



STATUS OF WOMEN IN INDIA AND THE RELATED LEGAL PROVISIONS: PROBLEMS AND PROSPECTS

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ABSTRACT

This paper aims to explore the challenges faced by women in India and highlights the problems and prospects with regard to women related laws. The paper starts with a brief introduction of the status of women in India throughout the Historical phases, followed by the challenges to the dignity, integrity and safety of women in the country. The article is also an attempt to grapple with the several challenges which are faced by women in India like Rape, Harassment, Domestic Violence, Female foeticide, etc. Simultaneously, the paper discusses the steps taken by the government to deal with this threat to the safety of its female citizens. This paper seeks to further analyse the loopholes in the laws which have been made with respect to women. The paper is an outcome of an exploratory research carried out by the researcher in order to understand the impact of these laws on both – women and the society at large.

KEYWORDS- Women's rights, Violations, Gender, Gender Equality, Violence

I. INTRODUCTION

The United Nations declared 'Gender Equality and Women Empowerment' as one of the eight 'Millennium Development Goals' in its Millennium Summit, 2000. However, observing the conditions

prevailing in our country, these goals are too far from being realised. India became independent in the year 1947, however, women in the country are still struggling to gain recognition in the society.

The women play a multilateral role in the society as a care taker of the family, as a bread winner in many families, as a service provider to the society. But, in spite of the fact that they contribute to the society just as much as their counterpart (males) does, still they have to face several restraints upon themselves which hinders their progress as an individual in the society.

In the 19th century the women emerged as a distinct interest group which put forward its demands to gain equal rights as men in the society. The inequalities were merely gender-based and hence, were considered baseless.

The term 'Women Empowerment' implies the ability of a woman to take her decisions independently which will help her in ensuring a successful life.

It is very easy to talk about the sufferings of women i.e. 'to sympathise' but it is as difficult 'to empathise' with them.

"You never really understand a person until you consider things from his point of view...until you climb into his skin and walk around in it". — Atticus Finch

The moment the entire society is able to understand the suffering of women, they'll be able to help them in coming out of the clutches of the evils that they are tied down to, in the society. The Indian society claims to have modernised itself, which is true to some extent, but what about those sectors of



society which are still not able to come out their 'imaginary bubble' of the belief that 'women are inferior to men'. Ignorance means being afraid of change and a society must be dynamic, it should change in accordance with the changing needs of its people. Thus, people must talk about these issues openly rather than ignoring them altogether. People in the society must put forward their opinions as an "Opinion is the only medium between knowledge and ignorance".

It is a very difficult task to understand the status of Indian women across the historical phases. As remarked by Ms. Romila Thapar, A very famous historian:

"Within the Indian Subcontinent, there have been infinite variations on the status of women diverging, according to cultural milieu, family structure, class, caste, property rights and morals".¹

The objective of this paper is to grapple with the challenges faced by women in India like Female foeticide, immoral trafficking, rape, dowry, denial of inheritance rights, domestic violence, etc. and to suggest the strategies to deal with these challenges.

II. POSITION OF WOMEN IN DIFFERENT HISTORICAL PHASES

VEDIC PERIOD

During this period, women enjoyed a fair amount of freedom and equality. They participated in all the activities as men and

¹ Romila Thapar, "Looking Back in History" in Devika Jain, Indian Women (Publication Division, Ministry of Information and Broadcasting, Government of India, New Delhi 1975)

in all spheres of life as men and were even allowed to study in *Gurukuls* and to undergo *Upanayana* rite. Many women like Atreyi, Lopamudra, Indrani, inter alia, excelled and were accomplished in the art of music, dance and in some instances, even warfare. Women held a very respectable position in the society and they were considered the *Ardhangini* of their husbands in every sense; for instance, a man was not allowed to perform any religious rites without his wife. Therefore, a woman cherished the ideals of liberty, equality and cooperation in the society during the Vedic period, unlike, the contemporary western world.

This period can also be characterised by the freedom of women to choose the men they wanted to marry (*Swayamvara* concept was quite prevalent), the absence of purdah system, rare instances of polygamy. Widows were also not prohibited from remarrying. Widows even had the option to perform *Niyoga*².

