside the scope of Section 375, these stringent written provisions of law are not available to them, and no one has ever discussed intersex and where their rights and protection will go if their bodies are sexually violated. Similar to the newly added provisions of Section 439, which state that before granting bail under Section 376(3), Section 376AB, 376 DA, and 376 DB, the High Court or Court of Sessions must provide a notice informing the public prosecutor of the application for bail, as well as the mandatory presence of the informant or any other person authorized by him. The researcher believes that this is yet another example of poorly drafted law. In most rape cases, the victim acts as an informant or complainant. If that is the case, there is no problem; it will only aid the victim in tracking her case; however^[11], there is always the risk of the informant being intimidated by the presence of the accused and the observing the stressful situation of the court and the arguments advocated; however, if the informant is a member of the general public, how is (s)he expected to come to court or sent a representative when (s)he has already fulfilled their fundamental duty towards the law of land and These are the genuine practical issues that legislation should address before adopting laws; otherwise, the goal will be failed. Yes, modifications can be made, but don't they waste time when the appropriate things might have been done in the first place?

To summarize, after analyzing the Code of Criminal Procedure, 1973 and case laws, the researcher concluded that there is no such thing as pure law. Society, aided by patriarchal seeds, has effected the execution of law and planted the seed of "normalized" sex and gender in the procedural part of criminal law as well, with no traces of gender neutrality or, at the very least, sensitivity about members of the LGBTI community being seen or recorded, proving all three hypotheses put forth by the researcher. It has been demonstrated that biology plays a significant role in declaring the subjects of criminal law in India, which has been governed by patriarchal principles that rely on morality rather than legality to govern and execute the legal process, and that the presence of the third sex and gender in society has been marginalized despite path-breaking judgments and new amendments to the law as recent as those of 2018.

Evidence act, 1872

The researcher began the analysis of the Indian Evidence Act, 1872 after reviewing its introduction and statement of

objects and reasons, which collectively reads that the purpose of the Indian Evidence Act, 1872 is to enact the law relating to evidence that will assist courts in deciding which facts and circumstances are relevant and which are not. The main goal of this Act is to collect evidence and decide who can be a witness and how to assess the credibility of such witnesses. The text did not emphasize a person's sex or gender. But then came the Amendment Act of 1983, which introduced-

Assumptions concerning previous sexual experiences (Section 53a)

In order to safeguard the dignity of female victims in offences against her body under section 354 section 354 A to D, section 376, section 376 A to E, as well as newly added clauses following the 2018 modification, Section 376AB, 376DA, and 376DB. The legislation said unequivocally that her previous sexual experiences and character could not be used to adjudicate consent concerns or educate about the quality of consent. This means that her character cannot be judged in general at any particular time throughout the trial.

Presumptions about suicide and dowry death in women (Sections 113a and 113b)

These parts introduced the gender neutral Act to the involvement of sex and gender in Indian society. This was, however, the outcome of public outcry over the appalling atrocities committed against married women in their matrimonial homes by their husbands and relatives. It was an urgent need that the legislature addressed because these offenses were taking place within the four walls of a woman's home, which were supposed to protect her life and dignity, and were strong enough that neither the executive nor the legislature, let alone the court, could penetrate to save the lives of such married women. Both of these parts assume certain assumptions for which no proof is necessary.

Presumption of consent (Section 114a)

This clause establishes the presumption of absence of consent in offences under clause 376 of the country's penal code. It simply means that a victim of sexual intercourse, as described in section 375 of the code, stating that she did not consent to the abovementioned conduct is sufficient to invoke the provisions of Section 376 of the Indian Penal Code, 1860.

Section 146 - question of consent

The proviso to Section states that if the question is about consent, it is not permissible to produce evidence or cross-examine the victim in terms of her general character, which is based on her morality and previous sexual experiences, in order to prove consent or evaluate the value of consent.

