GENDER JUSTICE- STILL A FAR CRY IN INDIA

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Abstract
This article seeks an answer to the question that why even after so many legislation and constitutional safeguards gender justice in India is still a far cry and this article also focuses on the problems which we face in our daily lives which hinder our path towards the attainment of the goal of gender equality. The reasons behind this deplorable condition are the deep-rooted patriarchy in our culture and lack of proper education which resulted in a psychological phenomenon of overlooking and ignoring the role and importance of women. despite new efforts which have made by the current government and other governments, to protect and safeguard the interests of women, it continuously fails to achieve the goal of balance society because of the reasons that the government, even the judiciary, is heavily affected by this dominant patriarchy which results in an ineffective implementation of the enactments which have been legislated by the legislature.

A. Introduction
Gender justice is a combination of two words gender and justice. The word gender is basically an interrelationship of three dimensions namely body, identity and expression and these three dimensions basically determine the ultimate characteristics of men and women. According to world health organization, Gender refers to the socially constructed characteristics of women and men – such as norms, roles and relationships of and between groups of women and men. It varies from society to society and can be changed. While most people are born either male or female, they are taught appropriate norms and behaviors – including how they should interact with others of the same or opposite sex within households, communities, and workplaces. When individuals or groups do not “fit” established gender norms they often face stigma, discriminatory practices or social exclusion – all of which adversely affect health. It is important to be sensitive to different identities that do not necessarily fit into binary male or female sex categories.” Hence gender is more of a societal point of view towards the personality of a person.

While the term justice, though having a protean face Earnest Barker\(^1\) in his seminal work, “Principles of Social and Political Theory” tries to define word justice and noted that the term ‘justice’ is derived from the Latin word jus which embodies ‘the idea of joining or fitting, the idea of bond or tie’. In other words, we can define justice as the kind of behavior or treatment which is not unjust.

Gender justice can be as a concept which focuses on a world where there is no discrimination on the basis of the person’s gender. It goes without saying that why there is the need for gender justice as

\(^1\) Earnest Baker, Principles of Social and Political Theory, (1967)
Friedrich Engels in his classical writing “Origin of the Family, Private Property and the State” pointed out that “Woman was the first human being that tasted bondage. Woman was a slave before slavery existed”. Since the eternity men and women are distributed various types of societal roles there are innumerable reasons behind that but primarily because of biological, physical and psychological structure and this resulted in the basis of the difference in social behavior and formation of gender roles and in due course of time these roles became very stereotypical of women. That was the time when the seeds of difference have been sown in mankind since that time women are acting subservient to men. Till this time various movements and reforms have been occurred and done but still we as a society got failed somewhere and that place is mind, which is being possessed by the patriarchal ghost and the current world is not devoid of this ghost instead the ghost has become more powerful than ever now the current world is quite a tough world for women and India is no different case.

In India, we chant,  
Yatra Naryastu Pujyante Ramante Tatra Devata Yatraitaastu Na Pujyante Sarvaastrafaalah Kriyaah

"Where Women Are Honored, Divinity Blossoms There; And Where They Are Dishonored, All Action Remains Unfruitful."

But in reality the situation is otherwise; recently in global entrepreneurship summit Prime Minister Narendra Modi inaugurated an event, the theme of which is ‘Women First, Prosperity for All. Before this, he launched a national programme called Beti Bachao (Save Our Girls). All these activities illustrate that how deplorable our conditions are when it comes to the security and protection of young girls and women let alone justice. According to the National Crime Records Bureau of India, reported incidents of crime against women increased 6.4% during 2012, and a crime against a woman is committed every three minutes. Likewise, In a survey conducted by the International Men and Gender Equality Survey (IMAGES) it found that 65% of Indian men believe women should tolerate violence in order to keep the family together, and women sometimes deserve to be beaten. In India, a woman is raped every 29 minutes. Incidents of reported rape increased 3% from 2011 to 2012. Incidents of reported incest rape increased 46.8% from 268 cases in 2011 to 392 cases in 2012. The statistics are nothing but a proof that India is at war with its women and justice for them is still a far cry.

