

# **Deconstructing ‘Rape Culture in India’: A study on Patriarchal Laws enshrined in Holy Constitution**

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## **Abstract**

Indian Constitution though contains legal protection and condition of gender equality, in certain instances, its male-dominated and masculine nature gets reflected. In reference to the sections, acts and laws enshrined in the Indian Constitution, the researchers here have tried to identify the hegemonic masculinity that the "Holy Text" wants to convey as it promotes Protectionism and deification of women resulting into a social complexity that one way or other patrons 'rape culture' in India. The definition of rape though does have different connotations, the most viable legal and sociological definitions emphasize that it is "The use of physical force against people or property, including threats and attempts" (Black, 2004) and is the most "illicit uncondoned genital contact without the consent or will of the woman which is considered in violation of social norms of expected behavior".

In the first part of the paper the researchers take upon the prosecution of the male as per the Section 497 of the Indian Penal Code which explicates that it is an offence if a man commits adultery with the wife of another man but, there is no punishment if the wife performs the same. As in Indian context the women are considered as sacrosanct and the Brahminical patriarchy uses the women body as pious cite, it is even out of imagination that ‘second sex’ could get engaged into adultery, mostly considered as Immoral. Vestiges of this mind set can be seen in the exception provided to marital rape.

The next section deals with the discussion of Hindu Adoption and Maintenance Act of 1956, according to which it is the parents' responsibility to provide the girl child with maintenance until she gets married off. It is nevertheless not similar whenever it comes to the case of dominant sex which casts aspersion on women and legitimates misogyny. The

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very notion clarifies that the women are to be considered as burden throughout their life and are used as transferrable property- from their own house to the in-laws.

The last part of the paper explores the inherent violence within Section 375 that denies the right to the women on their own body if they are married. It signifies that the deliberations of a male-privileged constitution which under no circumstance put up the value what Baba Ambedkar once promoted from Mahad Satyagraha to Kalaram Temple rebellion, Baba had been always of the opinion that Brahmins or the upper caste consider the lower caste body as easily accessible and hence, called for nationwide protest, the paper would provide with a feminist spectacle of constitution to identify the ways of liberty and annihilation of 'rape culture'.

### **Introduction**

21st century has acquired the tendency to discover diverse forms of democracy- may it be through the participation of people in social media or the continuous political engagement of a certain populace for assertion of their identity. However, if Indian state is considered, the idea of democracy lies enshrined within its constitution that Baba Ambedkar had even talked about as the only way to achieve any socio-political solution. The measures and the process of implementation of legal curriculum taken by the respective Governments though have been questioned pertaining to caste or gender parity, the integrity of its equalizing character is barely touched upon. In this context, nevertheless, the researchers at risk of being called anti-patriotic (!) identify hegemonic masculinity that the laws enshrined in the "Holy Text" promote. The patronage of the rape culture is properly located and appropriated in this paper with reference to the laws that mostly carry the patriarchal mindset and calls for a puritarian Brahminical outlook of a Gendered society.

In the first part of the paper the researchers dealt with the prosecution of the male as per the Section 497 of the IPC that only punishes Male for adultery. The idea of elopement after marriage, in a puritarian society lies with the male and the very notion of upper caste piousness attached to the body of Indian women deny even women' right to determine the male-imagination regarding their post-marital actions. It attributes to the fact that the women are being sold through marriage and hence, should be considered inept to even get into other relationships across. In the next part of the paper the researchers tried to analyze treatment of woman as a transferrable property as per the Hindu Adoption and

Maintenance Act that compels the Parents to bear their girl child until and unless she is married off, evoking the narrative that women rarely do have the right to deny marriage or rather women are more disabled than men to live a livelihood independently. This narrates the predefined destiny of the women in the Indian society where the women's oppressor is intrinsic patriarchy. The third part of the paper deals with the Section 375 that precludes women from claiming their rights on their own body if they are married. Consecutive denials of Supreme Court to give recognition to marital rape have worsened the issue and the increasing number of victims has directly pointed fingers to impeccable integrity of Indian constitution.

### **Purity in nationalist imagination: discrimination in adultery clause**

“Being a woman is a terribly difficult task, since it consists principally in dealing with men” (Conrad, 1906), this opens up the path for the researchers to search out how the Indian constitution doesn't allow equal footings for both genders. The wife being the sole and selective property of a man must be protected from some other man. Her sexuality must be controlled by the spouse to attest this sole and selective claim to her body. She has no right over her own particular body as well as even the body of the man to whom she is legitimately married. This itself is an archaic arrangement. It fortifies the accommodation of women inside the marriage. Section 497 of IPC mandates according to one of the post in The Hindu, “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 the offence of rape, is guilty of the offence of adultery and shall be punished.” (Rajagopal, 2017).

The offence is the authoritarian establishment of a man's ownership of a woman. In the year 1985, SC's three-judge bench recorded the submission made on the behalf of Sowmithri Vishnu where her husband demanded to get divorce for abandonment and adultery. Her advocate said Section 497 under IPC is a "Flagrant instance of gender discrimination, legislative despotism and male chauvinism" and described the same as "romantic paternalism “which originated from the assumption that women are Chattels to men (Chidamabaram, 1985).