Assumptions regarding crime in Indian criminal law

Now, before reaching any conclusions based on an analysis of the pillars of India's criminal procedural system, it is necessary to place focus on the subjective concept of

¹¹ <http://isna.org> (last visited on January2,2016).

criminality as defined by the text of legislation and understood by the judicial and executive branches of the legal system. To comprehend this, emphasis must be placed on the activity of the judiciary in the form of case laws, as this will serve to set a precedent in understanding female criminality^[12]. In *Rukmani Devi v. State of Uttar Pradesh*, a minor woman was convicted for killing her infant son and attempting suicide. However, the prosecution failed to demonstrate a discernible motivation. The High Court of Allahabad sentenced her to life in prison. And up to this point, the case appears to be a typical culpable homicide trial with courts, police, and so on. They are conducting their own jobs. However, the additional annotations call into question Indian society's approval of women's criminal behavior. Despite awarding the lady life in captivity, the court treated her with compassion. The court declared in writing that the state government is free to commute her life sentence because she is a young mother who, as a result of a mistake, has lost not only her kid but also the reliance and love of her family and society. The court also stated that if the defendant is a bereaved woman, the Supreme Court must intervene in such cases and establish criteria for sentencing. The issue now is that an offender who is guilty of murder, particularly of a newborn, might still be compassionate simply because of biological and social gender.

Law and order situation in Indian society

The year 2013 is remembered as one of the watershed moments in the evolution of the Indian judicial system's legal knowledge. This year, the criminal amendment act was passed in response to the public uproar following the violent gang rape. This modification changed how the three pillars of Indian criminal law worked. The timeline altered the Indian Penal Code 1860, the Code of Criminal Procedure 1973, and the Evidence Act 1872. The extensive study above has previously addressed the issue of what changes occurred and how the judiciary dealt with those changes. Now the attention is on society to see how this amendment has shifted the power balance in society, or whether it has actually brought about any change in the society's mental processes.

This amendment increased the severity of sanctions, ranging from 20 years to life imprisonment, which meant remaining alive until the death penalty was imposed. The legislature felt confident enough in the higher penalty to assert emphatically that after this change, women in India will live in a safe heaven with no transgressions against their bodies or dignity. However, as time passed^[13], it became clear that all of the grand claims made by the Magical Criminal Law (Amendment) Act 2013 were nothing more than a hurried fake. Even after this tragedy, the Indian society has been serviced by awful incidents such as the following:

- A woman and her daughter were raped in Bulandshahr on July 31, 2016.
- On December 31, 2016, there was mass molestation in Bangalore during the New Year's Eve celebrations.
- A tribal girl gang was raped in the forest in May 2016.

- Delhi molestation, January 6, 2017.

On May 15, 2017, an Indian woman was beaten to death with bricks after being intimidated into testifying against the culprit.

- Rampur molestation case, May 22nd, 2017.
- A man died and a woman was allegedly gangraped on a highway in Bulandshahr on May 27, 2017.
- Unnao attempted gang rape on July 6, 2018. These incidents demonstrate that the monster unleashed by the Criminal Law (Amendment) Act, 2013, with the intention of protecting women, backfired horribly. The arrogance of the crime's perpetrators is demonstrated by the fact that they have no remorse for their actions and instead take joy in what they have done to another human being simply because they belong to a specific sex or gender. The Rampur case, which was widely discussed on WhatsApp chat groups, is incontrovertible evidence that there is no fear of law and order in the country. Not only is the dignity of human life, which is intended to be protected by Article 21 of the Constitution, publicly and transparently disregarded, but humanity and morality are humiliated to the lowest possible degree.

In 2013, it was predicted that the youth of India had arrived and was aware of the social problems that women, in particular^[14], were facing; however, it appears that the youth has fallen back into its deep slumber of material needs, and it is once again running after high-profile jobs in order to protect their own future and that of their families.

The pattern of crime and the brutality of offences appear to be on the rise. Rape movies, recordings of mass molestation of women, and other such content are disseminated through social media and other means. These movies are viewed, which implies they are circulated, but prosecution is not conceivable since, according to sections 292 and 293 of the country's penal code, there must be a sale of obscene content, and the distribution in this case is for recreational purposes. Furthermore, notwithstanding the historical revision of 2013, the issue of technology was not addressed. Sections 292 and 293 of the Indian penal code together do not apply to Facebook live broadcasting or WhatsApp circulation^[15]. The lawmakers were in a hurry to soothe the general people and did not fully consider the bill that they promised would bring about a change in society and make women feel safe.

Instead, the Criminal Law (Amendment) Act 2013 introduced itself with a scale in its hands, evaluating the value of a woman's dignity, social status, and reputation to determine the degree of penalty to be imposed on her perpetrator. The researcher would like to clarify that she is not attacking courts of law or the judgmental sense of our distinguished judges, but if the text itself is analyzing the moral conduct of the victim, then even a legally aware person is impossible to meet the prerequisites of justice. Because these quantum games have discretion and debate

¹² <https://www.britannica.com/topic/social-structure> (last visited on June 7, 2015).