POST-VEDIC PERIOD

This was the phase in Indian history when the status of women suffered a setback as various restriction were put on their rights and privileges by the Manusmriti. The society started transforming itself into a patriarchal character by giving increasing authority to man in all spheres of life. Education for women, which had been an accepted norm in the past was neglected in the post-vedic period and slowly and gradually, women were totally denied to get education. In this period, the women were

² An ancient Hindu tradition, in which a woman (whose husband is either dead or is incapable of fatherhood) would request and appoint a person for helping her bear a child.



not allowed to be a part of the *Upanayana ceremony*, thereby closing the last door to formal education. The marriageable age of women was brought down to 9 to 10 years, which catapulted the evil practice of pre-puberty marriages. Even though the women were culturally and socially subordinated during this period, they had a very important right i.e. their right to own property, particularly the *Stridhana*. Stridhana, as defined by Manu is: “that which was given to her before the nuptial fire, in bridal procession, in token of love and which she has received from brother, mother, father or husband”.³

BRITISH PERIOD

At the inception of the colonial era, the status of women and their identity was completely dependent upon their husbands, the men.⁴ They were denied the access to education and many women were even denied their basic rights making their life a living hell. In short, it can be said that they had no access to social justice and equal rights in the society. they had no knowledge of their basic rights, due to illiteracy, economic and social subordination and many other factors⁵

Due to the western impact on the Indian society, a drastic change was witnessed in the behaviour, attitude and the pattern of living of Hindu society. The English language opened the gateway to the

ideology of *Liberalism*.⁶ Which stressed upon the ideals of liberty, equality and respect for individualism, etc.

During this period, two major movements took place in India which contributed a lot to the upliftment of women in the society. the two movements were – *The Social Reform Movement Of 19th Century* and *The Nationalist Movement Of 20th Century*. These movements were mainly taken up to raise the question of equal status of women in the society.

The 19th century movement brought attention to social issues like Sati, status of widows w.r.t. their ill-treatment and denial of remarriage to them, child marriage, education for women, etc. Social reformers like Raja Rammohan Roy, Swami Dayanand Saraswati, Aurobindo, etc. had a major role to play in this reform movement.

The 20th century movement paved way for active participation of women in various political activities by boosting their confidence and giving them strength to come forward and revolt, to demand for their rights in the society, in order to come at par with men.

Many important Acts were enacted by the British Government to do away with certain social evils in the Indian society, some of them are - **Sati Abolition Act (1820)**, **Widow Remarriage Act (1856)**, **Ban on Female Infanticide (1870)**, **Married Women’s Property Act(1874)**, **Abolition**

³ A.S. Altekar, *The Position of Women In Hindu Civilisation (Motilal Banarasidass, Delhi 1962)*

⁴ J.S. Mill (1840). *The history of British India* London, (1840) P.P. 312-313.

⁵ Manu Smriti with six commentaries, Bombay (1886)

⁶ *Liberalism is a political philosophy founded on the ideals of Liberty and Equality*



of Devadasi System (1929), Child Marriage Restraint Act (1929), etc.⁷

III. A BRIEF MAPPING OF THE VIOLATIONS OF WOMEN'S RIGHTS IN INDIA

This section highlights a range of violations of the most basic human rights of women in India and the strategies which the government has taken up to deal with the same.

CHILD MARRIAGE (Bal-Vivah)

This practice was not prevalent in the Ancient India, it originated in the Medieval era. This concept had adverse effects on the female population at large who were already fighting to have a respectable position in society to make a life for themselves when this practice came in. Child brides often suffered a lot of emotional pressure from their families and were subjected to forced sexual intercourses and early pregnancy that largely affected their physical and mental health.

According to the National Population policy, 'over 50% of the total population of girls marry before the age of 18 years, resulting in a typical reproductive pattern of 'too early, too frequent, too many', resulting in a high IMR⁸

The first attempt to curb this evil practice was made in the year 1929, when the Child Marriage Restraint Act was passed, thereby

fixing the marriable age of girls as 14 and that of boys as 18 which was later on amended to 18 for girls and 21 for boys. However, this Act lacked implementation. So, in the year 2006, a new Act came in, which prohibited Child Marriage and made it a punishable offence.

SATI (Jauhar)

Sati practice is the self-immolation by a widow on the funeral-pyre of her husband. This practice got its name after Sati, the wife of Dakshsha, who immolated herself on the funeral pyre of her husband as she was unable to overcome the grief of the demise of her husband.

Sometimes, sati was even committed by women before the death of their husbands when their city or town was besieged by the enemies or was under the threat of being defeated. This practice was known as Jouhar/Jauhar.

