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Proceedings of National Conference On
HUMAN RIGHTS AND GENDER JUSTICE

24th January 2018

Organized by
**DEPARTMENT OF LEGAL STUDIES
SCHOOL OF LAW**



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MESSAGE



*I am extremely happy to note that the School of Law, VELS is to host a National Conference on “**Human Rights and Gender Justice**” on 24th January 2018 at VISTAS Campus.*

We can successfully address sustainable development challenges if we achieve gender justice. Gender Justice is a shared vision of social justice and human rights. Human Rights and Gender Justice, must be central to the new development agenda in every society.

The theme of the Conference is vital and contemporary and I am sure, will definitely provide a platform to the academics, practitioners to exchange their knowledge. I hope there will be meaningful deliberations among researchers in the respective fields of their interest that will benefit to formulate certain policy recommendations. Further, I wish that this discussion will enable the participants to enrich their knowledge in their field of interest and also equip them to derive practical solution in the existing scenario. I am much delighted to know that the School of Law is publishing the proceedings of the conference.

I wish this conference to set sights on the creation of a society with greater equality for generations to come.

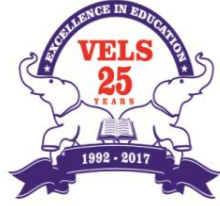
I deem it as my special privilege to wish them all success and I congratulate the staff and students of the department for having made it possible.



Dr. ISHARI K. GANESH

Chancellor, VELS

Chairman, VELS Group of Institutions.



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MESSAGE

18th January, 2018

I am happy to note that the department of Legal Studies, School of Law VISTAS is organizing a National Conference on “Human Rights and Gender Justice” on 24th January 2018.

Only if we educate and empower women, our country can progress. But in the present day context, the human rights violations are taking place especially with reference to women all over the country. To sustain the gender equality and empowerment of women both at the national and international level, committed initiatives and policies are needed. The topic chosen for the conference is cotemporary and I believe that the conference will certainly will pave way for a dynamic platform for exchange of knowledge and experience related to the Gender justice.

I congratulate the organizing committee for having chosen the timely theme of the Conference. I am happy to note that galaxy of experts will be delivering key note talks and significant number of research papers will be presented. My best wishes to the organizers towards the successful conduct of the Conference.

P. Swaminathan

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**FEMINIST JURISPRUDENCE AND GENDER JUSTICE:
AN INDIAN EXPERIENCE**

*Dr. A. David Ambrose,
Professor and Head,
Department of Legal Studies,
University of Madras, Chennai*

INTRODUCTION:

Gender inequality prevails in almost all societies of the world and its omnipresence is also felt in India, even though women are considered as Sakthi, the Goddess¹ or Devi in India. Though internationally cherished equality principles are loudly echoed in our constitutional framework especially in Part III of the Constitution more specifically from Arts 14 to 18, gender equality² has been an eluding factor in India as wide spread gender discrimination³ is very much prevalent even today⁴. This annoying pathetic unacceptable situation rightfully demands gender justice that aims at removing and redressing gender discrimination/inequality the resultant gender injustice.

Feminist Jurisprudence or Feminist Legal Theory⁵ argues that there must be a relook at the norms embedded in the present legal system and rethink the law from women's points of view⁶. The major areas of focus of feminist jurisprudence, among others include discrimination and exclusion based on sex and gender, structural and economic inequality, power and oppression, and gender roles and stereotypes. Accordingly, it is now possible to identify several theories of feminist jurisprudence⁷.

Understanding gender justice from the theories of feminist jurisprudence or understanding the role of theories of feminist jurisprudence in realizing gender justice from an Indian perspective will be the main focal point of this short paper.

¹ In India the women are worshipped as goddess. For example, the Goddess of learning is known as "Saraswathi", the Goddess of power is known as "Parvathi", the Goddess of prosperity is known as "Laxmi"

² Herein gender equality generally refers to equality of women with men with respect to their status, opportunity, relative power and role in the society.

³ Generally speaking "sex" refers to biological and physiological traits of human beings whereas "gender" refers to the roles defined, assigned and played in the society, accordingly, it is based on cultural, social and economic values attached to a particular gender and thus gender discrimination, unlike discrimination based on sex or sex discrimination referring to discrimination based on a person's sex, means bias based on a person's sex in defining the roles he/she should play in the society. However, today in common parlance, the terms sex discrimination and gender discrimination are often used interchangeably to connote all kinds of discrimination against women in particular.

⁴ Gender inequality in India can be understood from the ancient era when the Hindu sage, Manu said that a woman should remain under eternal bondage. Even today woman faces emotional and physical abuse, differential access to food and medical care, genital mutilation, sexual abuse by family members and outsiders, rape, sexual harassment at workplace, trafficking, forced prostitution, dowry related violence and what not.

⁵ Deborah L. Rhode, "Feminist Critical Theory", *Stan. L. Rev.* vol 42(1990) p 617 at 621-22.

⁶ By feminist jurisprudence it was intended to question, from a feminist perspective, the completeness of a jurisprudence that is not responsive to specifically female concerns like pregnancy; generally, see Ann Scales, "Towards a Feminist Jurisprudence", *Ind. L.J.* vol 56 (1981) at p 375.

⁷ See Patricia A. Cain, "Feminist Jurisprudence: Grounding the Theories", *Berkeley Women's L.J* vol 4 (1989) at p 191; Available at: <http://scholarship.law.berkeley.edu/bgjl/vol4/iss2/1>.



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Key Words: gender justice, feminist jurisprudence, theories, gender justice in India.

Gender Justice:

Justice, being a social concept having its origin in man's life in society, is mainly concerned with redressing the status quo as between two individuals. Though traditionally justice was thought of as maintaining or restoring a balance or proportion⁸, today based on the post-traditional liberal democratic theories⁹ and its kinds, the concept of justice enjoys the luxury of having many adjectives like - political, economic, social, distributive, natural, positive, universal, particular, written, unwritten, commutative, juridical, sub-juridical, constitutional, administrative, tributary, providential, educative, corporative, national, international, parental, complete, commutative, corrective¹⁰. In this long list of justice, Gender Justice also finds its due place.

The two basic principles of justice according to Rawls are liberty and equality (egalitarian principle) wherein equality is further connoting fair equality of opportunity¹¹. From this perspective the principle of gender justice is meant to capture the nature of a very wide range of injustices based on gender¹². It was even felt back in 1869 that "the existing relations between the sexes, the subordination of one sex is wrong in itself, and now one of the chief hindrances to human improvement and that it ought to be replaced by perfect equality admitting no power or privilege on the one side nor disability on the other"¹³. Thus from the unequal gender relations point of view gender justice is about overcoming women's discrimination and subordination and the common interpretations of gender justice pertain to fair treatment of women and men¹⁴, where

⁸ H.L.A Hart, **The Concept of Law** 2nd edn. (Oxford Uni. Press, 2002) at p 159; What Aristotle said more than two thousand years ago that "equals should be treated equally and unequals unequally" is even now considered as the most fundamental principle of justice. In its contemporary form, this principle is generally expressed as individuals should be treated the same, unless they differ in ways that are relevant to the situation in which they are involved. ("Treat like cases like and treat different cases differently") H.L.A Hart, *ibid.*; "For justice consists precisely in not singling persons out for special treatment in the absence of significant differences, but in treating like cases alike and meeting out fair and equal treatment to all"; P.J. Fitzgerald, **Salmod on Jurisprudence**, 12th edn. (Sweet & Maxwell, London, 1966) at p. 61.

⁹ The Supreme Court is of the opinion that 'in post-traditional liberal democratic theories of justice, the background assumption is that humans have equal value and should, therefore, be treated as equals, as well as by equal laws' that can be described as reflective equilibrium introduced first by Nelson Goodman; see the separate but concurring Judgement of Dr.Sikri J in *National Legal Authority vs Union of India*, (2014) 5 **Supreme Court Cases** 438 at para 133 p 507.

¹⁰ See A. David Ambrose, "Distributive Justice, Sustainable Development and the Constitutional Frame Work with Reference to Distribution of Natural Resources" in T.S.N Sastry and Durgambini Patel (Eds) **Law Development and Justice**(Department of Law, Pune University, 2017) pp 66-78 at p 67-68.

¹¹ John Rawls using the idea of primordial social contract has formulated the following two principles of justice governing a just order: "First Principle: Each person; is to have an equal right to the most extensive total system of equal basic liberties-compatible with a similar system of liberty for all. Second Principle: Social and economic inequalities are to be arranged so that they are both: (a) the greatest benefit of the least advantaged, consistent with the just savings"; John Rawls, **A Theory of Justice**, (Clarendon Press, Oxford, 1972) at p 302.

¹² Anca Gheaus, "Gender Justice", **Journal of Ethics & Social Philosophy**, vol. 6(1) (January 2012) at p 1; available at: http://www.jesp.org/PDF/gender_justice_finalized.pdf.

¹³ John Stuart Mill, **In Subjection of Women**; As Quoted in John Charret, **Feminism**, (London: Dept and Sons Ltd., 1982), p. 34.

¹⁴ The concept of gender justice has a variety of meanings. In the area of liberal philosophy, it is focused on thinking about subjective agency, rights and capacities; whereas in political science it is concerned with the constitution, processes of democracy, and citizenship. In the area of law, the concept of gender justice can mean formal equal rights between men and women; Ratna Kapur, "Challenging the Liberal Subject; Law and Gender Justice



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fairness is evaluated based on substantive consequences and not on the basis of a notion of formal equality that uses an implied 'sameness' standard¹⁵. Gender justice is about more than simply questioning the relationship between men and women. It involves crafting strategies for corrective action toward transforming society as a whole to make it more just and equal, it implies moving away from arbitrary to well-reasoned, justifiable and balanced—that is, fair-social relations¹⁶. In nutshell from the legal perspective gender justice means protection of women from exploitation and ending of, and remedying the inequalities between women and men that result in women's subordination to men.

Feminist Jurisprudence:

Feminist jurisprudence, generally speaking, stems out from the notion that women are oppressed and disadvantaged in comparison with men which is illegal or unjustified and therefore deals with feminist perspective of methods of law. It is the philosophy of law based on political, economic, social equality of sexes. As law is made by males to legitimize male domination and thus patriarchal, it is based on political and moral judgements about the worth of women and how women must be treated. Accordingly, it proceeds to emphasize that as law is fundamental for women's subordination only through law the change in women's status has to be brought out¹⁷.

As feminist jurisprudence revolves around a number of questions and features various theories of feminist jurisprudence are put forth. For example P.A. Cain classifies feminism into four¹⁸ schools, namely, liberal, radical, cultural and postmodern¹⁹. Liberal Feminism is rooted in the belief that women as well as men are rights bearing autonomous human beings and building on the

in South Asia" in Maitrayee Mukhopadhyay and Navsharan Singh, (eds) **Gender Justice, Citizenship and Development**, (Zubaan, IDRC December 1, 2007) at p 116;

available at <https://idl-bnc-idrc.dspace.direct.org/bitstream/handle/10625/32041/IDL-32041.pdf>;

¹⁵ Maria do Mar Castro Varela, "Envisioning Gender Justice"; available at <http://www.mcrg.ac.in/spheres/maria.pdf>.

¹⁶ See Nyamu-Musembi, Celestine, "Addressing Formal and Substantive Citizenship: Gender Justice in Sub-Saharan Africa" in Maitrayee Mukhopadhyay and Navsharan Singh, (eds) *supra* note 14. After referring to various writings the author finds out the implied meanings of gender justice include the following elements:

- Fair treatment of women and men, where fairness is evaluated on the basis substantive outcomes and not on the basis of a notion of formal equality that uses an implied 'sameness' standard. This means that in some cases, different treatment may be what is needed for a just outcome.
- Fairness should be at the level of interpersonal relations and at the level of institutions that mediate these relations and offer redress for wrongs.
- Acknowledgement that given a long history of gender hierarchy that has disadvantaged women, gender justice inevitably implies realigning the scales in women's favour.
- Questioning the arbitrariness that characterizes the social construction of gender; at p 174-75 (foot notes omitted).

¹⁷ It has been found out that the feminist approach to law focuses on the following issues: i) Examination of legal concepts, rules, doctrines and process with reference to women's experiences. ii) Examination of the underlying assumptions of law based in male female and ostensibly gender neutral distinctions. iii) Examination of mismatch, distortion or denial created by the deference between women's life experience and the laws assumption or imposed structures. iv) Patriarchal interest served by the mismatch. v) Reforms to be made in the law to eliminate patriarchal influences; M.D.A. Freeman, **Lloyds Introduction to Jurisprudence**, (London: Sweet and Maxwell Ltd., 1994), p. 1027.

¹⁸ It is of interest to note that generally as many as seven theories can be seen and they are: liberal feminism, difference or cultural feminism, radical feminism, postmodern feminism, black feminism, lesbian feminism and Marxist feminism (It focuses on the social institutions of private property and capitalism to explain and criticize gender inequality and oppression. It states that private property gives rise to economic inequality, dependence, political and domestic struggle between the sexes and it is the root of women's oppression).

¹⁹ P.A. Cain "Feminism and the Limits of Equality" in M.D.A. Freeman, **Lloyds Introduction to Jurisprudence**, *supra* note 17 at p 1026.



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concepts of liberal political theory like rationality, individual choice, equal rights and equal opportunity, and it, believes that women should have equal opportunity with men²⁰. Thus the liberal equality model aims at rationalizing individual choice, equal rights, and equal opportunity. They advocate not for nominal equality but for genuine equality.

The sexual, cultural difference school of thought recognises that women are different from men both physically and physiologically and therefore pleads for special treatment like that of protective discrimination found in Art 15(3)²¹ and press for change that supports the values based on difference, namely, caring rational connectedness and the like²². It advocates that women are part of men but men are different from women. It is of interest to note that in this context only women rights are for the first time recognised as human rights in the Beijing Conference 1995²³. This school of thought claims that law reflects male values and needs to incorporate ignored women's values and therefore argues for a separate law for men and women.

Radical or dominance feminists recognise the difference between women and men²⁴. However, they stress that it is not the difference between male and female but it is the dominance of one class namely the male over another class namely the female. Radicals go to the root of it in asserting that the existing laws perpetuate male dominance and demand the change and they talk about sexuality and power. Radical feminism opposes existing political and social organization in general because it is inherently tied to patriarchy. Post - modern feminism sees equality as a social construct and a product of patriarchy, hence in need of feminist reconstruction²⁵. It believes in categories and especially the gender categories are social constructs, these constructs are products of the patriarchy and hence needs feminist reconstruction. It demands women's participation in decision making²⁶.

Gender Justice and the Theories:

In realizing gender justice, the theories of feminist jurisprudence knowingly or unknowingly are recognised in one way or other. Of all the theories, going by the notion that gender justice aims at removing and redressing gender discrimination/inequality, two theories namely the Difference theory and the Dominance theory stand head and shoulder high in recognition in India. In realizing gender justice, difference theory has played a vital role in the protection and prevention of exploitation of women by demanding special laws and protective discrimination. On the other hand, the dominance theory has played its telling role in reviewing gender sensitive and male dominated patriarchal laws. In the following paragraphs it will be endeavoured to prove this point with the help of some case laws and relevant enacted laws.

Gender Justice and Difference Theory:

As seen above difference theory recognises the difference between men and women and demands for special laws for the protection of women. The Preamble of the Constitution clearly

²⁰ *Ibid* at p. 1027.

²¹ Art 15(3) permits/enables the State to make special provisions for women and children.

²² Carol Gilligan, *In a Different Voice* (1982); cf *Lloyds Introduction to Jurisprudence*, *supra* note 17 at p 1110.

²³ The Governments participating in the Fourth World Conference on Women were convinced in para 14 of the Beijing Declaration that "Women's rights are human rights".

See <http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>.

²⁴ Christine Littleton, "Reconstructing Sexual Equality", cf *Lloyd Introduction to Jurisprudence*, *ibid* at p. 1108.

²⁵ *Ibid* at p. 1111.

²⁶ Para 13 of the Beijing Declaration recognises women's participation in the decision-making process and is as follows: 'Women's empowerment and their full participation on the basis of equality in all spheres of society, including participation in the decision-making process and access to power, are fundamental for the achievement of equality, development and peace'; *supra* note 23.



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states that equality should be given to all citizens in terms of status and opportunity. Art15(3) positively discriminates in favour of women and permits the state to make special provisions for them. Art39(a) directs the State to secure its policy so that the citizens (both men and women) have equal rights to adequate means of livelihood. Art39(d) directs the State to secure equal pay for equal work for both men and women²⁷. Art39(e) specifically directs the State not to abuse the health and strength of workers (both men and women). Art42 directs the State to make provisions for securing just and humane conditions of work and for maternity relief²⁸. The provisions for making reservations for women in Panchayat Raj institutions and other local bodies²⁹ are aimed at enhancement of the extent of women's participation in democratic process guaranteeing women's representation in legislatures by reservation.³⁰

In *Vijay Lakhmi vs Punjab University*³¹, question was raised against preference being given to a woman as principal of a government college for girls. It was said that this preferential attitude is violative of the right to equality. However, the Supreme Court held that Art 14 does not bar rational classification and the question of inequality does not arise if there are different sets of circumstances. While the Supreme Court upholding a service rule that preferred women in recruitment to public employment to the extent of 30% of posts, in *Government of A.P. vs P.B. Vijayakumar*³² opined that, 'to say that under Article 15(3) job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this Article. Making special provision for women in respect of employments or posts under the state is an integral part of Article 15(3)'. The Court further with reference to Art 15(3) held as follows:

"The insertion of clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15(3) is placed in Article 15".

