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# **PATRIARCHY AND ITS EFFECT ON LAW**

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## **ABSTRACT**

Earlier, women were treated inferior to men where their choice was always ignored and were disparaged by men at every possible opportunity the men got. In India, especially women were treated at their absolute worst. However, the situation is slightly changing, and women are being given a near equal status at least in urban areas where education and way of life is much better than in rural areas. Men are showing a change in their attitude, recognizing that women bring a lot more to the table than just good looks and beauty. It seems there is a ray of light at the end of a dark and a patriarchal tunnel. Women have a mind of their own and they do not require any validation of their actions from any individual. They should be respected and encouraged rather than judged and deemed as a creature of disappointment. The word patriarchy shall be obsolete and should not be used in modern days of evolution of women.

## **1. INTRODUCTION**

The word Patriarchy means ‘A system of society or government in which men hold the power and women are largely excluded from it’. In other words, men hold the primary power, they are dominant over women and control their lives according to their whims and fancies.

*Of all creatures that can feel and think, we women are the worst treated things alive.* - Euripidies, Medea.

The above quote may have been made centuries ago by a Greek Tragedian in one of his plays, however it is still relevant in recent times where women are treated anything but equal to men. Though, the men may have progressed and allowed education for women but still equality seems to be a distant dream even in a country like India where there are many government schemes, the Constitution and the laws that protect the rights of a woman.

The status of women in comparison to a man has always been low from time immemorial as the independence of woman has always been a topic where the men are told to keep their women in check and control of their every move, because according to them whatever is spoken from a women’s mouth is a lie. The Hindu Scriptures have narrated ‘Men must make their women dependent day and night and keep under their control those who are attached to sensory objects.

*Her father guards her in childhood, her husband guards her in youth, and her sons guard her in old age. A woman is not fit for independence'. – Manusmriti 9.2-3.*

## **2. THE LAW IN INDIA AND ITS IMPLEMENTATION**

The Constitution of India through Article 15 though, provides for 'Prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth', the implementation of the same has not been effective as women are mistreated, disrespected, and made to silence their voices.

However, the judiciary and law in our country has been in favor of women empowerment and have always strived for women being educated and aware of their rights where the bench is represented by a woman. This case questions the constitutional validity of Section 497 of Indian Penal Code and Section 198 of the Criminal Procedure Code relating to adultery where it was held that any system treating women with indignity, inequity, inequality, and discrimination invites the wrath of the Constitution. Any provisions that might have, few decades back, might have got the stamp of serene approval may have to meet its epitaph with the efflux of time and growing constitutional precepts and progressive perception. A woman cannot be asked to think as a man or as how the society desires. Such thought is abominable, for it slaughters her core identity. And it is the time to say that the 'Husband is Not the Master'. Equality is a governing parameter. All historical perceptions should evaporate, and their obituaries be written. Justice Indu Malhotra has remarked in the same judgment 'the times when wives were invisible to the law and subordinate to their husbands has long passed'<sup>1</sup>. Scrapping Section 497 of the Indian Penal Code the judiciary showed that a woman is a distinct individual not belonging to any man.

### **A. MARTIAL RAPE**

Recently, however this liberal and progressive approach does not work with the Judiciary as the Chief Justice of India, in a case asked the rape accused that would he marry the victim<sup>2</sup>, making it abhorrent and disgusting to even suggest such a thing. Asking such a question and granting interim protection of four weeks to the accused does not lessen the offence and offer a chance of

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<sup>1</sup> Joseph Shine vs. Union of India, WP (Criminal) No. 197 of 2017

<sup>2</sup> Mohit Suhash Chauhan vs. The State of Maharashtra Diary no. 4345/2021

repentance, suddenly if his is an affirmative answer. The offence of rape is not an offence against the individual it is an offence in rem i.e., against the State and the public. Keeping in mind, that the Bombay High Court had cancelled the anticipatory bail application granted to the accused by the Sessions Court stating, ‘Lack of sensitivity by the Lower Court...’, the SC still granted protection to the accused allowing him to file an application for regular bail.

The remark was defended by the Chief Justice stating he was entitled to ask question relevant to the case under Section 165 of the Indian Evidence Act which is as follows ‘The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, or of any witness, or of the parties, about any fact relevant or irrelevant, and may order the production of any document or thing;’. But having asked the question whatever his intention, not asking for the opinion and the will of the victim the judge conveniently disregarded her and the humiliation, mental apathy, and the misery she has suffered, whereas the accused was not subjected to any of the miseries as he is already married and living a happy life without realizing his mistake. Justice is not served by playing into the hands of patriarchy and by marrying off the victim to the person who has repeatedly robbed her dignity and virtue.

Marriage does not justify rape, the above question asked gives the right to the husband to have sexual intercourse without the consent and the will of the wife, humanizing marital rape. There have been many appeals in India to criminalize marital rape, but till today they have been futile, as the Indian government believes criminalizing marital rape will de – stabilize the institution of marriage. The Indian government has also rejected marital rape as a ground for divorce. The Supreme Court, in a case of has observed ‘however brutal the husband be... can sexual intercourse between the husband and wife can be called rape?’<sup>3</sup>. The usage of the words ‘however brutal’ just implies that a woman is an instrument that her so called husband can play with.