B. Women and the law

Until relatively recently, women were legally invisible. Inheritance laws passed property from fathers to sons, and marriage laws passed women from fathers to husbands as if they were property. Children were the property of their father and belonged to their father in the case of divorce. Even the money or property that women-owned independently before marriage became the property of the husband on marriage. These legal patterns have existed in both Western and Eastern cultures. However it is not difficult to see how it was maintained: by preventing women access to a legal voice, through

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2Frederich Engels, ‘Origin of the Family, Private Property and the State’ (1884)
either standing in court or the vote, and by preventing women from accumulating their own wealth, there have been few means of enforcing a more equitable status for women. Ultimately, change began through the efforts of women to organize themselves to gain power in numbers where it was not available any other way. Hence the need for women-oriented legislation arose due to centuries of domination and subjugation did by men over women; women are the suppressed lot. They are the target of a myriad of violence and discriminatory practices done by men all over the world. India is no different, like others, Indian women also have been subjected to innumerable atrocities, from the time immemorial women have always been put away. To either way all these obnoxious traditions and discriminations various provisions has been incorporated in Indian constitution and various other legislation also been made. The Constituent Assembly, itself, was a male-dominated body with only 15 women members out of the total of 296 members. However, women like Rajkumari Amrit Kaur and Hansa Mehta were placed on the important committees in the sub-committee on fundamental rights. In constitution assembly debates Hansa Mehta pointed out that “….The average woman in this country has suffered now for centuries from inequalities heaped upon her by laws, customs and practices of people who have fallen from the heights of that civilization of which we are all so proud……They are put behind the purdah, secluded within the four walls of their homes, unable to move freely. The Indian woman has been reduced to such a state of helplessness that she has become an easy prey of those who wish to exploit the situation……” in that very same debates Renuka Ray while speaking for equality of status and justice for women said that “….Through the centuries of our decadence, subjection, and degradation, the position of women has gone down until she has gradually lost all her rights both in law and in society! Hence, the erudite and farsighted framers of our “ideal” constitution have felt the importance and acknowledged the role of women in a balanced society and thus for attaining the goal of “societal peace and harmony” they incorporated the sacrosanct ideals of justice in the form of certain rights especially for women so as to transform these abstract ideas into a concrete form.

(i) Constitutional Rights
The rights and safeguards enshrined in the constitution for women in India are listed below:

❖ Preamble:
The Preamble to the Constitution of India assures justice, social, economic and political; equality of status and opportunity and dignity to the individual. Thus it treats both men and women equal.

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Fundamental rights:
1. The state shall not discriminate against any citizen of India on the ground of sex [Article 15(1)].
2. The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favor of women [Article 15(3)].
3. No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex [Article 16(2)].
4. Traffic in human beings and forced labor are prohibited [Article 23(1)].

Directive Principles of State Policy:
5. The state to secure for men and women equally the right to an adequate means of livelihood [Article 39(a)].
6. The state to secure equal pay for equal work for both Indian men and women [Article 39(d)].
7. The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength [Article 39(e)].
8. The state shall make provision for securing just and humane conditions of work and maternity relief [Article 42].

Fundamental duties:
9. It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women [Article 51-A(e)].

Other Constitutional Provisions:
10. One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women [Article 243-D(3)].
11. One-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women [Article 243-D(4)].
12. One-third of the total number of seats to be filled by direct election in every Municipality shall be reserved for women [Article 243-T(3)].
13. The offices of Chairpersons in the Municipalities shall be reserved for women in such manner as the State Legislature may provide [Article 243-T(4)].

(ii) Legal Rights to Women:

The following various legislations contained several rights and safeguards for women:

1. Protection of Women from Domestic Violence Act (2005) is a comprehensive legislation to protect women in India from all forms of domestic violence. It also covers women who have been/are in a relationship with the abuser and are subjected to violence of any kind—physical, sexual, mental, verbal or emotional.
2. Immoral Traffic (Prevention) Act (1956) is the premier legislation for prevention of trafficking for

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commercial sexual exploitation. In other words, it prevents trafficking in women and girls for the purpose of prostitution as an organized means of living.