In *Yeshaswinee Merchant case*³³, the Court has held that the twin Articles 15 and 16 prohibit a discriminatory treatment but not preferential or special treatment of women, which is a positive measure in their favour. In *Valsamma Paul vs Cochin University & others*³⁴, it has been ruled that human rights for women comprehends gender equality and it is also traceable to the Convention for Elimination of All Forms of Discrimination Against Women. Human rights for women, including girl child are inalienable, integral and an indivisible part of universal human rights. The full development

²⁷ The State gave effect to this Art by enacting the Equal Remuneration Act, 1976.

²⁸ For this purpose, the Maternity Benefit Act has been enacted.

²⁹ Reservation under Articles 243 D (3), D (4), T (3) and T (4) are meant to empower the woman politically. Reservation of seats for women in Panchayats and Municipalities have been provided in Article 243D and 243T of the Constitution of India. Parts IX and IXA have been added to the Constitution by the 73rd and 74th Amendment Acts with Articles 243, 243A to 243D and Articles 243P to 243ZG. According to Article 243D (3), "not less than one-third, (including the number of seats reserved for women belonging to the Scheduled Castes and Scheduled Tribes) of the total number of seats to be filled up by direct election in every Panchayat, shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat. Article 243T (3) of the Constitution provides similar provisions for reservation of seats for women in direct election in the government.

³⁰ Dr P. Ishwara Bhat, "*Constitutional Feminism: An Overview*" (2001) 2 SCC (Jour) 1.

³¹ (2003) 8 SCC 440.

³² AIR 1995 SC 1648, 1995 SCC (4) 520.

³³ (2003) 6 SCC 277.

³⁴ AIR 1996 SC 1011; (1996) 3 SCC 545.



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of personality, fundamental freedoms and equal participation by women in political, social, economic and cultural life are held to be concomitants for national development, social and family stability and growth—cultural, social and economic. All forms of discrimination on grounds of gender are violative of fundamental freedoms and human rights. Conferment of equal status on women apart from being a constitutional right has been recognized as a human right. Thus the usefulness of difference theory in demanding special treatment for women for removing the inequalities prevalent in the Indian society has become very much apparent.

Gender Justice and Dominance Theory:

The Indian patriarchal system has made girls from their tender age to be dependent on males and thus made women to live at the mercy of men, who exercise unlimited power over them. Article 51(A)(e) of the Constitution provides that it will be the duty of every citizen to renounce practices derogatory to the dignity of women. In *Charu Khurana and others vs Union of India and others*³⁵, the controversy arose about the prevalence of discrimination of gender equality in the film industry where women were not allowed to become make-up artists and only allowed to work as hair-dressers. Referring to various earlier judgments and Article 51A(e), the Court observed that, "on a condign understanding of clause (e), it is clear as a cloudless sky that all practices derogatory to the dignity of women are to be renounced. Be it stated, dignity is the quintessential quality of a personality and a human frame always desires to live in the mansion of dignity, for it is a highly cherished value". The Court continued to observe that "...The sustenance of gender justice is the cultivated achievement of intrinsic human rights. Equality cannot be achieved unless there are equal opportunities and if a woman is debarred at the threshold to enter into the sphere of profession for which she is eligible and qualified, it is well-nigh impossible to conceive of equality. It also clips her capacity to earn her livelihood which affects her individual dignity."³⁶

Furthermore, in order to ameliorate the condition of women in India, various laws are enacted³⁷. Many discriminatory provisions were struck down by the apex court. In *C.B. Muthamma vs Union of India*³⁸ the validity of the Indian Foreign Service (Conduct and Discipline) Rules of 1961 was challenged which provided that a female employee to obtain a written permission of the Government in writing before her marriage is solemnized and at any time after a marriage a women member of the service may be required to resign from service. The Supreme Court held that such provision is discriminatory against women and hence unconstitutional. The Supreme Court made it clear that, we do not mean to universalize or dogmatise that men and women are equal in all occupation and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrated, the rule of equality must govern. In the case of *Nargesh Meerza vs Air India*³⁹ it was held that a woman shall not be denied employment merely on the ground that she is a woman. This leads to violation of Art 14 of the Constitution. In *Suchita Srivastava and another vs Chandigarh Administration*⁴⁰ the Court opined that to make reproductive choice is a part of personal liberty conferred under Article-21 and that may include procreation as well as abstaining from procreation. The Court further stated that a woman has the right to refuse to participate in sexual activity. The Supreme Court in *Anuj Garg and others*

³⁵(2015) 1 SCC 192.

³⁶*Ibid* at para 38.

³⁷ See for example Child Marriage Restraint Act 1929; Special Marriage Act 1954; Hindu Marriage Act 1955; Suppression of Immoral Traffic in Women and Girls Act 1956; Dowry Prohibition Act 1961; The Indecent Representation of Women (Prohibition) Act 1986; Commission of Sati (Prevention) Act 1987.

³⁸ AIR 1979 SC 1868; 1980 SCR (1) 668.

³⁹AIR 1981 SC 1829; 1982 SCR (1) 438.

⁴⁰ AIR 1990 SC 1412; 1990 SCR (2) 861.



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vsHotel Association of India and others⁴¹ declared ban on employment of women in establishment where liquor was served, as discriminatory as well as violative of Articles 14, 15, 19 and 21 of the Constitution. The Court also observed that with the advent of modern State, new models of security must be developed. It suggested that there could be a setting where the cost of security in the establishment be distributed between the State and the employer.

The Supreme Court in *State of Maharashtra and another vs Madhukar Narayan Mardikar*⁴² upheld the right to privacy of women of easy virtue against compulsions for sexual acts against her will. The Supreme Court in the case of *Gita Hari Haran vs Reserve Bank of India*⁴³ interpreted section 6 of the Hindu Minority and Guardianship Act 1956 and held that the mother could act as the natural guardian of the minor during the father's lifetime if the father was not in charge of the affairs of the minor. In *Maya Devi case*⁴⁴, the requirement that a married woman should obtain her husband's consent before applying for public employment was held invalid and unconstitutional. The Court observed that such a requirement is an anachronistic obstacle to women's equality. In *Vishakha and others vs State of Rajasthan*⁴⁵, the Supreme Court held that sexual harassment of working women at her place of an employment amounts to violation of rights of gender equality and right to life and liberty which is clear violation of Arts 14, 15 and 21 of the Indian Constitution. The Court further observed that the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse. In *Neera Mathur vs LIC*⁴⁶ the Supreme Court came down heavily on questions relating to personal issues stating that such questions are 'indeed embarrassing if not humiliating. The modesty and self-respect may perhaps preclude the disclosure of such personal problems like whether her menstrual period is regular or painless, the number of conceptions taken place; how many have gone full term etc' and directed the LIC to delete such columns in the declaration.

In *Ammini E.J. vs Union of India*⁴⁷, the subordinated position of Christian woman, who was denied equal right in the matter of divorce against her husband, was brought to the limelight by way of anti-subordination interpretation. Referring to the life of Christian wife being compelled to live as wife against her will, the Kerala High Court while quashing the impugned provision as violative of Arts 14, 15 and 21, observed as follows:

"It will be a humiliating and oppressed life without freedom to remarry and enjoy life in the normal course. It will be a life without freedom to uphold the dignity of the individual in all respects..."

The Supreme Court, *ABC vs State (NCT of Delhi)*⁴⁸ has held that the father's name is not necessary in a child's birth certificate and an unwed woman belonging to the Christian faith can become a legal guardian of her child without the father's consent. After observing that 'in today's society, where women are increasingly choosing to raise their children alone, we see no purpose in imposing an unwilling and unconcerned father on an otherwise viable family nucleus' the Court directed that 'if a single parent/unwed mother applies for the issuance of a Birth Certificate for a child born from her womb, the Authorities concerned may only require her to furnish an affidavit to this effect, and must thereupon issue the Birth Certificate, unless there is a Court direction to the

⁴¹ (2008) 3 SCC 1.

⁴² AIR 1991 SC 207.

⁴³ (1999) 2 SCC 228.

⁴⁴ (1986) 1 SCR 743.

⁴⁵ (1997) 6 SCC 241.

⁴⁶ AIR 1992 SC 392; (1992) 1 SCC 286.

⁴⁷ AIR 1995 Ker 252 at p268.

⁴⁸ Civil Appeal No. 5003 of 2015; 2015 SCC Online SC 609.



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contrary'. These sample examples amply demonstrate that the dominance theory has worked well in rewriting and reinterpreting male dominated laws in India thereby resulting in gender justice.

Conclusion:

From the foregoing discussion in rendering gender justice, the dominance of the difference theory and the dominance theory becomes evident. The root of gender justice lies in the notion that nobody should be disadvantaged because of their sex and gender justice is meant to capture the nature of a very wide range of injustices based on gender. Gender inequities throughout the world are among the most all-pervasive forms of inequality. Gender equality concerns each one of us and forms the very basis of a just society and therefore the issue of gender justice is of enormous magnitude and of mammoth ramification inviting and involving all sections of the society. Today gender justice is seen synonymous with women empowerment and the issues of gender justice are approached and dealt with substantial application of human rights. It needs no gift of prophecy therefore to say that the theories of feminist jurisprudence especially the difference and dominant theories will definitely have considerable influence on our legal system as modern India is merrily marching towards the much desired women empowerment/ gender justice based on gender equality and in this connection the participation and contribution of all is very much emphasised for the overall development of our Indian society.



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SURROGACY ARRANGEMENTS THE HUMAN RIGHTS PERSPECTIVE

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Introduction:

The urge for parenthood leads the couple to seek alternative arrangements like adoption, Artificial Reproductive Technology (ART), In Vitro Fertilization, Intra-Uterine Injections (IUI), etc., Infusing hope to childless couple have their own child by resorting the improved techniques in medical sciences. The techniques like donor insemination, embryo transfer, sperm transfers have revolutionizing the reproductive technology. One among is Surrogacy arrangement, where Surrogate mother is being hired to bear a child for a childless couple and handover the child after the birth to the commissioning couple¹.

India become a booming centre for the childless couple with its reproductive tourism reportedly estimated 25000 cores today (US \$ 5000 Million). The Supreme Court decision in Baby Manji Yamada (JT 2008 (11) SC 150) opined that this "industry proportions is sometimes referred to by the emotionally charged and potentially offensive terms Wombs for rent, outsourced pregnancies or baby farms"

To address the complicated issues that are being faced by the surrogate mother and the child born, it is pertained to analyze the basic issue of the notion wheather this arrange of surrogacy is empowering women to take the decision and autonomy to be a part of this arrangement or an altruistic gesture of helping the childless couple or entering into commercial surrogacy arrangement on payment to treat this arrangement as a service on payment. The author in her project survey in the southern states of India namely Chennai, Bangalore, Hyderabad and Vishakapatnam and drawn some conclusions with the data available².

Despite the legal moral and social complexities that are being raised in the surrogacy arrangement the basic reason why women are opting to entering into this arrangement is for the economic necessity and sometimes altruistic arrangements are taking place with the notion of helping the childless couple. The reason for international demand is found due to the availability of large pool of women willing to be surrogates, good medical infrastructure and specialized doctors with less charges³.

The most important reason is there is no legal regulation banning this practise which encourages the foreign couple to opt for this arrangement in India. There is no legal provision to safe guard the interest of the surrogate mother, child or commissioning parents. According to senior

¹ Surrogacy is an "Arrangement in which a women agrees to a pregnancy, achieved through assisted reproductive technology, in which neither of the gametes belong to her or her husband, with the intention of carrying it to term and handing over the child to the person or persons for whom she is acting as surrogate; and a 'surrogate mother' is a women who agress to have an embryo generated from the sperm of a man who is not her husband, and the oocyte for another women implanted in hereto carry the pregnancy to full term and deliver the child to its biological parent(s)"

² The author used some part of the data collected from the UGC Project on "Surrogacy-Moral, Ethical, Social & Legal Implications - A Study with special reference to Bangalore, Chennai, Hyderabad and Vishakapatnam" to prepare this seminar paper.

³ A thirty seven old Ruian women Bhopal as the expense for surrogacy is probitative in her country charging 15,00,000 to 20,00,000 compare to 2,00,000 in bhopal besides its not easy to find surrogate mothers in this countries. - Source: 'Surrogacy bhoom', article by Shuriah Niazi, october 14, 2007, by arrangement with WFS, <http://www.boloji.com/wfs6/wfs1027.htm>



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advocate Kirti Gupta, "At present, it is not difficult to have a baby through surrogacy in India because there is no law to control or regulate"⁴.

Thus it appears from the literature and the factual situations the surrogacy arrangements are lucrative to the parties involved that is, surrogate mother, commissioning parents and the clinics having win-win situations. Arguments in favour of surrogacy 'the treats gets a baby, broke gets a bonus' so the economic aspect of the arrangement is highlighted mostly in case of the women who are in the low economic background. From the rights perspective, right to procreate is an important right and it is a protected right in the constitutions, both domestic and international arena⁵.

The implied argument is the autonomy of the body. As long as the right is not affected and creates no harm to others the autonomy is respected. This is with reference to the commissioning parents and the surrogate mothers. But in practise when the surrogate hand over the child as agreed with the contractual terms of the surrogacy arrangements, instances show they may either retain the child i.e., surrogate mother or the psychological trauma while parting herself with the new born⁶.

Needless to say the economic aspect is the main backdrop for encouraging to opt for this arrangement with reference to women⁷. The feminists took the balanced opinion that women are now entering into market place and for years they are relegated to sphere at home. This made women powerless because the market place is dominated by men. This power, of entering into the surrogacy arrangement meant the liberation of women. They do not want men to tell what to sell and what not. Whether or not it is morally wrong to engage in child selling and entering into surrogacy arrangements should be decided by the women themselves. Many feminists use this reasoning as an argument for why surrogacy should be legal. Other view from the same group is allowing renting the womb, baby selling would mean that women remain being treated as interchangeable breeders which reinforces the objectification and subordination of women. Entering the market in this context is therefore far from liberating, is rather degrading.

Against the surrogacy it is noticed most of the surrogate mothers are often unaware of their legal rights and due to their financial constraints they cannot afford any expert opinion and services in case of any rights being affected. Kembrell (1988) is of the opinion the practice of surrogacy is the new and unique form of slavery. For and against arguments are in place equally the opponents of surrogacy would like to ban surrogacy completely. Some supports would like countries to declare surrogacy fully legal. The neutrals are of the opinion, stating that it is a controversial and a balanced approached solution is preferred.

The Government Initiatives

To address this complex issue the Govt. of India took the initiatives. In 2006 the The Indian Council of Medical Research(ICMR) published the guidelines accreditations, supervision and regulation of ART clinics. The artificial ART bill etc.,

The ART Bill has provided the guidelines and to safeguards the interest of commission parents more than not much to protect the right of the surrogate. Thus therefore surrogacy is both a threat and an opportunity with a risk that the commodification of the children, parenthood and women. The reasons for opting surrogacy arrangements are worth to consider and it cannot be easily

⁴ Ibid

⁵ This right is protected by the constitution (field,1990) in US. The couple may exercise this right in the most practical way available to them given their infertility. However, Cline (2008) states this right is not literally spelled out in the constitution. Margaret Jane Radin (1988) argues that if men are to donate sperm and receive money for that transaction, then surrogacy should also be allowed as an analogous transaction for women.

⁶ Baby M case ' 537 A 2d 1227'

⁷ Justice Posner(1987) is of the opinion "efficiency improves with free trade" this will happen when parents are eager to have their own genetic child and women who are anxious to be surrogates. He opines that due to the complicated adoption regulations many people are preferring to go to countries where there is free availability of the service. The fact is true if such such markets are in existence better acknowledge and control to make it more efficient.



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decided whether it is morally right or wrong. This arrangement is having serious Social, Ethical and Legal Issues. In India surrogacy is considered as legitimate as there is no express prohibition, hence the surrogacy arrangements are covered by the sec10 of Indian Contract Act .The enforceability of the arrangement is within the scope of the civil procedure code. With this backdrop of concept and issues the author took an empirical study of the three metro cities of south India and also the developing Metro Vishakhapatnam to and study with the designed indicators like profile of the surrogate mother, Socio-Economic background, type of the family, surrogacy arrangements, commissioning parents, etc., with reference to commissioning couple the issues like prohibition of surrogacy in their own counties, cost effectiveness, good medical facilities and other reasons are taken into consideration.

The aspects like payments, infrastructure, services, agreements, quality treatment, agents and counselling to surrogates are some of the factors are taken into consideration while conducting the study. In the present paper the socio economic factor is analysed to assess the reason why women are willing to enter in to the surrogate arrangements . It is inferred that the low economic background of surrogate mother is the main reason for entering into this surrogate arrangements, since most of the surrogates are below the average income of Rs. 5000 per month. The results are almost same in all the four metro cities taken for study.

The Socio-Economic Background

The Age, Monthly Income and Amount they received for the surrogacy arrangement is one important factor are taken into consideration to determine the socio-economic background is the main reason for women to enter into surrogacy arrangements . The data collection from the four metro fall in the age group of 26 to 30 except in Visakhapatnam it is shown falling between 30 to 35. The most preferred age is below 30 years. The reason for little higher is at Visakhapatnam is due to the illiteracy of women. The exact age of women is not known and they hardly maintained the birth records. Only the rough age is given by the surrogate mothers.