A woman was considered as a part and parcel of her husband, in the absence of whom she was nothing. This attitude towards a woman has also been depicted in our legal literature (Dharmashastra) and important legal texts like Manusmriti.

There is an inscription of various hand-prints in the Sati Mata Mandir, symbolizing the no. of women who have performed Sati. Those women who committed Sati were said to have been endowed with a divine halo.

Fortunately, this evil practice has been criminalised after the passing of the Sati (Prevention) Act, 1987, which declared Sati to be a crime for which even death penalty could be given to the perpetrators of this crime.

⁷Position of Women in Colonial Era, IJERT Journal [Vol.1(2), Dec. 2010: 109-111]

⁸ National Commission on Population, National Population policy-2000 objectives, Government of India (2000) (http://population.commission.nic.in/npp_obj.htm)



FEMALE FOETICIDE

In the Indian society, the birth of a girl child was seen as a social and economic burden upon the family in which she was born. Earlier, a girl child was killed as soon as it was born, thereby following the practise of female infanticide. But, later on, people started engaging in the practice of female foeticide i.e. the termination of a healthy female foetus after 18 weeks of gestation from the mother's uterus. The myth which guided this practice was that 'boys give and girls take'. The birth of the female child was dreaded as it was seen as curse to the family, so they opt for an abortion outside of the legal methods.

With the passing of the Pre-Conception and Pre-Natal Diagnostic Techniques Act (1994), female foeticide and pre-natal sex screening has been banned and made punishable in India. So, currently, in India, it is illegal to determine or disclose the sex of the foetus to anyone.

The government of India also carried out several social schemes like 'BetiBachaoAndolan' to spread awareness about the importance of a girl child and the basic human rights of women.

EDUCATION

This is one of the most critical areas for empowerment of women in India. Women are a sub-class in the Indian society and it has been a constant challenge for the Indian government to provide education to all the members of the society, especially due to the fact that the population is growing at a high rate and it is becoming more and more difficult to maintain a balance between the increasing population and the decreasing

education levels. Government has tried out various strategies to promote education in India like 'Five Year Plans' in order to achieve literacy level by providing free primary schools for all children.⁹

It is believed that educating the girl child would help in curbing the incidents of pre-puberty marriages and various kinds of sexually transmitted diseases. A lot of benefits can be achieved by the nation if effective measures are taken up for reducing gender, class and geographical inequalities in education, especially with regard to women and by providing them access to employment and resources.¹⁰

"Article 21 of the Indian Constitution have made it compulsory for the government to provide free education to everybody, but still, the high rate of women's education is still a distant dream.

In spite of the fact that due to the efforts of the 'SarvaShiksha Abhiyan', we have received a bit of success in the direction of education of the girl child, yet the rate of their retention in schools is still very low in comparison to their male counterpart. So, it is true to say that the dream of universalising primary education in India is a remote daydream for the females in India¹¹.

IV. CRIMES AGAINST WOMEN

In the year 2007, about 1,85, 315 cases of crimes against women in India were

⁹ 'Girl Child's Right to Education in India' by Adv. Rajeev Jadhav)

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(<https://rajeevjadhav.wordpress.com/2013/06/30/girl-childs-right-to-education-in-india/>)

¹¹ 'Women's Rights in India: Problems and Prospects' by SutapaSaryal



reported and about 75,930 cases among them were related to cruelty done to women by their husbands and relatives. One act of Sexual Harassment occurs every 59 minutes; One act of Torture occurs every 12 minutes; One act of Molestation occurs every 16 minutes¹².

ACID ATTACK

Acid attack or vitriol attack is a form of violent physical assault which involves the act of throwing acid or any similar corrosive substance onto the body of another person with the intention of disfiguring, maiming, torturing, or killing that person. Acid attack victims in India are mostly females. This offence has been made punishable under section 326B, Indian Penal Code, but still the rising number of the acid attack cases day by day is depictive of the inability of Indian law to grapple with such a heinous crime. Acid attack cases in India are the highest in number in comparison to other countries, but the conviction rates for the same are the worst. Usually the victims of Acid Attacks have been those women who either refused to the proposals of marriage or sexual advances of a man and suffered the consequences of hurting the so-called 'male-ego'. Earlier, the law relating to this heinous crime was not very strict and the punishment was also not adequate, but, it was only in the year 2013 that India finally acknowledged its seriousness towards this issue and made separate sections for the offence of 'acid attack' in IPC i.e. sections 326A and 326 B and made it a non-bailable offence with a minimum of ten years of imprisonment. Section 326A (acid attack) and Section 376D (gang rape) are the only two sections

¹² National Crimes Records Bureau, 2007

under IPC wherein the amount of compensation goes directly to the victim.