3. **Indecent Representation of Women (Prohibition) Act** (1986) prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.


5. **Dowry Prohibition Act** (1961) prohibits the giving or taking of dowry at or before or any time after the marriage from women.

6. **Maternity Benefit Act** (1961) regulates the employment of women in certain establishments for certain period before and after childbirth and provides for maternity benefit and certain other benefits.

7. **Medical Termination of Pregnancy Act** (1971) provides for the termination of certain pregnancies by registered medical practitioners on humanitarian and medical grounds.

8. **Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act** (1994) prohibits sex selection before or after conception and prevents the misuse of pre-natal diagnostic techniques for sex determination leading to female feticide.

9. **Equal Remuneration Act** (1976) provides for payment of equal remuneration to both men and women workers for same work or work of a similar nature. It also prevents discrimination on the ground of sex, against women in recruitment and service conditions.

10. **Dissolution of Muslim Marriages Act** (1939) grants a Muslim wife the right to seek the dissolution of her marriage.

11. **Muslim Women (Protection of Rights on Divorce) Act** (1986) protects the rights of Muslim women who have been divorced by or have obtained divorce from their husbands.


13. **Indian Penal Code** (1860) contains provisions to protect Indian women from dowry death, rape, kidnapping, cruelty and other offences.

14. **Code of Criminal Procedure** (1973) has certain safeguards for women like obligation of a person to maintain his wife, arrest of woman by female police and so on.

15. **Indian Christian Marriage Act** (1872) contain provisions relating to marriage and divorce among the Christian community.


17. **Hindu Marriage Act** (1955) introduced monogamy and allowed divorce on certain specified grounds. It provided equal rights to Indian man and woman in respect of marriage and divorce.

18. **Hindu Succession Act** (1956) recognizes the right of women to inherit parental property equally with men.

19. **Minimum Wages Act** (1948) does not allow discrimination between male and
female workers or different minimum wages for them.

20. Mines Act (1952) and Factories Act (1948) prohibits the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides for their safety and welfare.

21. The following other legislation’s also contain certain rights and safeguards for women:

   1. Employees’ State Insurance Act (1948)
   2. Plantation Labor Act (1951)
   4. Legal Practitioners (Women) Act (1923)
   5. Indian Succession Act (1925)
   6. Indian Divorce Act (1869)
   7. Parsi Marriage and Divorce Act (1936)
   8. Special Marriage Act (1954)
   10. Indian Evidence Act (1872)

22. National Commission for Women Act (1990) provided for the establishment of a National Commission for Women to study and monitor all matters relating to the constitutional and legal rights and safeguards of women.

23. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act (2013) provides protection to women from sexual harassment at all workplaces both in public and private sector, whether organized or unorganized.⁶

C. Judicial inroads into gender justice

The judiciary is the branch of the state which administers justice in accordance with the law time being in force. This branch of the state is often tasked with ensuring equal justice under law and in the last 60 years of its existence, the Indian judiciary has made long-lasting contributions to the system of governance that has impacted the life of the people and the nation on various occasions the apex court of the country made us realize that it has understood the truth that it is only through the way of women empowerment we, as a nation, can achieve the ideals of gender justice. What is the use of the so-called “economic development”? When around half of the population of the country is suppressed and inactive, we can only make ourselves fool by turning a blind eye and living in the illusion of economic prosperity and social justice. Therefore, the Supreme Court is trying its best to break down the orthodox societal tradition and norms that look down upon women have given judgments to prevent violence against women and to put them equally as men in the society.

There are several judgments which shed light on the activism which is done by Supreme Court in Vishaka & Ors. V. State of Rajasthan &Ors.⁷ where supreme court issued Guidelines to prevent sexual harassment against women in work-places. However, this verdict was later neutralized by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. When it came to the

⁶Ibid 5.