The monthly income of the surrogate is most important factor to opt for entering into this arrangement. It is general presumption that women with low economic background are the targets for the surrogacy arrangements. The data shows that women with a low income groups are showing interest to be as surrogate mothers .The inference from Chennai data is that mostly the women who are opted for entering into surrogacy arrangements are from a very low economic background. The average income is noted around Rs. 5000. At Bangalore almost same result can be noticed. Surrogates are mostly with very low group of income .The Hyderabad and Visakhapatnam is noticed little above. The fact that surrogates enter into this arrangement for economic gain is very clear .The doubts pertain to the incoherence between amount quoted by the clinic and the, the actual amount paid by the commissioning parents and the amount received by the surrogate mothers. In case the surrogate is conceived with twins then if the surrogate is showing the favourable situation to continue, fresh negotiations starts or something extra they pay, no clear information could be obtained in these situations The actual money the surrogates receive is maximum of 2 to 3 lakh only. Weather this amount would actually improve the socio-economic status of the surrogate family or not is matter of great concern. Most of the surrogates are illiterates and the decision how the amount to be spent depends on the family especially by the husband since also has to give consent for the wife to be as surrogate.

It is evident from the decided case laws and the actual findings from the data collected that the arrangement of surrogacy is a commercial arrangement and payment paid to the surrogate is for the service she renders for handing over the child to the commissioning couple. Women enter in this arrangement with the main reason of getting payment from the commissioning couple. Almost all women who are surrogates are opting the arrangement only for money. It is due to the low economic position they are inclined towards this arrangement where as the commitionning couple are rich and



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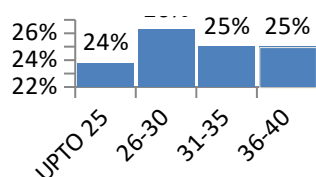
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belongs to higher strata of society the contract entered between these two people who are unequal in position and leaves the surrogates with no power to negotiate the terms. The surrogate has no power to negotiate the terms. It also be noted the surrogate will be having no copy of the agreement with them. The arrangement no doubt gives the hope to the childless couple to be as parents but it is taking different dimensions of exploration of women. The courts are facing tricky issues

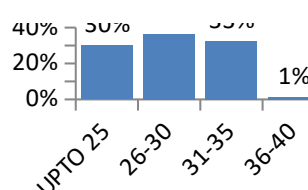
PROFILE OF THE SURROGATE MOTHER

AGE OF SURROGATE MOTHER

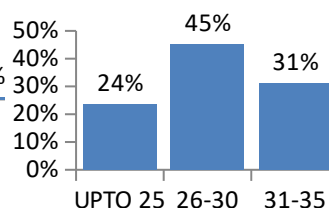
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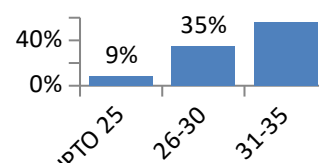
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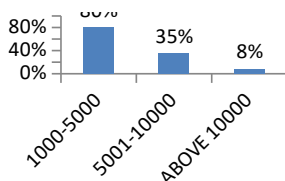


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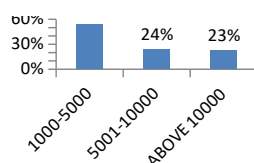


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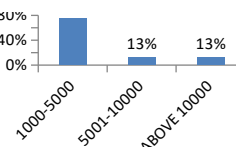
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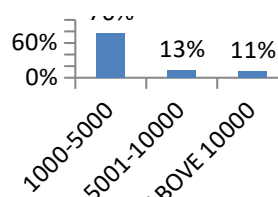
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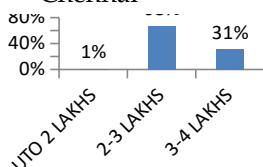


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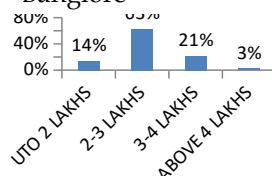


AMOUNT RECEIVED FOR SURROGACY ARRANGEMENTS

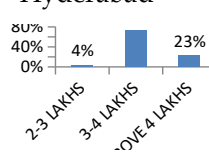
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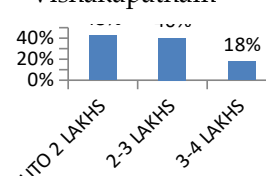
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Is this arrangement violating THE HUMAN RIGHTS of women?

It is much debated at the international forums that surrogacy is against the human dignity and is against the basic principles of Human Rights. In the arrangement the interest of the child is undermined and more focus is on the surrogate and the commission parents and the payment terms. The international conventions are salient on these aspects. some countries like Germany Switzerland tolerate this practice with strict conditions the position of Italy is almost similar to India whereas UK, Belgium, Netherland, Denmark allow with strict conditions.

The fact that the surrogate mother is closely monitored throughout her pregnancy restricts her freedom to move and constant surveillance would deny her right to privacy. Agreement would clearly insert clauses with reference to this. The arrangement would likely leads to inextricable legal



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disputes with reference to citizenship and nationality of the child born through this arrangement⁸. The Contract of Surrogacy there is no free consent but constrained by economic necessity. The consequence of this is, there is a risk of women being subject to emotional black mail. The women are used as carrier mother or egg donors who are carefully selected depending on many physical criteria. Women with medical or criminal record are eliminated. The women are chosen from catalogs with photos to allow the intended parents to have the baby of their dream. Many clinics also offer choice of the child sex with the genetic diagnosis⁹. Thus Surrogacy arrangements is against Human dignity depicting women as a commodity for the services she is rendering to handover the child after the due gestational period is over. The Laws in India are silent regarding the Legality of the whole arrangement entered by the surrogate mother with the commissioning parents through the clinics who act as intermediaries. In the absence of law, the ICMR guidelines and the ART regulations are being implemented till the concrete Law is enacted.

The International Initiatives

The surrogacy arrangement is incompatible with the existing rules of international adoption. Both the Hague conventions on the protection of child and cooperation in respect of inter-country adoption and the European convention on the adoption of the children require the consent of the parents without receiving any payments¹⁰. The aim of the convention is to safeguard the best interest of the child and prevent the sale or traffic in children¹¹. The central theme of adoptions is finding a family to the child so as to have the good parental care and family atmosphere. The international conventions aiming at to curb the abuses against the children which may turn adoption into sale of a child. Similarities of this concepts can correlate with the inherent transactions that are imbedded in the surrogacy arrangements. Here to have the desired child the arrangement is entered by the commissioning parents with an amount prefixed with the condition the child to be handed over to them after the due delivery of the surrogate mother. So, money places a crucial and important role in the whole transaction. According to Article 2(A) of the optional protocol to the convention on the Rights of the child on the sale of children, child prostitution and child pornography prohibits the monetary transactions¹². According to Article 35 of the Convention on the Rights of the Child, the sale of children is prohibited "for any purpose or in any form". Surrogacy then clearly enters into the framework of the sale of a child prohibited by international law. The surrogacy arrangement is against and incompatible to the Convention on The Elimination of All Forms of Discrimination against Women which became operative on September 3rd 1981¹³. (Article 6) that State Parties shall take all appropriate measures including legislation to suppress all forms of traffic and exploitation of prostitution of women. Article 11f, ensures that the states should protect the health and to safety in working conditions including the safeguarding the function of reproduction. Article 11 states,

⁸ Japanese Baby Manji Yamda's case (supra), Baby Manji Yamda Vs. Union of India, AIR 2009 SE, 84 and the Israel gay couple case who fathered the child in India are clear examples to establish that this is possible. However, the new Medical Visa Regulations, 2012 will not permit any entry to a foreign national as a single parent, gay couple or unmarried partners for commissioning fresh surrogacy arrangements in India.

⁹ <http://www.lasvegasfertility.com>; <http://www.fertility-docs.com/>.

¹⁰ The conventions state, "no one shall derive any improper financial or any other gain from an activity relating to the adoption of a child".

¹¹ Article 1(Hague Convention)

¹² Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration.

¹³ Article 6 requires that "State parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women" Article 11f adds that States must ensure, "the right to health protection and to safety in working conditions, including the safeguarding of the function of reproduction". This applies perfectly to the exploitation of the reproductive function of surrogate mothers.



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protective legislation in the matters mentioned above shall be reviewed in the light of scientific and technological advancements.

Way Forward

To conclude it is suggested that surrogate motherhood is violating the international conventions on Human Rights of Women and Children. It should be taken as an issue of global concern. Since the domestic Law is yet to formulate its policies the global guidelines would give a framework for the policy to regulate or ban the arrangement. The children born in this arrangement would face the complex legal problems as babies born in India do not have automatic rights to Indian Citizenship. Sometimes the child will be left stateless and were unable to leave India with the commissioning parents. The Universal Declaration of Human Rights protects the childhood and given a special care and assistance (Article 25.2). The motherhood is also being protected (Article 25.2). The vulnerability is the core issue in securing the rights of the surrogate mother and more protection is afforded, comparing with the commissioning parents who are less vulnerable. Great care to be taken while drafting the policy by taking the aforementioned concern around the surrogacy arrangement and Human Rights violations. Alleviating poverty in providing opportunities to women and empower them with economic support is one way to avoid this oppression and exploitation. It is suggested that international regulations on global surrogacy is needed and set standards of practices and procedures should be developed involving all the stake holders to protect the Rights of the surrogate mother and child.

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RIGHTS OF ELDERLY UNDER ISLAMIC JURISPRUDENCE- AN ANALYSIS

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Introduction

India's elderly population is growing quickly,¹ with less advanced economic development and access to health care, it is difficult to cope with the medical, economic, and social needs of the elderly. A major transition into old age occurs due to the loss of spouse that contributes to a feeling of increased insecurity among both men and women. Not having a spouse in the older ages is a cause for concern for both men and women. The support and protection shall be extended by both formal and informal social protection. The cultural teachings of Islam direct that children should care for their aged parents. The family forms the basic building block of Muslim society. Traditionally, the Muslim family structure is extended rather than nuclear. Despite the many pressures it faces, the family institution remains strong. In Muslim culture, akin to other traditional cultures, respect and esteem increase with age. The two foundational sources of Muslim law² contain principles and precepts that create family obligations to afford physical, mental, and emotional comfort to the elderly.

India is a land of diversities with several religions. The oldest part of Indian legal system is the personal laws governing the Hindus and the Muslims. The process of change in society has brought changes in law reflecting the changed social conditions and attempts the solution of social problems by new methods in the light of experience of legislations in other countries of the world. The Muslim personal law has been comparatively left untouched by legislations. Marriage, dower, divorce, parentage, Minority and guardianship, Maintenance, Pre-emption, Gifts, Wills, Wakf, Inheritance are part of Muslim personal law but religion have to keep pace with law. In the e-age today, the path to progress must be chartered with harmony at home.

Sources of Muslim Law: Sources are divided into primary and secondary rules. The first primary source is the Qur'an³. In practice The Qur'an trumps all other sources and is regarded by

¹According to Population Census 2011 there are nearly 104 million elderly persons (aged 60 years or above) in India; 53 million females and 51 million males. Both the share and size of elderly population is increasing over time. From 5.6% in 1961 the proportion has increased to 8.6% in 2011.

²The Qur'an and the Sunnah-Quran contains over 6200 verses, less than 10% relate to law and jurisprudence while the remainder deal with matters of belief, morality and faith.

³Primary sources

The Qur'an is the first and most important source of Islamic law. Believed to be the direct word of God as revealed to Muhammad through angel Gabriel in Mecca and Medina, the scripture specifies the moral, philosophical, social, political and economic basis on which a society should be constructed. The verses revealed in Mecca deal with philosophical and theological issues, whereas those revealed in Medina are concerned with socio-economic laws. The Qur'an was written and preserved during the life of Muhammad, and compiled soon after his death. The Sunnah is the next important source, and is commonly defined as "the traditions and customs of Muhammad" or "the words, actions and silent assertions of him". It includes the everyday sayings and utterances of Muhammad, his acts, his tacit consent, and acknowledgments of statements and activities.

Secondary sources

All medieval Muslim jurists rejected arbitrary opinion, and instead developed various secondary sources, also known as juristic principles or doctrines to follow in case the primary sources (i.e. the Qur'an and Sunnah) are silent on the issue. **Ijma'**: Theijma', or consensus amongst Muslim jurists on a particular legal issue, constitutes the



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Muslims as the highest authority in all facets of life, including legal, social, political and economic matters. The Qur'an is a code which governs religious and social life. It has foreseen everything, so that all is implicitly or explicitly regulated. When a new situation arises, or a new need is found, it is met with the help of the principles which are laid down in the Qur'an. In its entirety, the Qur'an aims at prohibiting all acts detrimental to society. Regardless of the incorporation of Islamic law into personal law, Islamic rules greatly affect Muslims' everyday behavior. The other sources include Qiyas (Analogy) 2. Istehsan (Equity) 3. 'Urf and 'Ada' (Custom and Usage), and 4. Masaleh-al-Mursalah (Public Interest). In all the sources elderly parents are respected on account of their life experiences and their hierarchic position within the family unit. The Qur'an and other sources contain principles and precepts that create family obligations to afford physical, mental, and emotional comfort to the elderly.

FAMILY HIERARCHY IN ISLAM:

The foundation of families in Islam is blood ties and marital commitments. There is a lot of value given to extended families or joint families. The traditional Muslim family is extended, often spanning three or more generations.⁴ Extended family members may or may not occupy and inhabit a common residential unit. An extended structure offers many advantages, including stability, coherence, and physical and psychological support, particularly in times of need. "A Muslim family primarily includes the self, the spouse and the immediate ascendants and descendants – the position of none of these constituents being inferior to any other⁵. Within the intergenerational roles prescribed by Islam, the elderly hold a place of honor. The "security, protection, and comfort" of the elderly are "guaranteed by the behavioral norms and obligations" placed on younger members of the family. Regular care relating to Food, Self-care, Physical health, Mental Health, Accommodation/place of residence, Transportation, Social contact/activities is a day to day requirement in the life of elderly.

Oldest Couple
The Son And Daughter In Law Of Oldest Couple
The Daughter
The Grandsons Of The Oldest Couple
The Granddaughters Of The Oldest Couple

Source: hierarchystructure.com

Families are led by the eldest male (and to a lesser extent, the eldest female), who has the final say on major family decisions and exercises a great deal of influence. When the elders are no longer physically or mentally able to play a leadership role, they are lovingly cared for and prayed over by their families. It is considered extremely shameful to put an elderly family member in a nursing home or to become irritated when he or she becomes difficult. Muslims in general consider the opportunity to care for their elderly family members a great honor.

third source of Islamic law. Muslim jurists provide many verses of the Qur'an that legitimize ijma' as a source of legislation. **Qiyas** Qiyas or analogical deduction is the fourth source of Sharia for the Sunni jurisprudence. Shiites do not accept qiyas, but replace it with reason (aql). Qiyas is the process of legal deduction according to which the jurist, confronted with an unprecedented case, bases his or her argument on the logic used in the Qur'an and Sunnah. Qiyas must not be based on arbitrary judgment, but rather be firmly rooted in the primary sources.

⁴ Anwar M. Young Muslims in Britain: Attitudes, Educational Needs, and Policy Implications. Leicester: Islamic Foundation; 1994.

⁵ <http://www.darfoundation.com>



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RIGHT OF EQUALITY:Islam is based on equality among individuals regardless of religion, belief, color, language, race, gender, or nationality. Moreover, the Qur'an treats the mother and father as equals.⁶ This stands in contrast to some Muslim understandings that prefer one parent over the other. Thus, the Qur'an "erects a system of material and moral protection for the elderly" based on the family structure.

RIGHT TO CARE AND PROTECTION:

Worldwide, it is generally understood that parents owe certain obligations to their own children. In Islam, children likewise owe certain obligations to their parents. special emphasis is placed on parents in old age. The Qur'an is absolutely clear that a person who is giving any kind of material or emotional support to an elderly relative is in no sense doing a favour to him or her; he is only discharging his own sacred obligation and thereby acquitting himself well in the sight of God⁷. No harm should be done to parents even if they commit any excesses⁸. Children, particularly sons, are considered to be the main source of security and economic support to their parents, particularly in the time of disaster, sickness and in old age. Parents must be respected, loved, obeyed, and honored in speech and dealings. This involves care and kindness to both parents, completely obeying and serving⁹ them in all acts permissible in Shari'a. If they are in need of money, children should give them access to their own wealth and offer them the best of their food and drink.

FINANCIAL RIGHTS AND INHERITANCE:¹⁰

As described above, Islamic law prescribes a moral obligation for children to provide material support for their parents when they are in need. Similarly, Islamic law entitles parents to their children's wealth, so long as no harm comes from taking it. under the Islamic law of inheritance, both parents are among the primary heirs of their children, and they cannot be excluded by each other or by any other heir.¹¹ In the major schools of Islamic law, it is stated that in the absence of the mother, a maternal grandmother becomes the heir and successor, and in the absence of both parents, a paternal grandfather becomes the heir and successor. If a child is predeceased by his father, then his living grandfather or great grandfather will be among the heirs. All these ancestors, outstandingly, inherit as primary beneficiaries. The Islamic law of inheritance takes remarkable care of elderly relatives by giving them shares in the deceased's property, even at the cost of excessive fragmentation. The provision of financial and emotional support for the elderly is one reason why Islam extends close familial relationships beyond the nuclear family.

RIGHTS OF OLDER NEIGHBORS, FRIENDS, AND OTHERS:

Where an aged person has no relative, near or distant—to take care of him or her, the machinery of the community or the state must move to help. Very old people, due to their reduced mobility and debilitating disabilities, need other people to do things for them. The shift to an older age

⁶ <http://quransmessage.com/>

⁷ Tahir Mahmood, *Law and the Elderly in the Islamic Tradition – Classical Precepts and Modern Legislation*-1982

⁸ <http://www.haqislam.org/rights-of-parents>

⁹ Patience (*Sabr*) and perseverance are required when serving parents) matter what the circumstances.