OUTRAGING THE MODESTY OF A WOMAN

Modesty is the behaviour, manner or the appearance that is intended to avoid any sort of indecency or impropriety. As defined by the Hon'ble Supreme court of India in a plethora of its judgments, "*the essence of a woman's modesty is her sex*".

"*The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse...would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence*", the Bench said in a judgment that has drawn from several verdicts by different courts¹³. Whoever assaults or uses criminal force intending to outrage her modesty (1yr-5yrs imprisonment) or disrobing her or compelling her to be naked (3yrs-7yrs imprisonment) are liable under Sec 354 and Sec 354B respectively¹⁴.

SEXUAL HARASSMENT

"*Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized human right. The requirement of this right has received global acceptance. Therefore, international conventions and norms are of*

¹³ The Times of India- 'SC defines what is a woman's modesty' by Dhananjay Mahapatra (1st March 2007)

¹⁴ Vishaka v. State of Rajasthan [(1997) 6 SCC 241; 1997 SCC (Cri) 932



great significance in the formulation of the guidelines to achieve this purpose"¹⁵

One of the most glaring examples of human rights violation. Gender inequality and injustice is sexual harassment at workplace. Earlier, the protection given to women in India was confined to be against the brutal offences like rape only, but over a period of time, it was realised that the law must also cover other aspects of men's conduct towards women within its ambit in order to ensure that such conduct of men shall not be roadblock in the path of women to achieve the goal of social and economic independence. One such act of men that poses a threat to the economic independence of women is Sexual Harassment at workplace as it is incompatible with her dignity and honour in the society.

STALKING

It is the obsessive and unwanted attention of a person towards another person. Such behaviours are related to harassment and intimidation. And they may even include following the victim or monitoring her in person.

"Virtually any sort of unwanted contact between two people that directly or indirectly communicates a threat or places the victim in fear can be considered stalking"¹⁶

According to LamberRoyackers:

"Stalking is a form of mental assault, in which the perpetrator repeatedly,

unwantedly, and disruptively breaks into the life-world of the victim, with whom they have no relationship (or no longer have). The acts, which separately make up the intrusion cannot by themselves be the cause of mental abuse, but they do when taken together."¹⁷

In 2013, Indian Parliament made amendments to the Indian Penal Code, thereby making 'Stalking' a criminal offence under Section 354D

RAPE

Rape is one of the most heinous of sexual offences against women which shocks the conscience and shakes it till its roots. It is the only crime where the victim gets socially ostracised more than being sympathised, and is morally degraded with a lifelong stigma attached to her character and her dignity.

It was stated in the case of *State of Punjab v. Gurmit Singh*¹⁸:

"Rape is not merely a form of physical assault- it is destructive of the whole personality of the victim. A murderer is the one who destroys the 'physical body' of the victim, a rapist degrades the very 'soul' of the helpless female. The courts, therefore, take on their shoulders, a great responsibility while trying an accused facing the charges of Rape."

The statistics of occurrences of Rape in India are very shocking.

According to the reports of the *World Health Organization*:

¹⁵Wen-Chen Chang, Li-annThio, Kevin YL Tan, Jiunn-rong Yeh, *CONSTITUTIONALISM IN ASIA: CASES AND MATERIALS*, Pg. 460

¹⁶ National Centre for Victims of Crime (Feb 2002). "Stalking Victimization". Office for Victims of Crime

¹⁷ "CyberStalking: menaced on the Internet"http://www.sociosite.org/cyberstalking_en.php

¹⁸ (1996) 2 SCC 384: 1996 SCC (Cri.) 316



‘EVERY 54 MINUTES, A WOMAN IS RAPED IN INDIA’¹⁹

According to the *Centre for Development of Women’s Studies*: ‘EVERY 35 MINUTES, 42 WOMEN ARE RAPED IN INDIA’²⁰

The offence of Rape finds its place in the Indian Penal Code, 1860 under Section 376 and the punishment for it is provided under Section 376 of the Code. But, with new cases coming to light, the loopholes in the rape laws come into light as well and puts forward the need to make these laws adaptable to the needs of the society.

The best example for this is the Delhi gang rape case of 2012.