⁷[1997] 6 SCC 241
dignity of prostitutes, supreme court in its progressive judgment of Budhadev Karmaskar v state of West Bengal stated that what if she is a prostitute, she is a women and human being too and hence they also have a right to live with dignity under Article 21 of the Constitution of India their problems also need to be addressed. In lillu @ rajesh and another v state of Haryana, where for the first time, the Supreme Court realized the agony and trauma of a rape victim who had to go through two-finger tests and held that it is a violation of victim’s right to privacy and dignity. Nargesh Meerza v Air India that a woman shall not be denied employment merely on the ground that she is a woman. This leads to violation of Article-14 of the Constitution. In the present case, an air-hostess of Air India challenged the service rules of Air India where air hostesses were barred from getting married within a period of 4 years from the date of their joining. The rule further stated that the airhostesses shall lose their jobs if they become pregnant and also that they will retire at the age of 35 years (exception can be made only if managing director extends the term by 10 years at his own discretion). The Apex Court that even though the first provision is reasonable, the second and third provisions are cruel, arbitrary and unconstitutional.

In Shamim Ara v. State of U.P., the Supreme Court, in this case, held that the requirements of a valid talaq are: that the talaq must be for a reasonable cause; and It must be preceded by attempts of reconciliation between the husband and the wife by two arbiters – one chosen by the wife from her family and the other by the husband from his family. If their attempts fail, talaq can be affected.

Since our judiciary is as much a part of our societal structure as our executive or our lawmakers, it shares the same prejudices and biases as the society at large. On top of that, much of the judiciary is seriously compromised by its own selfish links to men and grovels wielding power and political clout. All this ensures that the judicial system often takes the most regressive, reactionary stand on social issues.

Indeed these are a few glaring examples of those judgments which shows the brighter and the better side of the judiciary but if one looks closely and look precisely into the history of the nature of decisions of supreme court then he or she will find that there are several judgments of this court which are problematic and will show a tendency that Indian courts have had a long problem accepting women’s free choices. The problem again arises only because of one reason and the reason is gender

8 <https://indiankanoon.org/doc/1302025/> accessed on 5 June 2018
9 <https://indiankanoon.org/doc/78844212/> accessed on 5 June 2018
11 <https://indiankanoon.org/doc/1903603/> accessed on 5 June 2018
12 [2002] 7 SCC 518
13 ApoorvaMandhani, ‘Women’s Day Special: 15 Supreme Court judgments that made India a better place for women’, (March 8, 2015)<http://www.livelaw.in/womens-day-special-15-judgments-that-made-india-a-better-place-for-women/> accessed on June 5, 2018
inequality. The participation of women in this system is so deplorable that it is severally putting the whole justice delivery system in jeopardy for example if one look the decision of Justice Markanday Katju in D. Velasamy in which he had termed a second Hindu wife as ‘mistress’ and ‘keep’, and thus she was not entitled to maintenance. But in 2011, another bench which included a female judge, Justice Gyan Sudha Mishra, opined that a deserted wife is entitled to marriage regardless of validity of her marriage. Justice Anil Dave and Adarsh Goel’s judgment in Prakash v. Phulwati refused to give retrospective effect to a social welfare legislation, i.e., the 2005 Amendment to the Hindu Succession Act under which daughters were also for the first time recognised as coparceners. Thus, the pro-women judgment of the Karnataka high court was reversed by the apex court. The high court had given the benefit of the new amendment to the daughter as the Supreme Court itself in Geetha’s case had held that any development in law will inevitably apply to pending proceedings. Very strangely in the second part of the same judgment, Justice Goel expressed concerns about Muslim women and the discriminatory nature of Muslim Personal Law though he did accept that the matter was not in dispute before them. He also noted that the Supreme Court itself in Ahmedabad Women Action Group had held that such issues are a policy matter and are best left to the wisdom of the government, yet he went ahead and directed the registry of the court to file a public interest litigation on the discriminatory provisions of Muslim Personal Law. Why did the court not consider discriminatory provisions of the Hindu Succession Act, which were very much before it, i.e., a Hindu mother, Hindu wife and Hindu daughter-in-law are still not coparcener? Similarly, if there is an issueless Hindu couple, the property of the husband goes to his parents, but strangely even the property the wife goes to the husband’s parents rather than her own parents. Similarly, a Hindu can deprive his/her daughter from self-acquired property through testamentary powers of will. Under Muslim Personal Law, on the other side, no heir can be deprived of his/her share and through a will, not more than one-third of property can be given to a non-heir.17

