



Gender and Sustainability: Time for a Human Rights Lense¹

Going Beyond the Waves of Feminism

At Rio Di Janeiro in the year 2012 a non-binding document titled “Transforming our world: the 2030 Agenda for Sustainable Development”, was released by the United Nations, more popularly known as the sustainable development goals. It was a new set of 17 goals agreed upon by the world leaders to make this world a better place. Of those many goals, number 5, 10 and 16 is particularly important for this issue brief. SDG 5 pledges to achieve gender equality across all levels for all the countries. It should be noted that to achieve gender equality not one, but all the existing genders should be allowed a voice and the needs and demands of every gender should be valued. Otherwise we will not be able to reduce inequalities across gender and also in general. SDG 5 is also allied to SDG 10 which pledges to reduce inequality.

Now, whenever we speak of gender equality what comes to prominence that very moment is the oppressed state of the female. A lot has been said over the oppressed state of the females by the feminists. Of them, Simone de Beauvoir is of particular interest. Simone was a second wave feminist and a stalwart of the entire feminist discourse. According to Simone:

“One’s life has value so long as one attributes value to the life of others, by means of love, indignation and compassion” ---- Simone de Beauvoir

We can have a gender sustainable future when we do this apparently simple task of valuing others lives. Sustainability is a complex and contested space that has no one single definition. We are at liberty to define, and chalk our paths to a future that is gender sustainable. A gender sustainable future is that particular point in coming time that provides an equal, unbiased and unabashed voice not based on anybody’s gender identity but based on their identity as ‘humans’. Let ‘love’, ‘indignation’ and ‘compassion’ be the three pillars on which the idea of gender sustainability stands.

For most of our living, we dwell and act on the selfish understanding of self. We consider our well being, foolishly to say the least, removed and independent of the well being of others and thus inflict pain and

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violence without much deliberation. More often than not it is observed violence also follows a certain social and legal patterns. The social pattern is constructed and constituted by patriarchy and its different institutions. It is now common knowledge that violence on woman is a natural outgrowth of the patriarchal set up. The social institution of family (Social Institutions, *Stanford Encyclopedia of Philosophy*.) is tolerant and accepting of violence in more ways than one. Marriage is another family social institution through which patriarchy in majority of the world manifests itself (Hill Shirley A (2012)). From Marital(though not considered an offence in India) to incest rapes, killing and beatings for dowry, honour killings in India, Female Genital Mutilation in various parts of the world, patriarchy has manifested itself in the cruelest of ways. As per the national crime records bureau, in India a total of 34,651 rapes were committed in the year 2015 itself whereas 7,634 women died the same year because they failed on delivering the promised dowry! The lack of respect and commodification of woman is well substantiated by these statistics. However, it should be noted that violence against woman has been considered a serious issue by governments around the world, and it is declining in India, which can be substantiated by the table and graph given below.

Table-1 IPC Crime against women

Serial Number	Year	Total IPC Crimes	Crime against Women (IPC Cases)	Percentage to Total IPC Crimes
1	2011	23,25,575	2,19,142	9.4%
2	2012	23,87,188	2,44,270	10.2%
3	2013	26,47,722	2,95,896	11.2%
4	2014	28,51,563	3,25,327	11.4%
5	2015	29,49,400	3,14,575	10.7%