¹⁰ Muslim law recognizes two types of heirs, Sharers and Residuaries. Sharers are the ones who are entitled to certain share in the deceased's property and Residuaries would take up the share in the property that is left over after the sharers have taken their part. Sharers: The Sharers are 12 in number and are as follows: (1) Husband, (2) Wife, (3) Daughter, (4) Daughter of a son (or son's son or son's son and so on), (5) **Father**, (6) **Paternal Grandfather**, (7) **Mother**, (8) **Grandmother on the male line**, (9) Full sister (10) Consanguine sister (11) Uterine sister, and (12) Uterine brother.

¹¹ <http://www.islam101.com/sociology/inheritance.htm>



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structure has important implications for the nation as well as for elders and their families as the need for socio-economic support increases for older population. The organizational structure of social relations and social networks, at family and community levels play a vital role in the protection of elderly and it includes sharing and helping between families, close kin and immediate neighbors, engaging in informal cooperation and mutual assistance. In Muslim society several generations live together either in the same house or in same neighborhoods and follow the practice of eating and praying together.

Sharing and helping between families, close kin and immediate neighbours (often one and the same). This includes, for example, collecting water for a neighbour, borrowing small amounts of money or food, paying medical costs for a relative's health, paying for house repairs for a relative after a storm, and acts of caring in response to major events and crises. Informal cooperation and mutual assistance aimed at production and livelihood practices. Traditional solidarity events or rituals to support major life transitions and crises. This includes funerals, weddings. It also includes community-based associations formed for risk pooling around major life-course events, such as burial or funeral associations. People recognize the need to actively maintain their social networks by giving, as this is an expression of the shared values of selflessness and neighborliness.

Elderly and their needs varies basing upon their economic status and special address is needed for the elderly who are in poverty and vulnerable. This cannot be achieved effectively without understanding the nature of social relations, social networks and social structures in different contexts. Islamic society is guided by social, religious and cultural principles, as well as community and family values. **The Muslim society is a society of cooperation and mutual support.** The Muslim community as a whole is designed to be a harmonious family held together by their religious values of solidarity, mutual assistance, and cooperation. In Islam, family rights and obligations are both private and societal affairs. Moreover, social relationships, collective action and local institutions structurally give the protection to elderly by sustaining those in need of basic necessities such as food and sometimes shelter and also ensuing self-sufficiency. Caring elders and neighbours¹² has its own merits based on religious teachings, moral obligations, mental judgment, and pure innate duties and requirements. Enjoining honouring one's parents' friends even after the parents have passed away, and regarding that as part of honouring one's parents is part of Islamic culture and one grows socially, matures ethically, and feels at peace with oneself and one's community.

Traditional systems are critical if systems are to reinforce, not undermine, the functioning of local systems of support and fill gaps in informal safety nets. This includes understanding the concepts of mutuality and generosity that underpin reciprocal resource sharing, as well as the values of communality and accountability that underpin redistributive resource sharing. Communities have distinct notions of justice, which include identifying those who deserve support. The incursion of other philosophies is eroding traditional value systems. Community pressure for child to care for parents is required as **helping the elderly is not only supporting them financially but also supporting them psychologically.** It is about sitting down and talking to them, asking for advice, and being an active part of their lives.

Under Islam the concept of waqf deals with the permanent dedication of property for religious, pious, or charitable purposes. The concept of Waqf encourages private contributions to the public good. Zakah refers to "obligatory charity," a sort of religious tax that is calculated based upon a percentage of annual surplus wealth. Although Zakah is compulsory from a religious standpoint, it is voluntary from a legal standpoint, as it is not collected by state as a tax, but rather is

¹²It is important to note that "neighbors" is a term that means those who are not family, and it includes, for example, colleagues and companions.



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paid directly by citizens to the charity of their choice. In many circumstances zakah is Voluntary sharing¹³. Zakah is one kind of voluntary sharing usually supports love and sociable relations.

CONCLUSION:

Islamic jurisprudence advances a clear position on the status and care of older adults. Islamic teachings on the rights of the elderly are highly inspiring and traditional processes between people establish networks, norms and social trust, as well as facilitate coordination and cooperation for mutual benefit, that are informed by long-standing values of solidarity and mutuality. Although Islam provides a comprehensive system for protecting the elderly across many categories is there actual practice has often failed to live up to its ideals as practice does not always reflect such moral attitudes. An individual's relationship with society is not fixed rather, it develops and adapts to changing times and places¹⁴. Breakdown of family and introduction of other modern living styles, evidence suggests that form of social protection has never been adequate in providing sufficiently for all members of society. It has, however, been a critically important form of support for many elderly.

The Muslim society is a society of cooperation and mutual support. Older adults often serve an important resource function in families, helping to reshape traditional culture and care for grandchildren, yet they may also incur challenges associated with few economic resources, health status, and social isolation. Muslim law underwent a long process of evaluation. The fabric of law was woven and re-woven with the spindle of juristic interpretation or administration. Islamic Jurisprudence sets forth a framework for human society at large. Traditional social protection institutions shall be used to promote social solidarity and social cohesion in an attempt to fight against diverse sources of vulnerability and uncertainty relating to elders. Though traditionalism stemmed more from cultural beliefs and values rather than religion, reference to scriptural mandates for how to treat elders emerged as a way to identify strengths in the Muslim community. Our society acknowledge the cultural basis of traditional social protection systems, and better understand the potential for complementarity between formal and informal systems.

The Indian Family law is concerned with the personal laws of different religions. The family matters such as marriage, adoption, guardianship, divorce, maintenance, partition, succession, inheritance etc are governed by muslim personal law. If elderly protection is made explicitly part of family law the issue will be well handled since no formal system can extend emotional support that is needed by elderly¹⁵. Islam being a particular way of living with certain objectives and principles guiding human activities and ambitions it is not to say that change of every kind would be acceptable in Islam. For the purpose of reconstruction of any particular principle of Islamic law, one has to make sure that: i) The change in issue is not contrary to the basic teachings and objectives in Islam, ii) Is the change is really in the interest of the society, leading to its welfare, happiness and prosperity, and iii) The change will have no evil repercussions in the near or distant future. If the above three conditions, if satisfied then one may proceed to find out the ways and means to make reforms in Islamic law¹⁶.

¹³ Voluntary sharing is defined as sharing undertaken on the giver's initiative, whereas demand sharing is characterised by the receiver's initiative.

¹⁴ Norman Calder, Legal Thought and Jurisprudence, The Oxford Encyclopedia Of The Modern Islamic World

¹⁵ though the Our'an, Sunnah, Ijma and Oiyas are all accepted as main sources of Islamic jurisprudence, a point of difference between them is that the former two are recognized as absolute arguments while the later are arguments obtained by exercise of reason and hence not absolute. This is indeed a very significant point because it suggests that the door is still open for reassessment and re-evaluation of arguments which fall in the second category, in a given changed condition of the society. Such a reassessment or evaluation amounts to ijtiha[.

¹⁶ If a particular injunction mentioned in the Our'an or a Sunnah is based on a reason specified therein or indicated by the Prophet (SAW) or by one of his eminent companions (either though words or by action), then it would be the task of a **Mujtahid** to see whether that particular case would be applicable to the new situation which he has to face. If a Mujtahid finds that a principle of Islamic law is not based on the Our'an or a Sunnah



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SUGGESTIONS:

Population ageing has profound social, economic and political implications for a country. The increasing number of older persons put a strain on health care and social care systems in the country. If we emphasize more on the existing systems imbibed in our tradition elderly will be treated with respect but only religious Principles alone cannot be secured unless we establish a powerful and large country, strong in its economy, social institutions, educational framework, and other necessities; i.e., a nation that produces enough to permit all its citizens to enjoy decent life without poverty.

Informal social security entitlements offered by traditional solidarity (such as support payments, gifts, dowries and bequests, which are all based on generalised reciprocity). Indigenous self-help (such as burial funds, savings clubs and community support, which are all based on balanced reciprocity) modern self-help, which can be initiated by external help such as cooperatives, charities or non-government organisations, and more indigenously formed self-help groups religious groups will ensue self-sufficiency among elderly. A strong political will to promote the rights of the elderly to food, drink, clothing, medicine, and appropriate jobs shall be there. Appropriate social and economic policies need to be made.

Forming community-based associations to achieve a certain goal such as awareness programmes need to be spread on the problems facing by the elderly and how to address them can be well managed. Governments may, for example, provide tax incentives to organizations that provide home nursing care. Providing suitable employment opportunities for the elderly and removing any labor market impediments to them are also necessary measures. Public pension systems should be enriched and developed, and existing pension services should be improved for better quality. Safe and comfortable life style programs for disabled older people should be provided.

There is an urgent need to increase funding for family support and parenting programs by relevant Muslim community bodies. Existing school materials should be strengthened so as familiarize teachers, and students with the facts and needs of elderly and to support practices to protect elderly by highlighting the importance and value in traditions for the community. As the largest democracy in the world, India has an opportunity to be a role model in various aspects of family laws. Maybe, with further changes and amendments regarding protection of elderly shall be included under Muslim law.

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and derives authority from mere conjecture and reasoning of a jurist interpreter, then he is entitled to express a different opinion, provided he is well-equipped and is in a position to argue his view point.



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SECTION 377 OF I.P.C AND LGBT-A STUDY

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Introduction

LGBT is an initialism that collectively refers to the Lesbian, gay, Bisexual and Transgender community. This term is intended to emphasize a diversity of sexuality and gender – identity based on cultures and is sometimes used to refer to anyone who is non-heterosexual or cisgender instead of exclusively to people who are homosexual, bisexual or transgender. Since 1996 the letter Q has been added to this popular variant of those who identify as queer. The first widely used term, homosexual was thought to carry negative connotations and tended to be replaced by homophile in the 1950 and 1960's and subsequently gay in 1970's. But the words 'gay' and Lesbian' become more common. As equality is a priority for lesbian feminists, disparity of roles between men and women or butch or femme were viewed as patriarchal. Whatever the name or identity, each community that is collectively included has struggled to develop its own identity including whether or how to align with other gender or sexuality based communities at times excluding other sub groups and these conflicts continue today. The LGBT people have been suffering from both physical and mental ailments besides discrimination from the society since long time. Though they are willing to do work, none in the society come forward to entrust work or moreover they are being look down upon as untouchables. Therefore they are forced for begging in the public places such as bus stands and railway stations in order to eke out their lively hood.

Cultural Implications

In modern times there has been much controversy concerning the position and rights of gay and other third gender groups with the society. Should they be eliminated as harmful corruptive force within our midst. Should they be ignored and hidden away; or they should be welcomed as a part of the varied human society. The answers to these questions can be found in ancient Vedic literatures of India which have thoroughly analyzed and recorded all aspects of human behavior and knowledge since time immemorial. After the Vedas were issued forth from Brahma at the beginning of creation, Manu set aside the verses concerning civic virtues and ethics, thus compiling the dharma sastra. Similarly, Bruhaspathi set aside the verses concerning politics, economy and prosperity to compile the Arthasastra. The traditionally rigid male and female roles were consistently broken and altered throughout the Vedic literatures by human demigods¹ and even the supreme lord himself. For instance Cross dressing is quite common among lord Krishna's most intimate cowherd.

Unnatural offences and LGBT

The controversial law on homosexuality goes back 149 years when Lord Macaulay, who chaired the first law commission, introduced the section 377 while drafting the Indian Penal Code. Sec 377 is very similar to sodomy statutes around the world in that it reinstates and codifies the common law offence of sodomy and at the same time it is very different from a lot of sodomy statutes. Initially sodomy was made applicable to both heterosexuals and homosexuals. Over the years the general offence of sodomy became a specific offence of homosexual sodomy, a significant distinction although never reflected in the Indian law but later applied in the courts as the tendency of the Indian

¹ Demigod – being who is half mortal half god



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courts was to create an association between the sexual acts and certain kinds of persons , who are more likely to

- Section 377 of IPC - Whoever voluntarily has carnal intercourse against the order of nature with any man , woman or animal , shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to 10years and shall also be liable for fine.

The law on homosexuality has always been a matter of debate across the world. In Britain from where India derived the Law, King Edward VI repealed the Buggery Act, Anti sodomy Law. Denmark became the first country in 1989 to grant the same rights to same sex partners as to married partners. In Norway, Sweden and Iceland following suit while homosexuality is illegal in most Africa, post apartheid South Africa enshrined gay rights in its constitution. The act has given a character and face to sodomy in the form of homosexual. Thus the objective of sec 377 has remained unclear and unsubstantiated. This was introduced as an offence in colonial India with a presumption of a shared Biblical morality. The eunuch² was kept under constant suppression by the police and arrested upon being 'found singing and dressed as a woman'. The crux in the enforcement of sec 377 is this offence meant to criminalize the act of sodomy or people who appear to be likely to commit this offence.

Constitutional Validity

In recent past the constitutional validity of sec 377 became debatable. Part III of the Indian Constitution primarily carries the common theme of human right. The International conventions and the principles of natural justice focuses on the aspect of Right to life with full of dignity and liberty. The fundamental rights are minimum rights of the people. They are considered as basic rights to live a perfect life. Moreover article 13(2) says that "the state shall not make any law which takes away or abridges the rights conferred by this part or any law made in contravention of this clause shall to the extent of contravention is void". So according to the constitutional provision; section 377 of IPC violates a number of fundamental rights of the homosexual people.

Sec 377 also violates Art 14,15 and 21. Among other rights guaranteed by the constitution, it recognizes the right to privacy which is derived from and intimately related to the right of each person to dignity. The supreme court in *Gobind vs state of M.P* has held that 'privacy - Dignity claims deserved to be examined with care and to be denied only when an important countervailing interest is shown to be superior. Dignity is then concerned with the rights of the individual, and is linked to personal self realization and autonomy. If the right to privacy deserves from a respect for human dignity, it must also be a individualistic right in accruing to a person wherever he may be. This has been analyzed that sec 377 affects dignity of a man as it exposes a persona of his sexual orientation and also punishes him and sends him to prison which violates his right to live a dignified life. Further it has been held that sec 377 of the IPC denies the objectives enriched in the preamble namely Justice, Liberty, Equality to homosexual people. These objectives constitute the basic features of the constitution and hence liable to be interfered by the courts.

Sec 377 violates Art 14³ of the Indian Constitution. Art 14 focuses on the doctrine of intelligible differentia, according to which there should be clear nexus between the enacted provisions or act and its objectives as for what purpose they have been enacted. The same makes it clear that a law enacted by legislature must be clear and must be rational in *Kartar Singh vs State of Punjab* the SC⁴ held that a statute is void for valueless if its prohibitions are not clearly defined . The rationale for this is that the

² Eunuch refers to a hijra - a transgender identified person belonging to a traditional community of dances

³ Article 14 - The state shall not deny to any person equality before law and equal protection of the Laws within the territory of India

⁴ 1994 SCC 569



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provisions enacted should be clear so that persons affected known the intention. Sec 377 punishes carnal intercourse against the order of nature. However the expression is not defined.

To debate on sec 377 which punishes carnal intercourse against the order of the nature with imprisonment up to 10 years is not specifically targeted against homosexuality. But by criminalizing any penetrative sex that does not lead to reproduction, has become a weapon in the hands of the police to harass those who have alternative sexual orientations.

Gay rights movement is slowly coming of age in India emboldened by such developments as the then President Barak Obama's promise to bring the full spectrum of equal rights to LGBT Americans and his administrative decision to endorse a United Nations resolution calling for the world wide decriminalization of homo sexuality. This is the age where there is growing acceptance of the idea of LGBT where in they should be allowed to live in dignity and respect and there was an invitation of opposing sec 377.

In 2001 Naz Foundation filed a petition in the Delhi High Court asking for sec 377 to be read down by decriminalizing consensual sex among adults. In September 2003, the government insisted on retaining sec 377 on the grounds that Indian Invitation Society's disapproval of homosexuality was strong enough to justify it being treated as criminal offence even where adults indulge in it in private. In Feb 2006 the Supreme Court ordered the High Court to reconsider the constitutional validity of sec 377. The Naz Foundation petition was supported by voices against sec 377, comprising 12 organizations across the country while it was being opposed by the government of Delhi and others.

The provisions of sec 377 runs counter to constitutional values and the notion of human dignity which is considered to be cornerstone of our constitution. Sec 377 in its application to the sexual act of consenting adults in privacy, discriminates a section of people solely on the ground of their sexual orientation which analogous to the prohibited grounds of sex⁵. It also said that discrimination on the grounds of sexual orientation is against Art 15.

In this regard it has been put forth that the constitutional provision must be construed, not in the narrow and constructed sense but in a wide and liberal manner so as to anticipate and take it out of changing conditions and purposes so that the constitutional provision does not become static but remains flexible to meet the newly emerging challenges.

The gay rights had contended that the government is infringing upon their fundamental rights to equality by criminalizing homosexual acts on the ground of morality. The constitution gives fundamental right to equality and it prohibits discrimination on the basis of sex. But the rights of 50 lakh homosexuals in the country are being violated, earlier the government had put a contradicting stand on the issue with the Home minister of the then UPA government favoring the retention of penal provision for 'homosexual acts while the ministry of health opposed the enforcement of sec 377 in case of involving consenting adults. Eventually when the hearing began, the government set aside the stand of the health ministry and opposed the plea of gay right activists.

Conflict Between Law and Sociality in LGBT Issue

In India and the most of the Asian countries homo sexual practices with or without consent is illegal and punishable. The British drafted personal law on homosexuality under the section 377 in the British era when homosexuality is regarded as an illegal behavior that need to be rectified by the state criminalizing all forms of sexual behavior except some.