Exactly a year later, in Narender v. K. Meena the same bench of Justice Dave and Goel passed another strange order which came as a bolt from the blue for women. In this case, the learned judges explicitly held that under Hindu traditions, a wife on marriage is supposed to fully integrate herself with her husband’s family and if she refuses to live with her in-laws, it would amount to cruelty and the husband would be entitled to divorce her under the Hindu Marriages Act. Here, too, the high court had ruled in favor of the wife. But the Supreme court, reversing the high

14[2010]10 SCC 469
15Civil Appeal No.7217 of 2013
162009(3)KLI484
17Faizan Mustafa, ‘Judicialaberrations on gender issues are worrisome’,(8 March2018),<https://thewire.in/women/is-the-indian-judiciary-going-back-on-gender-justice> accessed on 5 June 2018
18Civil appeal no. 3253 of 2008
court’s order observed that “in India, generally people do not subscribe to western thought, whereupon getting married or attaining majority, the son gets separated from the family. In normal circumstances, a wife is expected to be with the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband and normally without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her.”

Recently in much celebrated Hadiya judgment where the supreme court hits a tight slap in the face of love jihad by ruling that adults choosing both their religion and whom to marry are both fundamental rights guaranteed by Constitution, some feminist lawyers stirs the controversy that gender has played a role in the Hadiya case. They argue the questions like custody and protection of Hadiya, the questions against the freedom of a woman to love a man of her choice, the questions against a woman to have a mind of her own, these questions certainly wouldn’t have been raised by anyone, in public discourse or elsewhere, if it was not for her gender. Likewise, Prompted senior lawyer Indira Jaising, who was representing Shafin Jahan in this case asked a question if the Supreme Court’s decision was driven by gender. Jaising asked the court if it would have acted in this manner had Hadiya been a man. The supreme court, however, answered in negative. But the question still remains in front of law and in front of the courts that what if in the same scenarios a male becomes the victim? The answer is no the recourse wouldn’t have been the same because the law itself is arguably embedded in patriarchal structures. Which makes it difficult to ignore the gender implications of even seemingly gender-neutral laws. Undoubtedly, a woman’s freedom to choose her husband, freedom to have children, freedom to work and freedom to live her life have come under threat. This is not the first case in which the higher judiciary has ignored the law and been driven by gender. In the Farooqui judgment, for example is a disastrous illustration that shows laws resistance to change in this case the Delhi High Court suggested that a woman’s feeble no may mean a yes. There was no explicit statutory basis supporting that interpretation of the law. As in Hadiya’s case, the rape judgment seemed to be influenced by patriarchy and culture in addition to the law.

These inconsistencies in the judgments of supreme court somewhere exposes our society and exfoliate the politics behind the veil and the truth is that our society is deeply embedded in patriarchal psyche and it’s really a deplorable situation that even after 7 decades of independence our women didn’t get their dues.

D. No Country for Women

According to the UN Women website, “A safe city is one where women and girls can

19Ibid, 16
20CRIMINAL APPEAL NO. 366 OF 2018

21CRLA.944/2016
22ShoaibDaniyal, ‘Not just Hadiya: Indian courts have had a long problem accepting women’s free choices’, (4 December 2017)<https://scroll.in/article/859846/hadiya-not-the-only-case-courts-in-india-have-long-had-a-problem-dealing-with-gender> accessed on June 5, 2018

www.supremoamicus.org
enjoy public spaces and public life without fear of being assaulted...one that promotes equal opportunities for men and women in all the spheres of social, economic, cultural and political life.””23