The law under Section 375 of the Indian Penal Code does give some protection to a minor girl as sexual intercourse between the man and his own wife under the age of sixteen years amounts to rape. Analyzing, the language of the section ‘the man and his own wife’ gives the idea that if the girl is more than sixteen years, she becomes the property of the husband to do whatever he pleases, she, being under his absolute control, dancing according to his fanciful notions.

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<sup>3</sup> Vinay Pratap Singh vs. The State of U.P (2019), SLP (Crl) No. 4528/2019

In a landmark judgment by the U.K Court the husband was accused of marital rape and defended the charge by stating that marriage gives irrevocable consent. The Court refuted his claim and stated, ‘the concept of irrevocable consent of the wife to the husband is an unacceptable concept in modern times as each is seen as equal partners in marriage’. The relationship between the parties does not matter<sup>4</sup>. Rape is Rape. Taking a leaf out of this judgment the Indian Government and the judiciary shall look at it as a ground where women are treated respectfully in their marriage not as their husband’s toy and by criminalizing marital rape modern era of change will be established where men understand, respect, and consider women as an equal human being.

### **B. THE NIRBHAYA CASE**

The mindset of men should be changed, they should be educated, made aware and raised with empathy and compassion, they should be taught to respect and treat a woman as his equal. The example that shows that Indian men will not adhere to modern norms is the Nirbhaya case where the rapists did not show a little bit of remorse, rather they blamed the victim, questioned her character while being interviewed. According to filmmaker Leslee Udwin who interviewed one of the rapists on death row where she was appalled to know the shocking treatment of woman in India. ‘The rapist showed no remorse and kept expressing bewilderment that such a fuss was being made about rape, when everyone was at it.’ According to him, no decent girl would roam around at nine o’clock at night and the girl is far more responsible for rape than a boy. The most horrifying thing from the interview was his lack of remorse, he said that ‘when being raped she shouldn’t fight back. She should just be silent and allow the rape’<sup>5</sup>. The keyword being “when” i.e., these rapists if freed back into the civil world would have done the same deed again, no reformative theory would have worked on them as their mentality would not have reformed. Men superior, Women inferior.

### **C. EQUALITY AND UNIFORM CIVIL CODE**

Article 14 of the Constitution provides equality before the law or equal protection of laws within the territory of India. The word ‘equal’ meaning having the same rights and being treated the same as others does not apply to Indian women, they are always being treated as worthless having no

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<sup>4</sup> R vs. R (U.K Court) (1991) 155 JPN 752

<sup>5</sup> Leslee Udwin, Delhi Rapist says victim shouldn’t have fought back, BBC.com, March 3, 2015, <https://www.bbc.com/news/magazine-31698154>.

value of their lives and being defined by the choices that the man makes for her. Female Infanticide is one of the reasons why equality will only be a dream for women in India, the desire for a male child that the family has including the elder women in the family is far greater than the desire for a female child, where sweets and festivities are enjoyed at the birth of the former and an atmosphere of gloom on the birth of the latter.

The judiciary has had women empowerment in their minds in many cases where they have pointed out, that a Uniform Civil Code, according to Article 44 of the Constitution “The State shall endeavor to secure for citizens a uniform civil code throughout the territory of India” is necessary for betterment and the progress of the country. It was in the Shah Bano’s<sup>6</sup> case that the judiciary realized the importance of uniform civil code, the judiciary further in another case urged the government to take necessary actions to bring about uniform civil code<sup>7</sup>. However, the government in its law commission report through its consultation paper in the month of September 2018 quoted that a Uniform Civil Code is neither necessary nor desirable at this time, the issue is vast and the potential repercussions untested in a democracy like India.

Hence, the judiciary has insisted on laws that lead to equality for women but the implementation or the refusal to make laws by the government and the citizens make it difficult for women to progress and live their lives as per their own wishes and desires.

The judiciary by scrapping of Section 377 of the Indian Penal Code, relating to homosexuality is the step in the right direction to acknowledge individuality and equality of a person. The SC has allowed same sex couples the freedom to live a dignified private life<sup>8</sup>. However, a plea filed in the Delhi High Court by four LGBTQ+ members demanding marriage rights for gay community under the Hindu Marriage Act, 1955 questions the fact whether marriage between the same sex couple can be legalized. The Centre in its affidavit had mentioned the legal recognition of gay marriage should be left on the legislature and the acceptance of the institution of marriage between two individuals of the same gender is neither recognized nor accepted in any uncodified personal laws or any codified statutory laws.<sup>9</sup>

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<sup>6</sup> Mohd. Ahmed Khan vs. Shah Bano Begum (1985) 1985 AIR 945

<sup>7</sup> Sarla Mugdal vs The Union of Indian, (1995) 1995 AIR 1531

<sup>8</sup> Navtej Singh Johar vs The Union of India (2018) 10 SCC 1

<sup>9</sup> Dr. Kavita Arora vs. The Union of India WP (C) 2574/2021. Case pending before the Delhi High Court.

### **3. CONCLUSION**

In conclusion, a woman has been a victim of patriarchy from time immemorial, her voice silenced, her worth questioned. For the society to progress and develop the woman should be respected, should be given her rightful status in the society and her opinion should be considered and laws shall be properly implemented. A woman is like a lion that should not be stifled with, she is a storm that can cause unprecedented destruction, do not underestimate her worth.

*I am a woman with thoughts and questions and shit to say. I say if I'm beautiful. I say if I'm strong. You will not determine my story – I will. - Amy Schumer.*