Historically it has been proved that homosexual 'erotic acts' occur in all cultures and in all societies and in all periods. In India there exists sufficient, documentary, archeological and anthropological evidences to suggest that same sex ties especially men were not only culturally but dignified revered by attributing similar traits to religious deities.

⁵ Constitutional Assembly debates – objective resolution moved by Nehru on Dec 13, 1946

⁶ Foe – an enemy

⁷ Erotic act – prompted or caused by love



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Due to rapid changing jurisprudence and other legal practices which signify the application of Human Rights law with regard to people of diverse sexual orientations and gender identities. This development commenced from the International scenario in the form of United Nations human rights treaties as well as European Convention of Human Rights. This recognition at the international level can be categorized as follows:

- Non discrimination
- Protection of private rights
- The ensuring of special gender human rights protection to all, regardless of sexual orientation or gender identity.

The recognition of application of Human Rights in these issues has resulted in 2007 the formulation of 'Yogyakarta principles'. The objective of this principle is that comprehensive identification of obligation to respect, protect and fulfill the human rights of all people regardless of their sexual orientation or gender identity. Thus in international scenario recognition or right to freedom as a fundamental human is considered as a fundamental right and criminalization of homosexual acts is a clear violation of right to privacy.

Case Laws

On July2, 2009 the High Court of Delhi in the case of NAZ foundation vs. Government of national capital, territory of Delhi verdict that since section 377 of IPC prohibits the sexual activities conducted with natural consent violates article 14, 15 and 21. Later the issue moved to Supreme Court of India. In India case of Suresh Kumar vs. NAZ foundation, has verdict in 2013 that section 377 was not unconstitutional and there by the verdict delivered earlier by the Honorable High Court of Delhi was over ruled and restored sec 377 of IPC. Eventually Naz foundation has filed curative petition before the Supreme Court which was admitted by the Supreme Court bench. This bench declared that the case was transmitted to full bench consisting of 5 Judges since the issue is being sensitive and linked with constitutional hitches.

National Legal Services Authority vs Union of India⁸

On 15th August 2014 the Supreme Court has declared transgender as third gender by recognizing TG's as third gender. This court is not only upholding the rule of law but also advancing justice to the class, so far of their legitimate, natural and constitutional rights.

The Rights of Transgender persons Bill- 2014⁹. This bill was introduced in the Rajya Sabha on 12th December, 2014. This bill is intended to provide for the formulation and implementation of a comprehensive national policy for ensuring overall development of the transgender persons and for their welfare to be undertaken by the state and for matters connected therewith and incidental thereto. The rights and entitlements put forward are equality, non discrimination, towards Transgender children, Right to life and personal liberty, Right to live in a community, Right to integrity etc. This act provides for provisions for making legislations which can bring equality among genders. It provides for Constitution of National Commission for Transgender persons. The bill further grants the right of transgender person to free legal services under the Legal Service Authority Act, 1987 and the right to file a complaint under the relevant provisions of Indian Penal Code and any other Law dealing with such crimes.

In the National Legal Authority, the Supreme Court cited Visakha and others vs State of Rajasthan and others (1997); the court under Art 141 laid down various guidelines to prevent sexual harassment of women in working places and to enable gender equality relying on Articles 11, 24 and general recommendations 22,23 and 24 of the convention on the elimination of all forms of discrimination against women.

⁸ (2014) 5 SCC 438

⁹ Bill no XLIX of 2014



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Transgender persons are also entitled to equal protection of laws and equality in all spheres and also entitled to reservation in public employment¹⁰. In the Indian Constitution, the third part provide that no discrimination may be made based on religion, race, caste, sex, descent, place of birth, residence or any of them. The argument put forth is when all are equal under Law, the Right to marry also becomes a part of Right to life under the Indian Constitution. The inclusion of a transgender as a spouse in special marriage act , may help in addressing this issue. Another issue regarding Transgender is that they are not been accepted in the family. The parents go for all sorts of abuse and the result is the trans boys or girls are thrown out from the family. In this area the Indian Penal Code comes to the rescue of tran sgenders.

Conclusion

To conclude there are few provisions in Indian Penal Code which are relevant to safeguard the rights of Gender variant, gender non conforming and Transgender children. It is 'exposure and Abandonment (crime against children by parents or others to expose or to leave them with intention of abandonment). Sec 317 IPC this section comes to the rescue of the Transgender when they are left out by the parents

The people in a society will give much importance to the primary needs such as food, cloth, shelter and sex. After satisfying these basic needs only, they will shift to the next phase of the pyramid i.e., self-actualization and esteemed needs in the society. This comes true in the case of LGBT community. In a largest democracy like India LGBT community is suffering from both mental and physical agony in understanding their own problems not in a position to express the same patently or latently. Thus they are suffering from a lot of stress besides humiliation in the society and consequently committing suicides. Therefore it is the high time for legislature, executive, judiciary and society at large that they cannot demean the existence of people with same sex desires. They also need to acknowledge that by legalizing homosexual relations they will not permit a mere sexual activity but will also decriminalize the lives of citizens who are connected.

¹⁰ AIR-6, Vol 101, part 1206 , June 2014 SC 1782



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EMPOWERING WOMEN FOR GENDER JUSTICE- A HUMAN RIGHT PERSPECTIVE

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Introduction:

Women empowerment has become a significant topic of discussion in development. It can also point to approaches regarding other trivialized genders in a particular political or social context. Entire nations, businesses, communities and groups can benefit from the implementation of programs and policies that adopt the nation of women empowerment.

Empowerment is one of the main procedural concerns when addressing human rights and development. The Human Development and Capabilities Approach, the Millennium development Goals, and other credible approaches/ goals point to empowerment and participation as a necessary step if a country is to overcome the obstacles associated with poverty and development.

In 20th century the word ' Women empowerment essentially means that the women one capable of regulating their day-to-day lives in terms of social, political and economic empowerment which enables them to move from the periphery to the centre stage.

GENDER JUSTICE: Gender inequality is the most serious and pervasive form of discrimination in the world. While this affects everyone, it is women and girls who face the most discrimination as a result of gender inequality. This is a key driver of poverty and a fundamental denial of women's rights.

Women form the majority of those living in poverty. They have fewer resources, less power and less influence in decision making when compared to men. They are exposed to various forms of violence and exploitation and experience further inequality because of their ethnicity, age, race, class, marital status, sexual orientation and (dis)ability.

Women are deprived of economic resources and are dependent on men for their living. Women works are often confined to domestic sphere, she had to all households works, which are not recognized and unpaid. In modern times many women are coming out to work but has to shoulder the double responsibility; one she has to work where she is employed and secondly she also has to do all the household works, moreover, she is last to be considered and first to be fired as she is considered to be less productive than her counterpart. Her general status in the family and in the society has been low and unrecognized. From the cradle to grave, females are under the clutches of numerous evils acts as discriminations, oppressions, violence, within the family, at the work places and in the society.

WOMEN EMPOWERMENT: Delivering multiple roles effortlessly every single day, women are undoubtedly the backbone of any society. Doting daughters, caring mothers, competent colleagues and a wide range of many other roles are played by women around us flawlessly and with grace.

Women's economic empowerment refers to the ability for women to enjoy their rights to control and benefit from resources, assets, income and their own time, as well as the ability to manage risk and improve their economic status and wellbeing.



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While often interchangeably used, the more comprehensive concept of gender empowerment refers to people of any gender, stressing the distinction between biological sex and gender as a role. It thereby also refers to other marginalized genders in a particular political or social context.

However, they've also been an ignored of the society in many parts of the world. This, in turn, has caused women at large to bear the burnt of inequality, oppression, financial dependability and other social evils. For centuries now, women have been living under bondage that restricts them from achieving professional as well as personal heights.

Women Empowerment refers to the creation of an environment for women where they can make decisions of their own for their personal benefits as well as for the society.

Women Empowerment refers to increasing and improving the social, economic, political and legal strength of the women, to ensure equal-right to women, and to make them confident enough to claim their rights, such as:

- freely live their life with a sense of self-worth, respect and dignity,
- have complete control of their life, both within and outside of their home and workplace,
- to make their own choices and decisions,
- have equal rights to participate in social, religious and public activities,
- have equal social status in the society,
- have equal rights for social and economic justice,
- determine financial and economic choices,
- get equal opportunity for education,
- get equal employment opportunity without any gender bias,
- get safe and comfortable working environment.

Why Women Empowerment is important?

1. Under-employed and unemployed: Women population constitutes around 50% of the world population. A large number of women around the world are unemployed. The world economy suffers a lot because of the unequal opportunity for women at workplaces.
2. Equally competent and intelligent. Women are equally competent. Nowadays , women are even ahead of men in many socio-economic activities.
3. Talented: Women are as talented as men. Previously, women were not allowed higher education like men and hence their talents were wasted. but nowadays, they are also allowed to go for higher studies and it encourages women to show their talents which will not only benefit her individually but to the whole world at large.
4. Overall development of society: The main advantage of women Empowerment is that there will be an overall development of the society. The money that women earn does not only help them and or their family, but it also help develop the society.
5. Economic Benefits: Women Empowerment also leads to move economic benefits not to the individuals but to the society as well. Unlike earlier days when they stayed at home only and do only kitchen stuffs, nowadays, they roam outside and also earns money like the male members of the society. Women Empowerment helps women to stand on their own legs, become independent and also to earn for their family which grows country's economy.
6. Reduction in domestic violence: Women Empowerment leads to decrease in domestic violence. Uneducated women are at higher risk for domestic violence than an educated women.



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7. Reduction in corruption: Women Empowerment is also advantageous in case of corruption. Women empowerment helps women to get educated and know their rights and duties and hence can stop corruption.
8. Reduce Poverty: Women Empowerment also reduces poverty. Sometimes, the money earned by the male member of the family is not sufficient to meet the demands of the family. The added earnings of women helps the family to come out of poverty trap.
9. National Development: Women are increasingly participating in the national development process. They are making the nation proud by their outstanding performances almost every spheres including medical science, social service, engineering, etc.
10. Irreplaceable in some sectors: Women are considered irreplaceable for certain jobs.

Gender equality , also known as sexual equality, is the state of equal ease of access to resources and opportunities regardless of gender, including economic participation and decision-making ; and the state of valuing different behaviors, aspirations and needs equally, regardless of gender.

“Gender equality, equality between men and women, entails the concept that all human beings, both men and women are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles and prejudices. Gender equality means that the different behavior, aspirations and needs of women and men are considered, valued and favoured equally. It does not mean that women and men have to become the same, but that their rights, responsibilities and opportunities will not depend on whether they are born male and female. Gender equity means fairness of treatment for women and men, according to their respective needs. This may include equal treatment that is different but which is considered equivalent in terms of rights, benefits, obligations and opportunities.”

- ABC Of Women Worker’s Rights And Gender Equality, ILO , 2000.p.48.

Gender equality is the goal, while gender neutrality and gender equity are practices and ways of thinking that help in achieving the goal. Gender equality is more than equal representation , it is strongly tied to women’s rights, and often requires policy changes.

As of 2017, the global movement for gender equality has not incorporated the proposition of genders besides women and men, or gender identities outside of the gender binary.

UNICEF says gender equality ‘means that women and men, and girls and boys, enjoy the same rights, resources, opportunities and protections. It does not require that girls and boys, or women and men, be the same, or that they be treated exactly alike.”

On a global scale, achieving gender equality also requires eliminating harmful practices against women and girls, including sex trafficking, femicide, wartime sexual violence, and other oppression tactics. UNFPA stated that, “despite many international agreements affirming their human rights, women are still much , more likely than men to be poor and illiterate. They have less access to property ownership, credit, training and employment. They are far less likely than men to be politically active and far more likely to be victims of domestic violence.”

As of 2017, gender equality is the fifth of seventeen sustainable development goals of the United Nations. Gender inequality is measured annually by the United Nations Development Programme’s Human development Report.



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GENDER JUSTICE- A HUMAN RIGHT PERSPECTIVE:

Human rights may be regarded as fundamental and natural rights which are essential for a decent life as human beings. They are the rights which are possessed by every human being irrespective of his or her nationality, race, religion, sex, color, simply and only because he or she is a human being. Human rights and fundamental freedom allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our physical, spiritual and other needs as human beings.

In our society, socialized from their tender age to be dependent on males. Her existence is always subject to men. In her childhood she is under the protection of her father, after marriage under the protection of her husband and in old age at the mercy of her sons. The patriarchal system in India made women to live at the mercy of men, who exercise unlimited power over them. In order to ameliorate the condition of women in India Legislature enacted the large volume of enactments and many of these legislations were enacted in colonial period.

It is a harsh reality that women have been ill-treated in every society for ages and India is no exception. The irony lies in fact that in our country where women are worshipped as shakti, the atrocities are committed against her in all sections of life. She is being looked down as commodity or as a slave, she is not robbed of her dignity and pride outside her house but she also faces ill-treatment and other atrocities within the four walls of her house. They are considered as an object of male sexual enjoyment and reproduction of children. They are real dalits (downtrodden) of the society. They are discriminated at two levels, firstly they suffer because of their gender and secondly due to grinding poverty.

Gender-based discrimination reveals ugly face of the society. This issue is very old and is global as well with varying degree. Really, it is a travesty of all canons of social justice and equity for women who constitute half of the world's population and work for two-third of the world's working hours and who earn just one-tenth of the world's property and remain victim of inequality and injustice. This anomaly is, now, being openly questioned and the underlying discrimination is seriously challenged. As human development occupies centre stage in the global development debate, gender equality and gender equity are emerging as major challenges. Gender discrimination, though amongst the most subtle, is one of the most all-pervading forms of institutionalized deprivation.

WOMEN EMPOWERMENT- A HUMAN RIGHT PERSPECTIVE:

After Independence, since the First Five Year Plan (1951-56), India has been taking initiatives for the development of women. But a shift from development to Empowerment of Women was taken during the VIIIth plan period (1992-97). The SHG's started playing an important role in the rural development. Constitution of India guarantees equality to women (Article 14). There are other articles too which ensure rights of women e.g. no discrimination by the state [article 15(1)] equality of opportunity (Article 16) etc. Feminist activism picked up momentum in India during later 1970's. Later on many self help groups and NGO's have been working for the Empowerment of women. We are proud that in India Women got voting right much before USA and some other European countries. It is hoped that this book would help to throw light on the role of SHGs in empowering women in Andhra Pradesh particularly in Anantapur district, in different dimensions such as mobility, autonomy, decision making power, freedom from domination, political and legal awareness, reproductive rights, participation in developmental activities.

To restore their rightful and dignified status, The Art of Living has initiated women empowerment programs that provide a solid foundation to nurture the inner strength, creativity and self-esteem of women from all walks of life. With this base well established, women are now able to go out into the world, prepared to handle any challenge with skills, confidence and grace. They come to the forefront, where they become agents of peace and positive social change for themselves, their families, other women and their society.



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Recently, the United Nations Division for the Advancement of Women in collaboration with the United Nations Economic Commission for Asia and the Pacific organized a judicial colloquium on the application of the international human rights law at the domestic level similar to that organized in 1999 to commemorate the twentieth anniversary of the adoption of the convention. Every person should know that they have rights and that they are protected by the state. Undoubtedly, it is rightly described that human rights are sure and sound guarantee of democracy.

Is the empowerment of women through conditional cash transfers illusory as women are 'empowered' by these programmes only as the nodal points receiving cash for the family and not as independent persons with their own economic, social and cultural rights? First, it is important to distinguish between the positive...

The notion that "women's rights are human rights" was first enunciated in slightly different words by the abolitionists and proto-feminists Sarah Moore Grimké and Angelina Grimké Weld in the late 1830s. In her series of Letters on the Equality of the Sexes, Sarah Moore Grimké writes, "Consequently I know nothing of man's rights, or woman's rights; human rights are all that I recognize". A similar expression is used by her sister, Angelina Grimké Weld, in her speeches and personal letters. In a letter to her friend Jane Smith, she says, "whatever is morally right for a man to do is morally right for a woman to do. I recognized no rights but human rights."

CONCLUSION

Empowerment is one of the main procedural concerns when addressing human rights and development. The Human Development and Capabilities Approach, the Millennium development Goals, and other credible approaches/ goals point to empowerment and participation as a necessary step if a country is to overcome the obstacles associated with poverty and development.



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HUMAN RIGHTS OF PERSONS WITH DISABILITY IN INDIA- A STUDY

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INTRODUCTION

Human rights are the basic rights and freedoms that belong to every person in the world, from birth to death. They apply regardless of where you are from, what you believe or how you choose to live your life¹. Thus, human rights are held by all persons equally, universally, and forever. All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Examples of rights and freedoms which have come to be commonly thought of as human rights include civil and political rights, such as the right to life and liberty, freedom of expression, and equality before the law; social, cultural and economic rights, including the right to participate in cultural activities, the right to food, the right to work, and the right to education. Human rights are inalienable and indivisible. In claiming these human rights, everyone also accepts the responsibility not to infringe on the rights of others and to support those whose rights are abused or denied. Thus, human rights can never be taken away, although they can sometimes be constrained. But human rights are not just abstract concepts – they are defined and protected by law.