Source: - National Crime Records Bureau Records

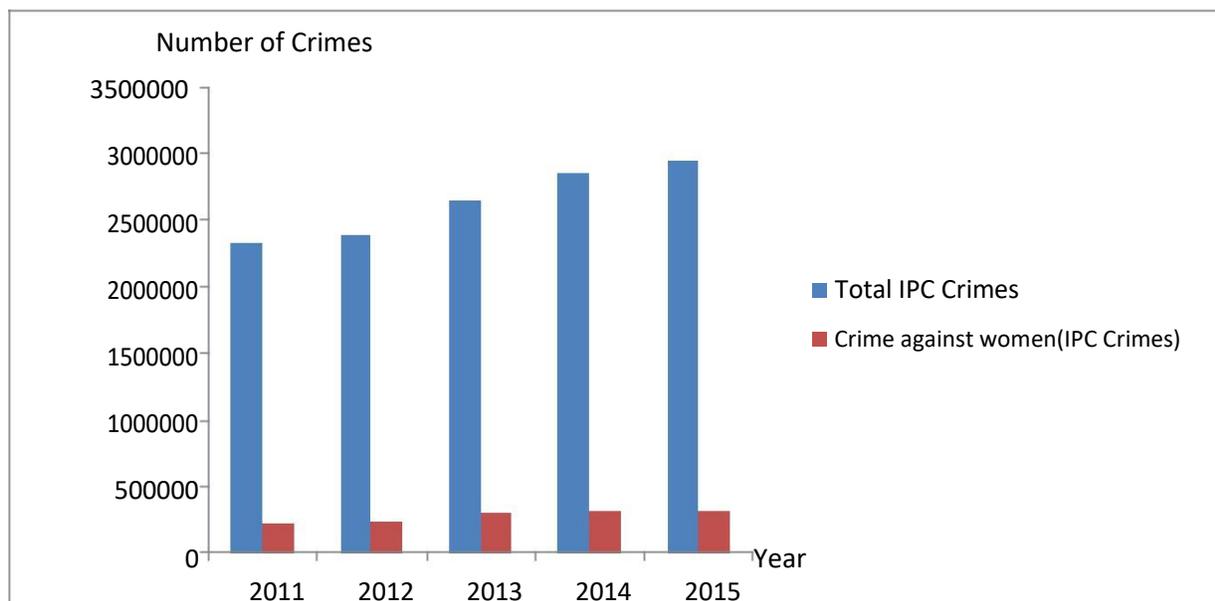


Figure-1 Graph showing IPC crime against women as compared to total IPC crimes

Though the decrease is not really substantial, however, it shows the importance this particular matter receives with the judiciary. In fact, there has been a rampant use of 498-A IPC as well as IPC 376. As per the NCRB (National Crime Records Bureau) a total of 1,06,527 cases were reported in the country during the year 2012 showing an increase of 7.5% over 2011 and an increase of 21.1% over the average of last 5 years (2007 – 2012). In terms of percentage, 43.7% of such crimes in the country were reported from three states only namely West Bengal (19,865 cases), Andhra Pradesh (13,389 cases) and Rajasthan (13,312 cases). Tripura has reported the highest crime rate of 23.4 followed by West Bengal (21.9) and Assam (20.6) as compared to National average of 8.8. These statistics help us to understand how the judiciary empowers the “Other-Man”, the wo(-)man.

It should be interesting to note that this particular lenient and considerate approach of the Indian Penal Code leads to a different friction all together between man and woman in the legal discourse. A legal hierarchy can be observed due to a power-structure where the woman mostly enjoys unquestioned power. It is exasperating that Section 375 of the IPC defines rape with the opening lines “A man is said to commit rape.....” The IPC goes to an altogether different level by reinstating and upholding the belief that men can be *sodomized* and not raped. To reiterate the point of legal hierarchy let us consider the table given below:

Table-2:- Disposal of IPC Cases by Courts During 2012

Sl. No.	Crime Head	Total no of cases for trial including pending cases from previous year	Cases withdrawn by government	Compounded or withdrawn	No. of cases in which trial was completed		
					Convicted	Acquitted or discharged	Total
17	Dowry Deaths (Sec 304BIPC)	37206	0	102	1684	3532	5216
20	Cruelty by Husband or his Relatives (Sec 498A IPC)	426922	613	8162	6916	39138	46054

Source- Purush Adhikar Sangh(2014, March 8), *IPC 498a arrests, conviction rate, statistics show gross abuse of human rights.*

From the table it can be seen that a majority of men were discharged in case of alleged dowry death or cruelty by husband, thus reflecting the extent to which these laws have become the means of oppression by the legally empowered gender of women in India.

Now let us take a look at the experience of Dore Raju, a public prosecutor with the state of Karnataka. In his own words:

"In a recent case, a merchant and his employee who were in a relationship ended up in court," Raju said. "She alleged that he pressed his private parts against her while they were in a godown. There was no removal of clothes. He was convicted in both the trial court and high court and was sentenced to three years in jail. The definition of rape has changed. There is no need of penetration to make it a case of rape. Along with the Negotiable Instruments Act, sections of the Dowry Prohibition Act, Section 498(A) of IPC (harassment of women), The Karnataka Scheduled Caste and Scheduled Tribes (prohibition of transfer of certain land) Act (PTCL Act), the new rape law is also heading towards rampant misuse. As a prosecutor myself, I fought for every case tooth and nail. But the trend of simple cases ending up with allegations under Section 354 (outraging modesty of women) and Section 376 (rape) is alarming." – Dore Raju, Karnataka Public Prosecutor

Source- "NO LOVE IN THE TIME OF AMENDED 376 AS CASES OF 'RAPE' BOOM" (Bangalore Mirror).

Let us take a look at another instance

“ This court had observed on number of occasions that the number of cases where both persons, out of their own will and choice, develop consensual physical relationship, when the relationship breaks due to some reason, the women use the law as a weapon for vengeance and personal vendetta. They tend to convert such consensual acts as an incident maybe out of anger and frustration thereby defeating the very purpose of the provision. This requires a clear demarcation between the rape and consensual sex especially in the case where complaint is that consent was given on promise of marriage ”

-Justice Pratibha Rani, Delhi High Court

Source- Some Women Tend to Convert Consensual Sex into Rape Post Breakup Says Delhi HC [Read Judgment], (Live Law News Network).