(i) The Rape Culture
According to the 2013 annual report of national crime report bureau rape is the fourth most common crime against women and approximately 95% of them are done by the ones who know them. Imagine in such situation can one expect a girl or a woman to go anywhere with a calm heartbeat if she can ever trust those men around her with this shocking realization that a fellow one may want to harm them just because they can. After the barbarous incidence of Kathua rape and Unnao rape 49 retired civil servants, in an open letter to Prime Minister Narendra Modi, wrote that “……The bestiality and the barbarity involved in the rape and murder of an eight-year-old child shows the depths of depravity that we have sunk into. In post-independence India, this is our darkest hour and we find the response of our government, the leaders of our political parties inadequate and feeble. At this juncture, we see no light at the end of the tunnel and we hang our heads in shame. Our sense of shame is all the acuter because our younger colleagues who are still in service, especially those working in the districts and are required by law to care for and protect the weak and the vulnerable, also seem to have failed in their duty…”24 It goes without saying that how depressing and suffocating it is that Now, in India little girls like Alifa and the 11-year-old girl in Gujarat whose dead body was found in a waste bin with 80 wounds are not safe tolet alone the safety concerns of a woman.

What becomes more dangerous is that rape is being used as an instrument of political coercion now it’s being used by megalomaniacs as a means of intimidation and control which function to perpetuate the subordinate status of women and men and now, children in patriarchal or more or less criminal societies. The eight-year-old girl's rape and murder in Kathua, Jammu, was primarily to scare away her community, Bakerwals, from that region. And today there is a movement spearheaded by local leaders with the support of two erstwhile BJP ministers of the state to protect the rapists. In this case, rape is a tool for control over resources, a war supported by right-wing politics. In Kandhamal and Gujarat, women were raped not just for being women, but for being Christians or Muslims. In fact, the rapists have even articulated this while raping. Women in Kashmir and the Northeast were raped in large numbers not just for being women, but for being part of a marginalized identity. If one looks closely then he will notice a pattern of repeated targeted attacks on women of minority religious communities in which rape and sexual harassments have been employed as

23 Ashwaq Masoodi, ‘No country for women’, (17 February 2017)<https://www.livemint.com/Leisure/H1J0QO2sUDNCh6El66ubcl/No-country-for-women.html> accessed on June 5, 2018

24 The wire staff, ‘Former Civil servants slam Modi’s ‘belated promises’ on Kathuva, Unnao Rape Cases, (16 April 2018)<https://thewire.in/politics/narendra-modi-open-letter-kathua-unnao> accessed on June 5, 2018
instruments of violence by workers of political parties.\textsuperscript{25}

At present in India, the marital rape is not recognized and exception 2 of section 375 explicitly excludes all marital acts of violence from the ambit of the word rape hence in India it is not illegal for a man to rape his wife.

(ii) Marital Rape
Marital rape is a widespread problem in India. According to a 2018 National Family Health Survey, more than 80 percent of married women who have experienced sexual violence named their current spouse as the perpetrator in fact marital rape exists in facts but not in law and hence it should be decriminalized as a woman should be entitled to refuse sexual relations with her husband as the right to bodily integrity and privacy is an intrinsic part of article 21 of the constitution.

After The brutal rape of Jyoti Singh (Nirbhaya) in December 2012 led to a revamping of laws that dealt with rape and sexual violence against women. The Justice Verma committee, tasked with the drafting, recommended removing the exception for marital rape. Clearly the opposition to criminalizing it is non-partisan. Government’s lawyers argued for the need to increase “moral and social awareness” to deal with marital rape, and said that it would be unfair to rest all the burden of proof on the husband. Leave aside the minor fact that 51 countries, including the UK – on the basis of whose system our penal code has been drafted – have criminalized marital rape. With Section 375, which criminalizes rape, making an exception for marital rape, and no other law giving wives recourse to justice, there’s very little the Protection of Women from Domestic Violence Act of 2005 can do.\textsuperscript{26}

(iii)Women in the personal laws
Isn’t it sound like an oxymoron: India is a secular country but still it has personnel laws which are based on religious beliefs and sentiments? Well, the rationale behind this is purely subjective and those who support this notion argues that minorities in India and the people who believe in these religions are not ready for it as they are highly sentimental towards their religions and their religious practices and therefore cannot be tampered with. India, in theory, is a purely secular nation with freedom of religion at the same time it also prohibits anything that might offend religious sensitivities. However a marked feature of all religious scriptures that women have fewer rights than men and somewhere it manifests the woven patriarchy in all scriptures.