This Section 497 came into enforcement in the year 1860. It was very natural for the colonial lawmakers to criminalize Adultery with its Victorian Purity campaign in cue. But

this creates a question of concern that how they negotiate with the socially coercive practice of marital polygamy and sustain in a country like India. In an act of compromise, the Judicial decision in a litigated cause rendered by a court of equity or decree that a man could endow his own Zenana, unless his dalliances did not intrude upon that of another man's. If the flaws in it to be considered, then it does not allow the woman to claim another woman guilty with whom her husband has performed adultery and this does not apply in the case if the husband has sexual relation with a woman who is unmarried. Thus, the provision adjudges that “husbands have a free license under the law to have extra-marital relationships with unmarried women.” (Sudhir, 2017).

Taking into account the judgments and the visions of the male dominating and male chauvinist Constitution catering to certain identified problems, the researchers went through few of the case studies including Yusuf Abdul Aziz vs. The State of Bombay that the 42nd Report of the law commission continued though having strong dissent for its deletion. “It is the right time to consider the question whether the offence of adultery as envisaged in Section 497 is in tune with present day notions of woman’s status within marriage” (Chandy,1954) as per one of the report in The Hindu. The sacrosanct relations that marriage portrays in terms of Indian social structure certainly allows the people of the country to imagine ‘Motherly’ or ‘Daughterly’ image of a woman making them surrender in front of the patriarchal knots. The idea of adultery is far away from the nationalist imagination that brags off the purity of Indian women. The epic Ramayana when retold and restructured by Tulsidas in Ramacharitamanas, had put up the piousness of Sita as the major component and even had created the scenario where Rama examined whether she had performed adultery paving the way for the Indian audience to believe that Indian ‘Proper’ women couldn’t do it. Prof. Jamison (2017) in her lecture in Asian Languages and Cultures, UCLA, disclosed that since 1500 BC Indian patriarchal society has been practicing the punishment for the women engaged in adultery and its extension might be letting them been eaten by dogs. While investigating the reason behind such condition, she found out the faithfulness is required for legitimizing the both of child. IPC 497 thus satisfies the masculine hegemony and the imagination of purity enshrined in the body of women in terms of sexual closure and restrain.

### **Deconstructing the ‘burden’: critical note on compulsive marriage of Indian women**

In this part of the paper the researchers deal with the discrimination that woman experience for the Hindu Adoption and Maintenance Act, 1956. This act obliges the parents to bear the livelihood costing of the girl child until she gets married, hence approving that she is the burden for the family. Certainly for a male child the rule is different and Parents does have no obligation to bring him up as he reaches 18 years' i.e. the constitutional age for voting. This specific issue has two-pronged patriarchal implications. Firstly, the woman is to be married of definitely justifies their disability to lead an independent life and overall imposes the identity of father, husband, son, brother or any other male relative to legitimize their social position. Secondly, the capacity of casting democratic franchise whensanctions 18 years as the bar; the faith on the women's decision to elect Government should be there.

Mostly Indian democracy witness rare participation of women in the political decision making of the family and thus Ravishankar (2018) properly locates 10% actual engagement of Women in gram sabha elections in Dakshina Kannada District. In this manner, the women's age of eighteen isn't even considered as a point of political or social maturity except its utility to sanction early marriage. "Half of the Indian population too is women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequalities, indignities, and discrimination" - Justice K.R Swamy in Madhu Kishwar vs State of Bihar (Abhang.S, 2015). In India, equality and equal rights are just two words which continue to be a mere paper blessing and are far away from the reality of life. According to one of Indian Mythologies Mahabharata, "Wife is not only a source of Dharma, Artha and Karma but also a source of Moksha". And further in consonance Ramayana says- Wife is very soul of her husband. She is 'Grihini' (the lady of the House), 'Sachiva' (wise Counselor) and 'Sakhi' (friend of her husband). She is 'Griha Laxmi', 'Ardhangini' (half of him) and 'Samarajyi'. If the ancient history is to be considered, women were stereotyped as 'Sakhi', 'Ardhangini'.

The strength of a woman thus is evoked to ensure that they effectively play their roles which contained nurturance feature of daughters, mothers, wives and daughter-in-laws. On the other hand, the stereotype of "a weak and helpless woman" is fostered to ensure complete dependence on the male sex. Women are always treated as burden, firstly they

are dependent on their father then on their husband and if the husband dies then on father-in-law. But the same does not apply in case of men.