In the Nirbhaya case, the bench of Hon’ble High Court of Delhi stated:

“The undying appetite for sex, the constant hunger for violence, the differential position of the empowered and the attitude of people’s perversity, to say the least, are bound to shock the collective conscience which knows not what to do...Thence, we hold that the high court has correctly decided and confirmed the death penalty and we don’t see any reason to differ with the same”

In her separate judgment upholding the death sentence on the four accused of gang rape, Justice R. Banumathi stated that the offences against women are not merely gender issues, but they are the issues of human rights as well. The increasing rates of crimes against women points out an emergent need to study in depth the roots of these problems and to remedy the same through a strict law-and-order regime.

¹⁹ A study done by WHO

²⁰ A study done by CDWS, nn. 2-6 reported in India Today, 9/9/2002

Justice R. Bhanumati also stated: “There are a huge number of legislations and penal provisions to punish the offenders committing violence against women. However, it has become even more important to ensure that gender justice does not remain only on the papers”.

DOMESTIC VIOLENCE

“Violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over women and discrimination against women by men and to the prevention of the full advancement of women...”²¹

Around the world, women continue to suffer domestic violence, varying from 20% to 50%, throughout the years, from country to country.

1 out of every 5 married women in India are the victims of Domestic Violence and about 40% of every married woman of the age group of 15 to 49 years have experienced at least one of the forms of spousal violence i.e. physical or sexual or emotional²².

Physical violence is one of the most common form of domestic violence.

At least one case of cruelty is reported every 9 minutes in India²³.

Domestic Violence manifests itself as physical, verbal or psychological abuse, which often occurs behind ‘closed doors’ by the perpetrator against the victim, in order to alienate that victim from receiving any kind

²¹ The United Nations Declaration on the Elimination of Violence against women. The General Assembly Resolution. Dec. 1993

²² National Family Health Survey, 2005-06

²³ National Crime Reports Bureau



of remedy for the same. Due to societal pressures, the victim tries to 'adjust' with the family and is forced to reconcile with her perpetrator, and this subjugation of the victim by the society is a violation of human rights of living a life with dignity and liberty. This inability of the victim to have access to law is a failure of the law itself as it is rendered ineffective due to the incapability of the victim to come out from the 'four walls' of her home and demand justice.

In India, under Criminal Law, there are certain provisions which address the issue of Domestic Violence. Some relevant provisions are:

Section 498-A which was added to the Indian Penal Code in the year 1983. Other offences like dowry death (Section 304B, IPC), Hurt (Section 319, IPC), Grievous Hurt (Section 320, IPC), etc. are also used quite often, against the perpetrators of domestic violence.

In the year 2005, the 'Protection of Women against Domestic Violence Act' was passed, with the objective of providing more effective protection of women's rights as are guaranteed by the Constitution, who are the victims of any kind of violence that occurs within their family and with regard to incidental matters. This Act came into force in October, 2006.

V. CONCLUSION

All the history has attested that a woman has been subjugated by man; a woman has been merely used as an instrument to promote the self-gratification of man, to minister to the sensual pleasures of man and to provide him comfort; but has never been elevated to the rank which she deserves.

Man did everything to debase and enslave her mind; and now he looks triumphantly on the ruin he has wrought, and says, the being he has thus deeply injured is his inferior...²⁴

The government has taken numerous steps to improve the condition of women in the society, but little has changed. The issues which threaten the safety of women in India cannot merely be dealt with by bringing in new laws or modifying the existing laws; what needs to be changed is the attitude of society in dealing with these laws.

Whenever a woman is victimised by offences like Domestic Violence, Cruelty, Hurt, Harassment, etc, she shouldn't be told to keep mum about the same, rather, she should get enough support from her relatives and friends to speak up and fight against the injustice that she is facing. A woman who is victimised by any of the evil practices of her husband and his relatives should not be told to 'adjust', as such conditions may get even worse for her in the future. Now, it's high time, the society should change its mentality and accept the fact that even God intended to make a biological creation i.e. two sexes, in order to keep the cycle going and make development a smooth process; he never intended to create two genders, he never fixed gender roles, these are sociological creations and this gender classification needs to be done away with, if the society has to progress.

Laws are created for the society and it is the society only that can help in the successful implementation of these laws.

²⁴ Sarah M. Grimke, Letter on the Equality of Sexes and the Condition of Woman (Isaac Knapp) Boston, reprinted by Source Books Press, New York)