The term human rights was recently coined, but the concept has roots in medieval times. Kings ruled their subjects in such degrading ways because they felt they had the God-given rights to do so. This led people to develop 'man' rights to combat the God given rights. Some others indicate that the Quran, the Bible and eastern world teachings have all contributed to the development of human rights. It is noteworthy that political struggles such as Liberalism, Marxism, Socialism, etc. have all included the concept of human rights. After the Second World War, the United Nations created the Universal Declaration of Human Rights² (UDHR) for the promotion and protection of human rights and fundamental freedoms at international level. The UDHR document has become the backbone of many treaties and human rights laws all over the world. The United Nations define human rights as an individual constitutional right that should be enjoyed regardless of whom you are and where you are in this world. Each and every one is allowed to have access to these rights without prejudice³. Amnesty International (2011) define human rights as rudimentary privileges which should be enjoyed by everybody irrespective of whom they are, where they come from, which skin colour they are, and irrespective of their gender, faith, linguistic background or standing⁴. Governments create legal rights through organic instruments like Constitution or through legislation or judicial decisions as a vehicle to implement and enforce human rights. Human rights existed prior to, and independent of any legal authority, and are inherent in being human. In India they are contained in the Constitution as fundamental rights, i.e. they are guaranteed statutorily. In the Britain, they are available through precedence. In addition, international law and conventions also provide certain safeguards.

¹<https://iddconsortium.net/sites/de...>

² General Assembly resolution 217 A (III) of 10 December 1948.

³ United Nations Human Rights, 2011.

⁴<https://amnesty.org.in/about-us/what-are-human-rights>.



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There are certain groups of human beings which either by nature or because of deep-rooted custom are weak and vulnerable, such as, a child, women, disabled persons, aged persons, migrant workers or persons belonging to a particular race. However, they being human beings do possess human rights and fundamental freedoms. But their rights have been violated very frequently by the dominant section of the society. Among them, persons with disabilities are one of the most neglected sections of our society. They face discrimination and barriers that restrict them from participating in society on an equal basis with others every day. They are denied their rights to be included in the general school system, to be employed, to live independently in the community, to move freely, to vote, to participate in sport and cultural activities, to enjoy social protection, to access justice, to choose medical treatment and to enter freely into legal commitments such as buying and selling property. This is due to the sheer indifference of the society which subjects such people to disapproval and antipathy. People with disabilities exist in every age group, every social sector, every class and every ethnic and religious community. They often do not have a voice of their own in issues that affect their lives. Disability rights, as a species of human rights, are indeed the source of legal rights to remedy non-discrimination. The term persons with disabilities is applied to all people with disabilities. It includes people who have long term mental, physical, intellectual or sensory impairments. These disabilities can affect their independence and participation in society.

Any restriction or lack of ability to perform an activity in a manner or within the range considered normal for the human beings, resulting from impairment is termed as disability. The types of disability include loco-motor, hearing, speech, visual and mental disability. We are all physically disabled⁵ at some time in our life. A child, a person with a broken leg, a parent with a pram, an elderly person, etc. are all disabled in one way or another. Those who remain healthy and able-bodied all their lives are few⁶. Thus, disability is part of the human condition. So, in day- to- day life, everyone faces hardships and difficulties at one time or another. But for people with disabilities, barriers can be more frequent and have greater impact. People suffering from disabilities face a lot of challenges everyday. Simple tasks that ordinary people perform on a daily basis as routine are extremely delicate and difficult to those suffering from disabilities. Thus accomplishing simple tasks such as taking a shower, dressing up, brushing teeth or even having a meal are tasks that may take much longer than normal and in many cases, may require the assistance of others. Individuals with disabilities are faced with stigma and discrimination from the society where they live. Most people look down on them and treat them as dependent person. Disabled people may find it hard to socialize with members of the society. This can lead to depression as well as self pity. What prevents disabled people from living a life like anyone else, going to school, participating in family celebrations and working in fields is not individual's impairment, but how society interpreted and reacts to it. Life is made difficult not so much by the individual's medical condition, but mainly by a hostile physical and social environment which excludes disabled people from all spheres of social life. It is not the medical impairment, but the way in which society reacts to it, that exclude disabled from taking part in celebration, political decision-making or religious worship.

⁵ It should be noted that a handicap is not a synonym for disability. A disability refers to a physical, sensory or mental limitation that interferes with a person's ability to move, see, hear or learn; a handicap refers to a condition or barrier imposed by the environment, society or oneself. As such, physical obstructions of the built-up environment constitute a handicap to a disabled person. For example, a stairway is a handicap to a wheelchair user. On the other hand, feeling different and inferior to other people constitutes a handicap imposed by oneself.

⁶<http://www.un.org/esa/socdev/enable/designm/intro.html>. Last visited 5th Jan 2018.



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INTERNATIONAL LEGAL INSTRUMENTS:

All international human rights instruments affirm inalienable human rights to all persons with disability. Article 1 of the Universal Declaration of Human Rights, 1948, states that, "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood"⁷. In the year 1969 an international awareness programme has been adopted in the name of Declaration on the Social Progress and Development by UN General Assembly. The year 1981 was announced as the 'International Year for Disabled Persons', some important objectives have been taken to implement in national, regional and international level. The movement of the disabled and deprived sections for securing a place for themselves under the auspices of the United Nations has contributed a great deal in spreading the message of human rights. A number of conventions have been concluded under the auspices of the United Nations to protect their rights at international level.

(1) Declaration on the Rights of Mentally Retarded Persons (1971)

After recalling the principles of the Universal Declaration of Human Rights, the General Assembly on December 20, 1971 proclaimed the Declaration on the Rights of Mentally Retarded Persons⁸ and called for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights. The Declaration affirmed that the mentally retarded persons shall have the rights as other human beings and wherever possible, should live with his or her family. Rights provided to such persons included a right to proper medical care and physical therapy and to education, training, rehabilitation and guidance; a right to economic security and a decent standard of living ; a right to a qualified guardian to protect his personal well-being and interests and a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility. The General Assembly on December 17, 1991 laid down the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.⁹ The Principles laid down shall be applied without discrimination of any kind, such as, on grounds of disability, race, colour, sex, language, political or other opinion, national, ethnic or social origin, legal or social status, age, property or birth.

(2) Declaration on the Rights of Disabled Persons (1975)

A Declaration on the Rights of Disabled Persons was adopted by the General Assembly on December 9, 1975,¹⁰ the term disabled person was defined in the Declaration as any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and or social life. The Declaration asserted that disabled persons shall have the same fundamental rights as their fellow citizens and are entitled to measures designed to enable them to become as self-reliant as possible. They have the inherent right to respect for their human dignity; right to economic and social security and to a decent level of living; right to live with their families or with foster parents and shall be protected against all exploitation, all regulations and all treatments of a discriminatory, abusive or degrading nature.

Negotiating Committee for the Convention on the Rights of Persons with Disabilities have agreed on August 25, 2006 on a treaty to protect the rights of persons with disabilities. The United

⁷Article 1 of Universal Declaration of Human Rights states " All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood".

⁸ General Assembly Resolution 2856 (XXVI), dated December 20, 1971.

⁹ General Assembly Resolution 46/119, dated December 17, 1991.

¹⁰General Assembly Resolution 3447 (xxx), dated December 9, 1975.



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Nations Convention on the Rights of Persons with Disabilities and its Optional Protocol¹¹ was adopted on 13 December 2006 at the United Nations Headquarters in New York, and was opened for signature on 30 March 2007. The Convention entered into force on 3rd May 2008. There are currently 174 ratifications to the CRPD and 92 ratifications to its Optional Protocol. It is the first comprehensive human rights treaty of the 21st century and is the first human rights convention to be open for signature by regional integration organizations. The United Nations Convention on the rights of persons with disabilities is an international human rights instrument, which intends to protect the dignity and rights of individuals with disabilities. All parties to the convention are required to protect, promote and ensure the accomplishment of the rights of disabled people. They also need to ensure that these individuals are provided with full equality and respect for their dignity. The Convention covers a wide range of areas including: health, education, employment, access to justice, personal security, independent living, access to information. The purpose of the Convention is to promote, protect and ensure the full enjoyment of all human rights and fundamental freedoms by all persons with disabilities.¹² The Convention is based on the principles of respect for dignity; non-discrimination; participation and inclusion; respect for difference; equality of opportunity; accessibility; equality between men and women; and respect for children.

THE CONSTITUTION OF INDIA ON DISABILITY:

The Constitution of India is the founding legal document guaranteeing fundamental rights to all persons i.e., men, women, children, old, minorities including persons with disability without any bias or favour. The concepts of justice as incorporated in the Preamble includes social, economic, political, equality of status, opportunity and of assuring dignity of the individual, recognizes and is designed to flower the citizens' personality to its fullest. The right to equality as enshrined in Article 14¹³ of the Constitution states that all persons are equal before law. Thus this Article enjoins duty on the State to bring about a situation where the fundamental right can be exercised on the footing of equality. Therefore, a person with disability is entitled to a right to be placed at the level at which he can enjoy the rights. Similarly, Article 15¹⁴ and 16¹⁵ of the Constitution of India prohibits discrimination on the grounds of "religion, race, caste, sex, place of birth or any of them and guarantees equal opportunity in matters of public employment. Article 16 (3)¹⁶ and (4)¹⁷ provides that

¹¹ A/RES/61/106. A Resolution adopted by General Assembly on 24th January 2007.

¹² Article 1 of The United Nations Convention on the Rights of Persons with Disabilities, 2006

¹³ Article 14. Equality before law

"The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India".

¹⁴ ARTICLE 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

¹⁵ ARTICLE 16. Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

¹⁶ Article 16. Equality of opportunity in matters of public employment



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the State can make provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services. It is on the basis of Article 16, that the guarantees to reservation and equal opportunity in public employment are made under the PWD Act.¹⁸ The right to equality has been upheld for persons with disabilities not to be discriminated and to be provided equal opportunity in recruitment to the civil services.¹⁹ Article 21²⁰ of the Constitution guarantees the right to life to all persons, which has been interpreted by the Supreme Court to include the right to live with dignity,²¹ the right to livelihood,²² and the right to education.²³ Article 21A²⁴ guarantees the right to free and compulsory education for all children between the ages of 6-14 years.

In the background of these Fundamental rights, Chapter IV of the Constitution of India contains the Directive Principles of State Policy, which also aims for the State to comply with. The Directive Principles of State Policies as provided in Article 38²⁵ states that the State has to be directed to minimize inequalities, secure right to an adequate means of livelihood and also secure that the operation of legal system promotes justice. Added to this, the directive principle of State policy contained in Article 39A²⁶ of the Constitution assumes significance, where the State secures and promotes justice, on the basis of equal opportunity, and in particular, provide free legal aid, and ensures that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Also, it is the duty of the State under Article 41²⁷ to make effective provision for

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

¹⁷ Article 16. Equality of opportunity in matters of public employment

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

¹⁸ Rights of Persons with Disabilities Act, 2016 (No. 49 of 2016).

¹⁹ NFB vs. UPSC (1993) 2 SCC 411, Amita vs. Union of India (2005) 13 SCC 721

²⁰ Article 21. Protection of life and personal liberty. "No person shall be deprived of his life or personal liberty except according to procedure established by law".

²¹ Francis Coralie Mullin vs. Union Territory of Delhi, (1981) 1 SCC 608

²² Olga Tellis and Ors. vs. Bombay Municipal Corporation and Ors., (1985) 3 SCC 545

²³ Unnikrishnan J.P. and Ors. vs. State of Andhra Pradesh and Ors., (1993) 1 SCC 645

²⁴ Article 21-A. Right to Education.

"The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine".

²⁵ Article 38. State to secure a social order for the promotion of welfare of the people

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

²⁶ Article 39-A. Equal justice and free legal aid

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

²⁷ Article 41. Right to work, to education and to public assistance in certain cases

The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.



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securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement.

All these provisions are equally applicable to the persons with disabilities. The denial or violation of any of these rights would entitle any person to approach the Supreme Court or the High Courts in their writ jurisdictions under Articles 32 and 226 respectively, if there is no other alternative or equally efficacious remedies are available. Thus, much before the progress was made at international level, the founding fathers of the Constitution of India found it necessary to emphasize these duties on the State²⁸.

Legislations for Persons with Disability in India:

India is a signatory to both the United Nations Convention on the Rights of Persons with Disabilities, 2006²⁹ and Biwako Millennium Framework towards an Inclusive, Barrier-free and Rights-based Society for PWDs in Asia and the Pacific, 2002³⁰ and thus it has an international obligation to provide equal opportunities, facilities and accessibility to all persons with disability, irrespective of any disabilities they might suffer from. In order to give effect to the international conventions, the Government of India has passed The Rights of Persons with Disabilities Act, 2016³¹. It replaces the erstwhile Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995³². Before the enactment of the Disabilities Act, 2016, the law governing rights of the disabled include The Mental Health Act, 1987³³, The Rehabilitation Council of India Act, 1992³⁴, The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995³⁵ and The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999³⁶. Although these legislations aimed at safeguarding the rights of persons with disabilities, these legislations did not speak about equality of opportunity especially in matters relating to employment, making public places accessible to persons with disability. The new Disability Law inter alia seeks to protect disabled persons from various forms of discrimination from their non-disabled counterparts, increases measures for effective participation and inclusion in the society, and ensures equality of opportunity in public and private employments by making their environment accessible in accordance with their special needs.

Getting around in the physical world is something many of us may take for granted. Curbs, thresholds, stairs, sidewalk gratings, obstructions, narrow passages – these are barriers we walk over, around, or through many times a day. We may seldom think about signs, loudspeaker announcements, traffic signals, and other sources that direct us or give us necessary information, except to avoid or use them. For those of us who have some physical difficulties, however – a curb or a few stairs can be large barriers. Airport loudspeaker announcements are often difficult to understand for people with perfect hearing; for those who are deaf or hard of hearing, they might as well not exist. Signs, no matter how well-placed they are and how much information they carry, do someone who is vision impaired no good unless they are in predictable places and can be read by

²⁸<http://vikaspedia.in/education/parents-corner/guidelines-for-parents-of-children-with-disabilities/legal-rights-of-the-disabled-in-india>. Last visited 4th Jan 2018.

²⁹<http://www.un.org/disabilities/default.asp>. Last visited 5th Jan 2018.

³⁰<http://www8.cao.go.jp/shougai/english/biwako/contents.html>. Last visited 6th Jan 2018.

³¹ Rights of Persons with Disabilities Act, 2016 (Act No. 49 of 2016).

³² Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (Act No 1 of 1996).

³³ The Mental Health Act, 1987, (Act No. 1 of 1987).

³⁴ The Rehabilitation Council of India Act, 1992, (Act No. 34 of 1992).

³⁵ The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, (Act No. 1 of 1996).

³⁶ The National Trust for the Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities Act, 1999, (Act No. 44 of 1999).



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touch. In other words, physical features that people without physical disabilities take for granted can present serious problems for people with different abilities, mostly because their needs have not been considered in designing those features. That lack of consideration can also be extended to the ways people with disabilities can be treated when they seek employment, education, or services. In developed countries, this situation has been recognized and addressed, at least to some extent, by laws that protect people with disabilities from discrimination, and guarantee them at least some degree of access to public facilities, employment, services, education, and amenities.

Disabled persons in India lack access to basic amenities such as educational material in an accessible format, accessible medical prescriptions, etc. There can be no better example of the discriminatory treatment that is meted out to persons with disabilities than the problem of lack of access to public places. More specifically, public places such as hotels, restaurants, shopping malls, airports/ railway stations, footpaths and walkways, educational institutions, banks and other financial institutions, parks, public swimming pools, cafes, government service offices, hospitals, cinemas and sports venues, libraries and other information centres, doctors', lawyers and other professional offices etc are not equipped with the facilities necessary for addressing the unique needs of persons with disabilities. The problem is more a technical/ attitudinal than a legal one. Another major problems faced by persons with disability is the physical accessibility of banks, with hardly any buildings being equipped with ramps and elevators; even if the bank itself is made accessible via these architectural modifications, the area surrounding the bank, for example, the market place, might be difficult to reach for people in wheelchairs, ultimately making it very difficult for them to use banking services. When a hearing impaired goes to a bank, the first problem they face is the fact that unless they are proficient at lip reading, they will find very difficult to communicate with the bank officials even when undertaking simple tasks like withdrawing money or depositing cheques. It is very important to know that most of the hearing impaired people are more familiar with sign language than with English, and so can get confused by the complicated language used by the banks in their brochures and information booklets. If a deaf customer is communicating with the bank official by writing out instructions, it could take a longer time than other customers and they might face problems with other customers. Visually impaired customers can find it difficult to navigate and even reach their banks, if the path is not clear and if the building is not provided with enough ramps and clear entrances. They often face a lot of problems while using ATM's, because the keys are not marked with recognisable lettering in Braille. Even when there is a token raised symbol on the middle key or Braille markings on the keypad for tactile recognition, there is still the problem that what is being displayed on the touch screen, as well as the instructions on how to proceed with a transaction, are not capable of being communicated. Most of the Automated Teller Machines (ATM's) in India are not equipped with an audio jack, and so it cannot be used by blind customers.

Persons with disability have been treated like a third class citizen, especially when it comes to travelling in public transport or accessing a public place in India. Most common modes of public transport do not keep in mind disabled people, especially people using a wheelchair. Most buses, rickshaws and auto rickshaws in India are not friendly towards people on wheelchairs. Even if ramps are provided somewhere, a major complaint is that those ramps are not properly built. Some are rickety and anyone using it would be a bit scared. Some have an extreme angle, which makes going up and down the ramp a challenge. It had reached a point where a lot of people felt trapped in their homes or dependent others with their over pampered care and attention.