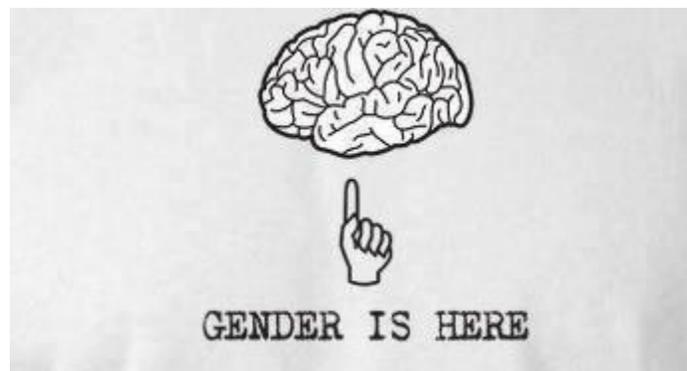
All these instances site the rampant misuse of the existing laws. It should be noted that these laws were meant for women to raise voice against oppression and injustice but some of them have defeated the purpose of these laws by using them for the very acts of oppression and injustice.

The plight of men that has been discussed so far is not in any way an attempt to justify or support the oppression faced by women at every level of society. Women have been oppressed by their male

counterparts for centuries only because the social structure permitted and allowed that to the effect of normalizing it and the statistics provided above bear testimony to this fact. This entire paradigm of injustice is survived on and bolstered by an unequal power structure where a man dominates and dictates the norms of the social structure (Sultana, A. (2012)). To undo all of these injustices the legal system came up with a structure that is partisan to the female. The Indian legal structure in this case again initiated an unequal power flow thereby leaving opportunities for injustice and oppression, only this time the woman enjoyed a privilege. This particular approach of the Indian Judiciary is in direct contradiction with the sustainable development goal of 16 which aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. One of its underlined target is to “Promote and enforce non-discriminatory laws and policies for sustainable development.(16 B)” The Indian judiciary should thus, reconsider the unequal status it gives to the man and woman in the ambit of law.

Beyond all these, there remains the issue of what is the true definition of a gender. All the discussion and debate so far largely functions on the gender duality of male and female. But it is common knowledge that gender is not restricted to that of a male and a female. Fourteen gender types have been identified so far (Kelly, Guy. (2016)).

As it is often said:



Source-Pinterest

However, not a single law in our country pertains to all the other gender categories. In fact the Indian Penal Code puts a big question mark over their existence by upholding IPC 377. Here we can consider the example of Naina, the youngest declared transgender who in her own words “battled depression and suicidal tendencies”, before she came out in public as a transgender woman (Meet Naina, The Youngest Transgender In India To Come out. *Huffington Post.*). As per Shivali, another transgender woman “I have lived a suppressed life” (#Coming Out: Shivali’s Story- Born male, Now Transitioning To Female/Unique Stories from India.). All these statements do not reflect the least of adversities faced by genders other than the male or the female. What is surprising to note is that in the various Sustainable Development Goals brought forward by the UN Gender equality dwells and functions on the very understanding of gender as male and female. The SDG-5 that reads gender equality and women empowerment do not once give an idea that they are aware that gender roles cannot be narrowed to males and females. They go on to give an elaborate description of how females are behind male but not

how the others are light years behind these two genders. (SDG 5: Achieve gender equality and empower all women and girls.)

So, if we are striving for equality we must first remember that it is not about appeasing the already represented, discussed, and accepted gender definitions. The onus is not on the dominant to make space or be inclusive or accommodative of the dominated. The onus of the dominant is that it should leave its idea or power to dominate. It should also be remembered equality is not role reversal. A glaring example of that is the unnecessary power given to females in the ambit of law. To undo the injustice done to women we should be careful to not make them the very devil we are trying to fight against. In the same light it is not on the hegemonic genders of male and female to make 'space' for the 'others'. It is for the hegemonic to 'realize' that we 'all' exist and have existed since times immemorial. We need to remember we all have one uniting identity amongst it all, and that is we all are 'Humans'. As Simone de Beauvoir put it:

"All oppression creates a state of war; this is no exception

The ideal should be to be capable of loving a woman or a man; either, a human being, without feeling fear, restraint, or obligation."

An effort to achieve representation of the different gender identities is absolutely necessary on the part of the Indian judiciary if the SDGs 10 and 16 are to be met. A lopsided representation will further the existing inequalities thus making it impossible to achieve the SDGs by 2030.

We as a society, as a collective, have survived many wars, many epidemics; let's also survive this one by focusing on 'humanism'. It is also important to focus on a humanitarian aspect to achieve the SDGs as it is an explicitly underlined target of SDG 16 to set up independent national human rights institutions in compliance with the Paris Principles.

As Marx says:

"The philosopher's have only interpreted the world, in various ways; the point is to change it."

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