¹³ <https://www.merriam-webster.com/dictionary/gay> (last visited on October 7, 2015).

¹⁴ <https://en.oxforddictionaries.com/definition/gay> (last visited on October 7, 2015).

¹⁵ <https://dictionary.cambridge.org/dictionary/english/lesbian> (last visited on October 7, 2015).

procedures, they collectively form a very broad playground for elements influencing human comprehension of a situation.

It should be noted that a judge is not the only authority sitting in a court of law. The pen of a judge is guided by the arguments of lawyers and the investigations of state agencies, and when they all come together with this dubious text of law, there is bound to be confusion and chaos that is part of the adversarial system of law, and thus the accused is liable to benefit from doubt, resulting in the failure of law and justice. And this occurred on February 13, 2018 in Delhi High Court, where charges of rape were dropped due to the inconsistency of statements made by a 14-year-old prosecutrix, and a slap from the accused's hands was deemed a trivial offence and thus excusable under Section 95 of the Indian Penal Code, 1860.

This interpretation by the courts of law was clearly not the legislature's intention, but explaining attempts like these are apparent when this statute is implemented in practice. This suggests that, in addition to the legal procedure, the problem lies elsewhere, in the dictation of Indian society, which is made by elder males in the guise of moral values, required to appease their egos first, then the divine, with the primary responsibility for appeasement falling on biological female sex and sociological feminine gender.

Criminal law (amendment) act 2019 - an Honourable mention

To begin, the researcher will declare the obvious: the creation of this legal act, even as a private bill, proves the researcher's theory that intersex is absent from India's law books. However, this bill remains a drafting disaster. There has been no attempt to understand the concepts first. The entire document lacks comprehension of the concepts of intersex and transgender. Though the proposed addition to Section 8 correctly states that transgender people should be included, the proposed modification to Section 10 confuses intersex, a third biological sex, with transgender people, and section 11 is still missing, which classifies corporations as people. If this tiny logic had been kept in mind, there would have been no need to design such a long measure; a simple alteration in Section 11 and a complete amendment of Sections 8 and 10 with the substitution of person as a word would have sufficed to fulfill the goal of gender neutrality.

Conclusion

This analysis clearly shows that there is no defined pattern of criminality's meaning and operation that can be traced back to our Indian legal system. However, it cannot be denied that the courts' primary concentration is on the protection of families. But what is difficult to grasp is that by treating a woman's criminality as a distinct twig of learning, it is thought that biology would be vanquished, under the social gender role that she is required to fulfill with perfection. The courts are concentrating on the center of the social circle, known as family. And the researcher would ask, since the core portion is not prohibited from committing an offense, on what basis do the courts believe that everything she did was to sustain and protect her family? It appears that the Lombroso effect, as defined by Lord Babington Macaulay, is still prevalent in the social structure of Indian patriarchy, with Lord Macaulay

assuming that because Indian women are and will always be behind the doors of their homes, they are innocent enough to commit any crime. And even if she does, it is under the influence of her husband or patriarchs, to whom she is expected to adhere religiously as defined unguided in her sociological role of gender, and thus her crimes are mitigated by this sociological conditioning, and she is required to be treated as a separate class so that justice can be awarded to her in accordance with her circumstances. In the famous Tinder Murder case in New Delhi, the female accused who killed a guy for money had previously been apprehended, charged, and imprisoned, yet she was always granted release based on only two facts: her biological sex and societal gender.

It is true that gender neutrality, which includes both sexes of human anatomy and all genders of human sociology, has a long way to go, but it must be started because the concept of gender equality has failed miserably to provide justice. The researcher strongly believes that by making gender neutral, the attention will move to criminality and the offence rather than a person's genetics. However, it is important to remember that the objective of law is to serve humanity, thus the drops of humanity in law should not be eliminated in order to make a concept operate, such as gender neutrality in this case. Finally, the researcher would like to say that in order to achieve changes, we must draw everyone into the mainstream, as changes never occur in isolation. As a result, the focus of the law and society will now move to the overall well-being of humans rather than the biological sexes for apparently no legal reasons.

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