A disability is only actually a disability when it prevents someone from doing what they want or need to do. A lawyer can be just as effective in a wheelchair as not, as long as she has access to the courtroom and the legal library, as well as to whatever other places and material or equipment that are necessary for her to do her job well. A person who can't hear can be a master carpenter or the head of a chemistry lab, if he can communicate with clients and assistants. A person with mental



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illness can nonetheless be a brilliant scholar or theorist. Sometimes, on the other hand, a disability is really a disability. If the building is on fire and the elevators aren't working, a wheelchair user on the 14th floor could be in quite a predicament. In order to function effectively and safely in jobs, education, and everyday life, people with disabilities have to have physical and social access to the same spaces, employment, goods, services, entertainment, and community participation that everyone else does. When that's the case, their disabilities don't limit their ability to fully participate in life.

This means access to buildings, public spaces, and any other place a person might need to go for work, play, education, business, services, etc. must be made in accordance with the needs of persons with disability. Physical access includes things like accessible routes, curb ramps, parking and passenger loading zones, elevators, signage, entrances, and restroom accommodations. When a society recognizes any physical or mental condition as a disability, it accepts, by implication, its social obligations toward fully integrating those whom it considers disabled into the society. As far as the built-up environment is concerned, it is important that it should be barrier-free and adapted to fulfill the needs of all people equally. As a matter of fact, the needs of the disabled coincide with the needs of the majority, and all people are at ease with them. As such, planning for the majority implies planning for people with varying abilities and disabilities. The need for accessibility in the physical environment is accentuated by the increase in consumption among the general public. As more and more persons with disabilities start utilising public marketplaces, a demand is generated to make the public places accessible to be able to reach out to a group of untapped consumers. Accessibility is a measure of the extent to which a place or product or service can be used by a person with a disability as effectively as it can be used by a person without that disability. For example, an elevator can be fitted with audio outputs and buttons that also have Braille notations, thus making it possible for persons with visual impairment to use it on their own. Similarly, buildings and public places can be built with ramps along with stairs, making it possible for persons using wheel chairs to access them.

Judicial approach:

The role played by Indian judiciary in protecting the rights of persons with disability by recognizing the education, employment, social security, non discrimination, affirmative action and other rights of the disabled individuals is incredible. Many public interest litigations are being filed to provide opportunities for disabled individuals in educational institutions and to make public places accessible. The Supreme Court of India has recently passed an order asking the central government and all the state counterparts to make public spaces accessible and inclusive to differently abled people. The apex court emphasised that it is about time the perception of people towards the differently abled changed. Treating them as ill and different from others only leads to 'severe isolation'. The Court said that

"Wanderlust strikes people of all caste, creed, colour and capabilities. Our planet is our common inheritance after all, and everything is meant for everyone. However, a large section of people have had to stifle their thirst for travel – because the infrastructure is designed and controlled from the perspective of those with perfectly functioning senses and limbs. It does not always consider the requirements of the differently-abled persons, who also want to experience the joy of discovering new places, but simply need different means and tools to do so".

It further stated that,

"Earlier, traditional approaches to disability depicted it as a health and welfare issue, to be addressed through care provided to persons with disabilities, from a charitable point of view. Disabled persons are viewed as abnormal, deserving of pity and care, and not as individuals who are entitled to enjoy the same opportunities to live a full and satisfying life as other members of society. This resulted in marginalising disabled persons and their exclusion both from the mainstream of society and enjoyment of their fundamental rights and freedoms."



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The focus of the Supreme Court of India is on making educational institutions, classrooms, libraries and washrooms accessible to persons with disability (PwD). India has a disabled population of more than 2.1 crore people and the Supreme Court's order is an essential move towards improving their lives.³⁷ Thus, the Supreme Court of India is of the opinion that when once proper education has been provided to persons with disability, they will be able to lead an independent, economically self sufficient, productive and fully participatory life on par with their non-disabled counterparts.³⁸

Why ensure access for people with disabilities?

It's a matter of fairness and respect. People with disabilities have the same rights as others, including the right to fully participate in community life. Everybody has a right to live as normal a life as possible. Right to life does not mean animal existence, but right to live with human dignity. Many persons with disabilities in all walks of life are competent to do important jobs, and some do remarkable work. Denying people access to employment, education, or services wastes human resources and makes society poorer. People with disabilities add to the diversity of the community, and that diversity makes everyone's life richer. If they can mix normally with the rest of the community, they will have more friends and acquaintances, and more people will have the opportunity to know them. Access for people with disabilities improves access for everyone. Making public spaces and facilities physically accessible for people with disabilities also makes them more accessible for people who may not have disabilities, including families with baby strollers, skateboarders, and bicycle riders. Making ramps a built-in feature of the environment is good for everyone.

Conclusion and Suggestions:

In a developing country like India the road to accessibility is a long and winding one. India is home to 2.7 crore people living with one or the other kind of disability. According to the 2011 Census, 2.21 percent of India's population is disabled.³⁹ Unlike the developed countries, disabled persons in India are made further socially vulnerable by lack of quality education, safe access to public places, lack of women's safety, and attitudinal barriers as they continue to grapple with the challenges of acceptance and inclusion by their non-disabled counterparts. While making a case for accessibility and stressing the importance of making all products and services open to the public accessible to persons with disabilities, it is of great importance to understand some of the key concepts attached to accessibility.

Accessibility to the Physical Environment

One of the major requirements of physical accessibility is the availability of a barrier free environment for persons with disabilities to experience equal opportunities. This includes constructing new buildings and modifying old buildings and other public places with ramps, lifts and accessible signages for persons with disabilities. Accessible physical environment also includes transports and transport systems as well as roads being made accessible for persons with disabilities. This could be done by constructing roads with properly defined sidewalks, ramps at proper intervals for wheelchair users, engraved zebra crossings, beeps at traffic signals and accessible signages at road directions. Public transports such as buses, trains and other applicable options could be modified to allow persons with disabilities including wheelchair users to enter and exit them comfortably through

³⁷<https://yourstory.com/2017/12/public-spaces-supreme-court>. Last visited 7th Jan, 2018.

³⁸ Disabled Right Group vs Union Of India, Writ Petition (Civil) No. 292 of 2006, Disabled Rights Group &Anr. Vs. Union of India &ors. Writ Petition (Civil) No. 997 of 2013, RajiveRaturiVs. Union of India &Ors. (Civil Appeal No. 243 of 2005 on 15 December, 2017.

³⁹<https://yourstory.com/2016/08/disabled-accessibility-india> last visited 5th Jan, 2018.



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ramps, broad doorways, etc. Places such as railway stations, airports and bus stations should be made accessible by provision of ramps, lifts, accessible signages and accessible enquiry services⁴⁰.

Universal design:

It is simply a technique of designing a product or service in such a way that it is equally usable by persons with disabilities as well as persons without disabilities. This is highly useful in not only creating accessible systems, but also curtailing expenses and reducing redundant efforts. For example, public transport systems such as buses and trains can be modelled keeping in mind wheel chair users. Buses may be created with ramps such that a wheel chair user is able to board and alight from the bus without any inconvenience. Similarly, trains can be constructed such that the door is on the same level with the platform and the door is wide enough to accommodate a wheelchair to enable passengers using wheelchairs to be able to enjoy the public services on par with other passengers.

Reasonable Accommodation:

This could be in the form of changes to the physical environment to accommodate the independent mobility needs of persons with disabilities, or modification in the procedure of performing a task to ensure that a person with disability is able to enjoy equal opportunities. An example of this would be an organisation employing persons with visual impairment providing them with screen reader software to enable them to work productively. Likewise, employees with disabilities could be granted extra leave in addition to their regular days of leave for attending health care sessions or training camps related to managing their disabilities.

Access to Communication and Information Technology:

Accessibility is a key issue for the persons with disability, not just in the physical world, but in the digital space as well. Despite existing technology and standards, the problem of non-adherence to standards of accessibility and universal design in electronic devices and websites is a perpetual one. Signs, public address systems, the Internet, telephones, TV set, Radio and many other communication media are oriented toward people who can hear, see and use their hands easily. Making these media accessible to people with disabilities can take some creativity and ingenuity⁴¹. But when once if it is made accessible, persons with disability can get an opportunity to live an independent and dignified life on par with their non-disabled counterparts.

Community access:

Everyone should have the right to fully participate in community life, including attending religious services, dining in public restaurants, shopping, enjoying community park facilities, and the like. Even where there are no physical barriers, people with disabilities still sometimes experience differential treatment. In general, what is required is that private and public places, cities and towns, educational institutions, employers, and service providers has to make reasonable accommodations wherever necessary to serve people with disabilities. "Reasonable accommodation" means making changes that don't cause unreasonable hardship to the party making them or to others that party who make use of it.

Making Financial Institutions accessible:

There are many problems faced by person with disabilities while accessing banking and other financial services in India. Despite the existence of technology, for example, many banks and Automated Teller Machines (ATM's) are not physically accessible, staff has no training or expertise in dealing with customers who have special needs. So, in order to overcome the difficulties, banks need to ensure that as far as possible, there shall be at least physical accessibility to their branches – which would include building ramps, having wider lifts, and so on. Branches should, even if they cannot be located on the ground floor, at least make reasonable accommodations for the persons with disability,

⁴⁰<https://www.hrw.org/topic/disability-rights.html>. last visited 3rd Jan 2018.

⁴¹<http://ctb.ku.edu/en/table-of-contents/implement/physical-social-environment/housing-accessibility-disabilities>. last visited 5th Jan 2018.



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such as having a person who can assist them up to the branch or come down to meet them. Finger print identification technology can be effectively explored to allow the use of thumb impressions while operating bank accounts.

When people with disabilities demand access they are not asking for special treatment; they are simply requesting that their needs which may be different but are not "special" be planned and provided as the needs of non-disabled people are. 'Accessibility,' is not simply confined to constructing buildings that have ramps, or building roads - it means ensuring that people with disabilities have access to transportation systems, signs that are both audio and Braille, sports auditoriums, public facilities, hospitals, malls, clinics, and other facilities. One concern that arises when we consider questions of accessibility is: what would be the cost of altering the present technology and infrastructure? If the cost of making public places accessible is too prohibitive, it would not be in the interests of the state to do so. On the other hand, persons with disability also have human rights. Accessibility should not only be treated as a corporate social responsibility measure by the public sector undertakings, banks and financial corporations, but it should be a responsibility to be fulfilled regardless of any entity it may be. Further, Central and State governments have the biggest responsibility to make the public places accessible, so that, the human rights of persons with disability can well be protected.



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**HONOUR KILLINGS AS HUMAN RIGHTS VIOLATION: THE PRICE
FOR FALLING IN LOVE CONTINUES TO SEE A HUGE SPIKE**

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"Unlike a drop of water which loses its identity when it joins the ocean, man does not lose his being in the society in which he lives. Man's life is independent. He is born not for the development of the society alone, but for the development of his self too."

-Dr.B.R.Ambedkar

What is Honour killing?

Generally speaking an Honour killing is the murder of a member of a family or social group by other members, due to the belief of the perpetrators that the victim has brought dishonour upon the family or community. The perceived dishonour is normally the result of one of the following behaviours, or the suspicion of such behaviours: dressing in a manner unacceptable to the family or community, wanting to terminate or prevent an arranged marriage or desiring to marry by own choice, especially if to a member of a social group deemed inappropriate, engaging in heterosexual acts outside marriage and engaging in homosexual acts.

Human Rights Watch defines "Honour killings" as follows: Honour killings are acts of vengeance, usually death, committed by male family members against female family members, who are held to have brought dishonour upon the family. Honour killings are directed mostly against women and girls. However, men are equally the victims of this practice where son-in-law is killed as well. The perceived dishonour is a result of:

(a) dressing in a manner unacceptable to the family or community, (b) wanting to terminate or prevent an arranged marriage or desiring to marry by own choice (love marriages), (c) engaging in heterosexual sexual acts outside marriage, (d) engaging in homosexual acts (e) marrying within the same gotra or outside one's caste or marrying a cousin from a different caste.

The most obvious reason for this practice to continue in India, albeit, at a much faster and almost daily basis, is because of the fact that the caste system continues to be at its rigid best and also because people refuse to change their attitude, mentality to marriage. It is very unfortunate that the caste system in India has turned into a social evil for many. Many young people have lost their lives in the name of Honour. Second, increased visibility of such crimes is the trend of more and more of youngsters joining educational institutions, meeting others from different backgrounds and castes and establishing relationships beyond the confines of caste and community, creating a conflict between traditional beliefs and modern aspirations in the young minds. Thirdly, Honour killings are rooted not in religion, but in feudal social structures and violently patriarchal, tribal culture where representation of women at local level and her engagement in socio-economic development is negligible. Caste panchayats have come to play an increasingly important role in Haryana and elsewhere, especially in situations where political patronage also exists.



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Historical background

Studies of the phenomenon of 'Honour'-based violence are currently limited. Where the slaying of women and men with the justification of family 'Honour' is a collective and even communal enterprise, and the acts of the dead are considered to have brought shame to the family, there is a huge motivation for the family and community to cover up murders. Thus victims are erased from history and the existence and prevalence of Honour-based violence in any particular society is difficult to assess. A historical survey suggests that violence against women, which would now be considered as 'Honour'-based violence has occurred in many societies and in many historical periods.

Laws, which appear to promote violence against women for the expression of sexual autonomy, are notable in Assyrian law codes dating back to 6000 BCE, and the codes of Hammurabi. Within the Bible, in Numbers 25:6-19, the figure of Phineas slays both a man and a woman in the temple for marrying across racial boundaries, which ends a plague and guarantees priesthood to his lineage. Guru Gobind Singh, a central figure in the Sikhi religion called for the rejection of 'Honour' killers. From the community, stating that 'whosoever takes food from the slayers of daughters, shall die unabsolved'; despite his prohibition, 'Honour' killings continue to be a serious issue within contemporary India, with Sikh families common perpetrators. Under Roman law, fathers had absolute power of life or death over all members of their families; males who did not take action against female relatives who were considered to have violated the sexual code were persecuted by their peers. In medieval Albania, the legal code known as the Kanun of Lekë Dukagjini allowed for the killing of women believed to have committed adultery in terms of blood revenge, which still has its effects on contemporary Albania. During John Calvin's control over Geneva, adulterous women were drowned in the river Rhone. Within Ching dynasty China, fathers and husbands had the right to kill daughters deemed to have dishonoured them. Abuses of women that relate to a notion of 'Honour', such as the exchange of girls as compensation for crimes of the male relatives, and levirate, where a widow is obliged to marry her husband's brother occur across sub-Saharan Africa. 'Honour' killings have been recorded in the Southern Mediterranean, including Greece, Spain and Italy right up to the modern era. A law allowing for murder justified by 'Honour' remained part of the Italian penal code right up to 1980 when it was removed from the statute books due to feminist campaigning. It is unknown how many societies outside the areas commonly associated with 'Honour'-based violence enact the collective murder and abuse of women deemed to have offended traditional sexual morality, yet individual cases have been noted in places as diverse as the Philippines and Western Samoa.

According to statistics collected by UNPFA in 2000, there are 5,000 'Honour' killings per year stating that Honour killings had been reported in Egypt, Jordan, Lebanon, Morocco, Pakistan, the Syrian Arab Republic, Turkey, Yemen, and other Mediterranean and Persian Gulf countries, and also in western countries such as France, Germany and the United Kingdom, largely within migrant communities; India also has high levels of 'Honour' based crimes, on a level with the prevalence in Pakistan. However, this figure is considered an underestimate by many women's rights activists and the true prevalence of HBV at the current time is unknown and very difficult to estimate. Murders committed in the name of Honour³ may be concealed through the combined power of family and community working in concert, providing alibis for one another and representing a murder as an accidental death or suicide. In certain countries, women and girls may not be registered at birth or attend school, so their lives, and their deaths occur outside official figures. In some cases, police and the judiciary may collude by interpreting a murder as a natural death: in one case for example, a woman murdered by her family was recorded as dying of 'old age' despite being under 25.



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Statistical analysis of Honour killing

- 5000 Honour killings internationally per year.
- 1000 Honour killings occur in India
- 1000 Honour killings occur in Pakistan
- 12 Honour killings per year in UK

Honour killings have been reported in northern regions of India, mainly in the Indian states of Punjab, Rajasthan, Haryana, Uttar Pradesh, as a result of people marrying without their family's acceptance, and sometimes for marrying outside their caste or religion. In contrast, Honour killings are rare to non-existent in South India and the western Indian states of Maharashtra and Gujarat. In some other parts of India, notably West Bengal, Honour killings ceased about a century ago, largely due to the activism and influence of reformists such as Vivekananda, Ramakrishna, Vidyasagar and Raja Ram Mohan Roy.

The Indian state of Punjab has a large number of Honour killings. According to data compiled by the Punjab Police, 34 Honour killings were reported in the state between 2008 and 2010: 10 in 2008, 20 in 2009, and four in 2010. Haryana is also notorious for incidents of Honour killing, mainly in the upper caste of society, among Rajputs and Jaats. Various instances of Honour killings have also been reported in the State of Bihar. Recent cases include a 16-year-old girl, Imrana, from Bhojpur who was set on fire inside her house. In June 2012, a man chopped off his 20-year-old daughter's head with a sword in Rajasthan after learning that she was dating with men. According to police officer, "Omkar Singh told the police that his daughter Manju had relations with several men. He had asked her to mend her ways several times in the past. However, she did not pay heed. Out of pure rage, he chopped off her head with the sword."



What Indian government is doing?

Constitution of India is supreme means no body is supreme to the constitution of India. But Khap Panchayats these bodies acting as judiciary and announcing judgements like killing the persons if they marry outside their caste especially if a woman marries a person of low caste man. It needs to be mentioned here that the Khap Panchayats are not recognised under any law in India. The Indian Penal code provides punishment for rape (section 376), molestation (section 354), harassment (section 509), dowry death (section 304 B), cruelty by husband (section 498 A), importation of girls (section 366 B) and kidnapping and abduction (sections 363-373) but no punishment for Honour killings. Special laws have also been made to provide protection from offences such as trafficking; demanding, taking or giving dowry (Dowry Act 1967); child marriage (Child marriage Act); female foeticide; domestic



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violence(Protection of Women from Domestic Violence Act, 2005), etc. But no special law on Honour killings which is the need of the hour.