Personal laws in our country are shining beacons and often personal laws are retrograde, discriminatory and do not do ______

\textsuperscript{25}Ujjawal Chaudhari,' sorry, but rape is political issue in India,'(April 19, 2018) <https://www.dailyo.in/variety/pm-modi-do-not-politicise-rape-unnao-kathua-rape-cases-london-uk-visit-crime-against-women/story/1/23568.html> accessed on June 4, 2018

\textsuperscript{26}Maya Mirchandani,’ Triple Talaq and Marital Rape: Politics and Patriarchy Trump Gender Justice’, (31 August 2017) <https://thewire.in/law/triple-talaq-marital-rape-patriarchy-politics-gender-justice> accessed on June 4 2018
justice between women and men, for example the Hindu Succession Act, 1956, though amended in 2005 to give an equal share to daughters in inheritance, still remain discriminatory up to some extent like Section 15 of the act says If a Hindu woman dies without a will, her property goes to her husband’s heirs if there is no spouse or children. The law assumes that the women become part of the husband’s family after marriage. In Hindu guardianship laws Section 6 of the Hindu Minority and Guardianship Act, 1956 considers the father to be the ‘natural guardian’ of a Hindu child. The mother is considered a guardian only in the absence of the father or if the child is under five years of age. Parsi laws Children born to a Parsi woman and a non-Parsi man are not considered Parsi in the eyes of the law. A non-Parsi wife of a Parsi man can inherit only a part of his property, but his children can inherit it completely as they are considered Parsis.

(iv) Adultery

Adultery is defined in sec 497 of IPC as “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 to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case, the wife shall not be punishable as an abettor.” Section 198 of the Code of Criminal Procedure, 1973, says only the husband of the married woman, who had sexual intercourse with another man, could file a case against the male who indulged in the act with her. The adultery law in India is a throwback to the times when women were considered as a property of their husbands. So, if a man sleeps with the property of another man, how dare he? A married woman, however, cannot challenge another woman, as to how dare she slept with her husband.27

On the basis of aforementioned factors, the question arises that when we have the law then why there is not a proper enforcement of these laws. Every political party has its own ideologies and ambitions but when at a given point of time that party forms the government then it’s the duty of that government to work for the public good and not for its own ulterior motives. Now, Gender violence is not limited to the limits of religion nor to the limits of class or caste but it has now spread its wing into the cruel political manifestations also. Patriarchy is universal, and it takes away a woman’s agency over her body and her mind.

E. Conclusion

All the aforementioned statements and evidence proves the reason that why after so many years of independence and so many welfare legislations we, still, are way behind to achieve it, and why it is still a far cry in India. It is not that this goal cannot be achieved it can be achieved but it will, however, take time, money and a combined effort on the part of many people. Firstly we have to understand there is nothing we as a

27Avani Bansal, ‘India needs to debate about law on adultery’, (February 7, 2017)<http://www.livelaw.in/india-needs-debate-law-adultery/>accessed on June 4 2018
society can give to women than acknowledgment and recognition because as Michael J. Sandel rightly puts it out “Justice is not only about the right way to distribute things. It is also about the right way to value things.” And if we expect that women should get the same freedom as men, they do the same work as men do, they breathe the same air as man breathe then we must provide them the same things and environment which we provide to men. We have to leave our unrelenting stubborn and almost maddening proclivity towards patriarchy. We must ensure that all groups and communities can express their voice without fear; we have to make it ensure that every citizen of India, not the few, should get the benefit of the profit of the country. We have to make women more visible and increase their role in public life as well as in policy making. Robert Kennedy has very well said that, The glory of justice and the majesty of law are created not just by the constitution, nor by the courts, nor by the officers of the law, nor by the lawyers but by the men and women who constitute our society who are the protectors of the law as they are themselves protected by the law. Being a man is certainly takes more than that of being a male and a real man is a man who treats a woman like a human in a society which heavily undermines the importance the role of women.

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