There are a number of laws made for the maintenance of the women but if we look into the fact then the women actually don't need such laws. They are capable of maintaining themselves. They call it protecting women. But are they actually protecting them? Or just encouraging the dominant sex to treat women as chattels. Violence against women occurs throughout their life from pre-birth to infancy to childhood to adolescence to adulthood. Cases of women violence are increasing on a faster rate in our country. Many of them are believed to be unreliable as such cases go unreported. According to the National Crime Record Bureau, India, in Indian J Psychiatry, there is one dowry death in the country every 78 hour, one act of sexual harassment every 59 minutes, one rape every 34 minutes, one act of torture every 12 minutes, and almost one in every three married women experience domestic violence.(Sharma. I, 2015)

Mary Astel has properly commented while emphasizing on violence against women: "If all men are born free, how is it that all women are born slaves?" (Astel, 1706 e. d). This question reverberates across the pages of Indian constitution that carries intrinsic and inherent malevolence, uninterrupted patriarchy and deep-rooted misogyny.

### **Understanding marital rape: identification of legal premises promoting rape culture**

The position and status of women in ancient India was not satisfactory, rather women and property were bracketed together in several references in the epics, Smritis and Puranas. She could be given away or loaned as any property. Even this was sometimes the attitude of typical patriarchal society based on private property. Dr. B.R Ambedkar, the social-revolutionist, struggled for the equal rights and opportunities for women in the Democratically Independent India. Baba believed that the reason for deterioration in the status of women in the society began with severe restrictions obtruded on them with the manipulation of Manusmriti. The next part of the paper includes section 375 of Indian Penal Code which says that "Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape". Thus in India if a man marries a woman he secures all the right to have sexual intercourse with her whenever he wants to with or without the consent of the woman. This quote by Sir Matthew Hale has become canon in

explaining and understanding this historical concept, “The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and the contract the wife have given up herself in this kind unto her husband, which she cannot retract”.

Historically wife was treated as "chattel" so does in present time. Marriage is considered as a carte blanche for sexual intercourse. A marriage as a contract is a license for men over woman's body and to rape one's wife. The Then home affairs minister of India, Haribhai Chaudhary, had said that “Marital Rape can't be made a criminal offence in India because of high illiteracy rate, poverty, extreme religious beliefs and the very 'sanctity' of marriage”. To address the marital rape as an important issue Saitan Theatre group has prepared a Hindu-musical play consisting of two characters namely Siya and Jaanki and the title of the play was “Pinjra”. While speaking about the theme of the play, Ms. Namita Verma, co-founder of Saitan Theatre Group said, "Women have been subjected to many atrocities from time immemorial, and even today they live with the pain of being handcuffed by social obligations rooted deep in our history”. Marital rape is one such pain of suffering- a dreadful double jeopardy. Also the Founder and Director of Saitan Theatre Group, Mr. Rajneesh Gautam said, "We chose this subject because it is happening around us and we are still showing ignorance. Sexual assault by one's spouse accounts for approximately 25% of rapes committed. While the Indian society is known for its civilization and culture, there rest some pertinent questions related to the life of women, specially married women, who are left ignored, portraying the resilient suffering of women choked in four-deaf-walls or even back in the history. We are against this kind of approach and that is why we conceptualized this play. We have a lot of wolves in the street but sometimes they live inside our house under sheep's skin."

The show is all about the Sati Pratha and Marital Rape practiced in India. A girl name Siya was forced to commit Sati, two years after the Sati practice was banned in India and a life story of Jaanki whose relation with his husband was more of sexual and physical abuse and less of love and respect. This story raises a question that if marriage is a contract for legal sex in India, where man doesn't need to ask permission and is free to impose himself on his wife. Unfortunately, this is the reality for a considerable number of Indian marriages. The lawyer representative of Independent thought, Gaurav Agrawal, in an interview with Times of India told that “We see a girl under 18 years of age as a child in

Protection of Children from Sexual Offences (POCSO) Act 2012, but once she is married, she is no more a child under the Exception 2 to Section 375 of the IPC. This is totally inconsistent. The truth is that a girl under 15 is still a child, married or not. The parliament has to protect the child.” (Bhattacharya.D, 2017).

The consent for sexual relationship should be increased to eighteen, irrespective of the marital status of girl child because this discrepancy put the girls who are between the age of fifteen to eighteen years of age in a legal vacuum that whether they are protected by law or not. On the other hand, there is no point of classifying the girls under the age of eighteen in two groups that whether they are married or not because Rape is a Rape and it should be punished on the basis of its Marital or Non-Marital status. If a girl says NO then it means NO, there is no further explanation or questions required. Although there are many laws made on the non- marital rape, but marriage can be called as a double- edged sword where the same crime called rape is considered as husband’s right.

### **Conclusion**

The reflection of patriarchal notion and legitimization of misogynist practices in India thoroughly affects the equality notion of Indian constitution and displays its gendered character. The laws discussed here are among the very few legal regulations that brag off masculine supremacy in one way or other. In name of protection of the women, whenever these laws are justified, mostly it denies the right of the women to have an independent identity. Baba Ambedkar since the days of Mahad Satyagraha though talked about the equality of the women, emphasized upon their relief from the upper caste imagination of piousness, the Nationalist supremacist gender discourse remained unaffected. The legal machinery thus with or without intention promotes patriarchy resulting into the emergence of rape culture that not only makes women’ body as accessible product rather creates the premises upon which it could be violated for even satisfying the causes of masculine revenge or animosity.