It needs to be mention here that our parliamentarians are failed in order to pass the legislation on Honour killings till date. India has given equal status to women under Article 14 of its constitution. But it is found that there is no such equality in case of marriage of women. If a woman marry against the wishes of her parent's choice or refused to marry with the person of her parent's choice she may be killed in the name of Honour. In 1990, National Commission For women (NCW) was established under a statutory body in order to address the issues of Honour killings among some ethnic groups in North India. This body reviewed constitutional, legal and other provisions as well as challenges women face. The NCW's activism has contributed significantly towards the reduction of Honour killings in rural areas of North India. According to Pakistaniactivists HinaJilani and Eman M. Ahmed, Indian women are considerably better protected against Honour killings by Indian law and government than Pakistani women, and they have suggested that governments of countries affected by Honour killings use Indian law as a model in order to prevent Honour killings in their respective societies.

National Commission Of Human Rights shall have the power to inquire, Suo-moto or on a petition presentedto it by victims or any person on his behalf, into complaint of,-i)violation of human rights or abatement thereof : or ii) negligence in the prevention of such violation by a public servant.

Law Commission of India suggested to the Government of India a Legal framework for Prevention of interference with the freedom of matrimonial Alliances (in the name of Honour and tradition) in its Report no.242 on August 2012. Recently the Law Commission of India has recommended making offence of Honour killings a non-bailable offence but disagreed with Supreme Court's suggestion that death sentence be applied to all such cases of Honour killings

- In 2006, Supreme court ordered stern action against all those threatening and harassing couples in the name of Honour.
- Though the Honour killings are happening from very long ago, it's only in 2009, parliament spoke the issue of Honour killings and supported the demand for a separate law.
- In a Landmark judgement in the year 2010, Karnal district court in Haryana ordered death penalty to five members of the family that committed the crime and a life imprisonment to the Khapanchayat chief that perpetrated the incident.
- In 2011, Supreme court ruled that Honour killings comes under 'rarest of rare' category that deserve death penalty.
- 'National Commission for Women' (NCW) is working hard to stop Honour killings. It's efforts significantly reduced the crimes.
- Prohibition of unlawful assembly (Interference with he freedom of Matrimonial alliances) Bill, 2011 sought to declare khapanchayats as unlawful and mentions measures to prevent Honour killings. This bill is supported only by 23 states and is still pending.
- The opponents of this law say that the law will be misused.

What other countries are doing?

- Turkey imposes life imprisonment for the guilty, if proved.
- Some countries allow the victim's family to forgive the killer. There are a few exceptions though.



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- In ancient times, Rome and in some other countries men are allowed kill their wife and children, if they dishonour the family. At present, all the countries banned those barbaric laws.
- In most of the countries, Honour killings are not recognized as a separate crime, and hence no statistics are available.

Prevalence in Tamil Nadu

The political landscape of Tamil Nadu abounds with Dravidian parties that have inherited and being influenced by the social justice movement of Periyar, who spoke forcefully against caste-based violence and advocated 'self-respect' marriages. But behind the lip-service to Periyar, the state hides a sordid history of violent responses to inter-caste marriage, or demands from Dalits to have the same access to places of worship that the higher castes do.

In February 2015, O Panneerselvam – the then chief minister and now deputy chief minister – emphatically denied that there was any honour killing in Tamil Nadu while rejecting a member's demand for separate legislation for honour killings. A year later – on March 13, 2016 – a surveillance camera in Udumalaipettai proved Panneerselvam disastrously wrong. The world witnessed the gruesome murder of V. Sankar – a Dalit engineering graduate – who was married to Kausalya – a caste Hindu girl from Palani. On December 12, a principal court in Tirupur handed down death sentences to six convicts in the case including Kausalya's father Chinnasamy, double life term to one and five years of rigorous imprisonment to another. Three persons including Kausalya's mother Annalakshmi was acquitted.

"Between 2013 and 2017, 187 Honour killings have happened in Tamil Nadu. About 80% of those killed are women" said A Kathir of Evidence, an organisation that works on caste issues. Honour killing is a real, serious issue in Tamil Nadu.

Tirunelvelicourt had sentenced a couple from Thevar community to death for killing a Dalit woman Kalpana. The murder had happened after the couple's daughter Kaveri eloped with Kalpana's brother Viswanathan. The Palayamkottai police had arrested the couple on charges of honour killing.

The killing of Kannagi and Murugesan in 2003 arguably remains the most gruesome one in the state. The couple who had hailed from Virudhachalam fell in love while studying together at Annamalai University in Chidambaram. S Murugesan – a Dalit – was a graduate in chemical engineering while D. Kannagi – from the Vanniyar community – was a commerce graduate. Fearing backlash, the couple eloped but were tracked and forcibly fed poison by Kannagi's relatives in public view. Murugesan's relatives had later told a fact-finding team that Murugesan was fed poison and killed while Kannagi had kept her mouth tightly closed. The relatives then poured the poison into her ears and nose and killed her. The trial in the case began in August of this year. Many witnesses have reportedly turned hostile.

Exactly a decade later, in 2013, E. Ilavarasan – a Dalit youth – was found mysteriously dead near a railway track near Dharmapuri district. Caught in sharp caste bigotry, his marriage to Divya – from Vanniyar community – led to tensions across the state with the Pattali Makkal Katchi chief S. Ramadoss accusing the Dalit youth of 'luring dominant caste women by wearing sunglasses and t-shirts.' While the CB-CID investigation concluded that it was a suicide, experts have contested the theory.

In June 2015, Dalit youth V. Gokulraj was found dead on a railway track near Salem after he was apparently seen with a girl from a Kongu Vellalar community at the Tiruchengode temple. When Yuvaraj – a small-time caste leader – surrendered in the case in October, he was given a hero's reception.



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Conclusion

In fact, women are more victims of this type of dignity than men. There are many incidents. Parents who are angry and frustrated that their children's love has gone out of love, they do not think that they will be subject to the chastisement of murderers by killing children, the dignity that cannot be found by the children's love and will not return to their murders. In fact, the parents are the reason behind the loss of dignity of their family as the murderers are the parents, not their children.

These young people are worth the parent's senses. They need to understand their mood. If we walked in Periyar and Ambedkar's way, it would have been hidden before thirty years ago. But we still have to drive up the reactionary thinking. Periyar's disclosure of the fifty years ago was not even close to the shadow.

When we get a solution for the so called Honour murders only when,

1. People should be able to change their view of religion and caste traditions if they want to prevent such Honour killings.
2. Still awareness must be made for those who are still trapped in caste and religion.
3. Above all the government should make special laws for people who go for love marriages, inter caste marriages and inter religious marriage to prevent Honour murders.
4. Only good education can prevent Honour killings. So we want to give Community education to the next generation to know our social justice.
5. The next hundred years cannot prevent Honour killings without eradicating caste and religion thoughts.
6. Caste is born from religion. Honourary murders are born from the caste.

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WOMEN'S RIGHTS AS HUMAN RIGHTS

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Introduction

Women are an important part of humanity. She is the creator, the up bringer, preserver and protector of a family. Women in general and women in India in particular are equally talented and able worker and is an invaluable asset of human resource and is contributing substantially towards the nation's building. Women rights are human rights. To deny her the political, social, civil, economic and cultural rights is gross violation of the constitution, the Supreme law of the land and is also contempt of numerous world human rights declarations, covenants and conventions. If all the constitutional and legal provisions guaranteeing human rights to the people of this country particularly women, one become complacent and assume that there has been liberation of the masses. But, is that the reality what is the status of women of the country vis-à-vis the human rights. It is very strange that a country is progressing and all round awareness is increasing atrocities against women, rather than declining are on the increase. The custodial, marital and other rape cases are registering sharp increase though the laws are very stringent now.

This paper proposed by the author to have a thorough study on the status of women on the National and International front and bring about the most striking features about the expression of women's rights in contemporary human rights doctrine. It also contemplates to mention that women are not only the creators of the world but also makes the future of the nation by making a balance in and outside the home. To the same old question of why we should think of women's human rights as special subject, the answer may be in the reasons to consider the rights of the women to be subject suitable for a dedicated treaty and implementation process which is a historical fact that discrimination against women has been such a persuasive feature of most human societies for which special measures are needed to eliminate it.

The interests of women who are subjects of distinctive vulnerability are perfectly general and they are interested in physical security and personal liberty. The human rights of women are considered matters of special concern because certain important interests of women are subject to gender specific forms of abuses. The patterns of subordination sustained by these features of societies help to explain why women typically face certain kinds of threats to their interests in particular which are not faced by men. Though there may be only a few human rights can be seen as protection of interests specifically for women and Human Rights of women is regarded as a special subject of concern which has a larger domain.

Throughout the world women continue to face pervasive forms of discrimination, violence and injustice because they are women. Law and legal processes continue to systemically ingrain and sustain discrimination and inequality faced by women, to perpetuate the human rights abuses they face, and to deny women effective legal protection, remedy and reparation.

Meanwhile women human rights defenders, lawyers and judges who work to make change and represent powerful and legitimate voices for justice, equality and accountability, are often met with particular abuses, barriers and hurdles that arise because of their status as women, or because of their focus on issues of gender-equality or rights issues facing women.

Violence against women can be considered one of the first issues on the women's rights agenda to be fluidly incorporated into the discourse of human rights. The slogan 'Women's Rights are



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Human Rights' was first used at the UN World Conference on Human Rights in Vienna in 1993. This conference was successful in integrating women's rights by recognizing rape, sexual slavery, and all forms of sexual harassment and exploitation as human rights issues. In this article I will point out some of the benefits and shortcomings of realigning women's rights into a human right's framework.

It is important to realize that in the age of rapid globalization, universalism of any sort is suspect and targeted for critique. However, this should not defer our acknowledgment of the various positive outcomes the human rights framework has provided for women's rights.

WOMEN HUMAN RIGHTS VIOLATIONS:

The rights of women along with those of men have been recognized in major human rights instruments since the establishment of the United Nations Organization. In fact, the U.N Charter itself reaffirms its faith in fundamental human rights..... equal rights of men and women and Article-1 of the Universal Declaration of Human Rights states that all human beings are born free and equal indignity and status. Human rights of women have been defined as "collective rights for a woman to be seen and accepted as a person with the capacity to decide or act on her own behalf and to have equal access to resources and equitable social, economic and political support to develop her full potential, exercise her right as a full human being and to support the development of others. If we try to analyze this definition we can understand that every right that helps women to become full pledged human being is her human right and denial of such of any rights amounts to violations of women's human rights for eg, violence against women. Violence against women regardless of the nature of the perpetrator- and individual, a group, an institution, the state or the society, is human rights' violation and is treated as such whether it happens at home, or outside. Thus violations of women's human rights include:

- Sexual or physical assault and mental harassment;
- Female foeticide and infanticide;
- Female circumcision
- Dowry deaths, Sati, Forced prostitution and
- Detail of her autonomy and authority over her body.

But these violations may extend to unlimited humiliations and violence against women, for example, wife battering, stripping of women in public, economic exploitations of women, exploitation of women labour by less payments, like that the list goes on and on.

The violations and violence refuted in the deprivation and discrimination to which women are subjected to in all societies either affluent urban and downtrodden rural. Women, though represent more than half of the world's population and vast majority of them are engaged in works that contributes for the social economic development of the Nation, are subjected to discrimination in every walk of life. The national policies, programmes and decisions are so structured as to regulate the women to the level of 'passive' participate rather than the 'active' one in all activities. Although they contribute more to the family income they are considered to be unproductive by government statisticians, economics, development experts and even by their family members. Gender bias both at home and society in it's various forms prevents many women from obtaining proper education, health care and economic independence and legal status also. This deprivation and denial of rights resulted in poor literacy among the women.

Deeply rooted societal and customary rules have further impeded their progress to a great extent. The sex based discrimination and deprivation are premised to a large extent on the arbitrary division of male and female roles in the society. It is heartening to note that the difference in sex roles begin from the time when the female child is identified in the womb of the mother. By chance she survives and takes her breath on the earth; she is put in chains at every step of her life which makes her generic status also at stake.



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The United Nations Organisation from the very beginning in concerned with the plight of women. This is significant in itself as it not only accepts the prevalence of discrimination in all its forms. However, these instruments lay down the international norms to be adhered by the state at the national and international levels. But it is the implementation which is crucial to judge the progress towards the realization of human rights.

HUMAN RIGHTS OF WOMEN AT INTERNATIONAL STAND:

The rights of women along with men have been recognized in major human rights instruments since the establishment of the United Nations Organization on the international platform. Indeed the United Nations Charter itself reaffirms faith in fundamental human rights..... in equal rights of men and women. Human rights discourse may be regarded as a proper type of rhetorical expression which is exemplified in the Universal Declaration of Human Rights, 1948. In 1948 the U.N General Assembly adopted the Universal Declaration of Human Rights which defined the human rights and fundamental freedoms, the governments have agreed to protect. The Declaration represents a milestone in the history of human-kind, a veritable Magna Carta which spells out precise Civil, Political, Economic, Social and Cultural rights to which every human being on earth is equally entitled. Indeed this document introduced unprecedented standards of achievement in human rights which are valid for all members of the international community. It covers the whole range of activities right from the rights of indigenous people to economic and social rights which include rights of women. This Declaration also deals with the mechanisms available to ensure these rights are respected and fulfilled. The Universal Declaration is an expression of global hope for those millions of our fellow men and women for whom the attainment of Universal human rights is a goal and not yet an existing reality. The vision displayed by the drafters of the Universal Declaration of Human Rights was without parallel. Today two covenants and some fifty international instruments covering all aspects of human endeavor have developed out of the original document.

The inclusion of women's rights in key United Nations documents, however, has not brought about equality. Consequently a number of other human rights instruments have been passed both by the United Nations General Assembly and the U.N. specialized agencies with regard to various aspects of women's rights. The two human rights covenants of 1966- the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, reinforce the equality concept and forbid discrimination on account of sex. These covenants refer to the equal rights of men and women to the enjoyment of all civil and political rights including the right to marry and found a family. In 1951, the International Labour Organisation (ILO) adopted a Convention concerning Equal Remuneration for Men and Women workers for work of Equal Value besides adopting two other conventions to improve the working conditions of women: viz. Convention on prohibition of Night Work to women employed in industry, 1948 and convention providing Maternity protection (Revised) 1952. The other conventions of special importance to women are the Convention on the Political Rights of Women 1952, the Convention on the consent to Marriage, Minimum age for Marriage and Registration of Marriage (1962) and the Convention on the Nationality of Married Women (1957) which directly addresses issues related to the status of women. In addition the United Nations Educational Scientific and Cultural Organization (UNESCO) has adopted the Convention against Discrimination in Education (1960) which prohibits "any distinction, exclusion, limitation or preference" on account of sex. However, it is the Convention on the Elimination of All Forms of Discrimination Against Women adopted by the General Assembly in 1979, which is the major instrument relating to the status of women. India has ratified the Convention on 9th July, 1993. The Convention has the twin objectives:

- to prohibit discrimination, and
- to ensure equality. (Arts. 2-4).



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The scope of the obligations created by the Convention extends to political, economic, social, cultural, legal, familial and personal fields of activity. The essence of the Convention is that, for the first time it provides an extensive definition of the term "discrimination against women", as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women, of human rights and fundamental freedoms in the political, social, cultural, civil and any other field. The Convention, thus, prohibits discrimination not only in public life but also in private life, which clearly includes family relations. The U.N General Assembly adopted a Resolution (No. 48/104) on 23rd February, 1994 in order to strengthen and complement the process initiated under the Convention on the Elimination of All Forms of Discrimination against women. The resolution consists of 6 Articles and defines "Violence Against Women" as follows:

- Any act of gender based Violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.
- Violence is to include, inter alia, dowry related violence, traditional practices harmful to women, trafficking in women and forced prostitution, sexual harassment, violence occurring within the general community and violence perpetrated or condoned by the State.

The Convention reaffirms that women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms, in all spheres of life. In addition to Conventions and Resolutions other activities also have been taken up at international level. As early as in 1947 the Commission on the Status of Women was established. It has become an instrument to develop the principle of equality of men and women. Besides this Commission, World Conferences were also held to highlight the Women's Issues. The First Inter-governmental Conference of Women was held in Mexico City in 1975, The Second World Conference of Women was held in Copenhagen in 1980 focusing on three sub-themes: Education, Employment and Health. Third World Conference on Women in 1985 reviews and appraise the achievements of the decades for women and to develop strategies for overcoming obstacles still remaining. Accordingly it adopted the Forward Looking Strategies (FLS) leading up to the year 2000. The Fourth World Conference on Women held in Beijing with three objectives:

- To equip the women to meet the challenges of 21st century for scientific, technical, economic and political development
- To empower the women so as to enable them to take part in decision making and
- To draw up a platform of action for the completion of unfinished works.

HUMAN RIGHTS OF THE WOMEN- NATIONAL STAND:

After detailed discussion of International standards with regard to women's human rights, it is felt necessary to observe the position under Indian Law; otherwise the present paper remains incomplete. Being a signatory to various International Conventions, covenants and protocol on human rights, India has assumed the responsibility to provide and protect various rights of women. Therefore, the concept of "equality and non-discrimination" finds its due place in Indian Constitution, and to ensure these principles Articles 14, 15 and 16 have been provided with equality provisions.

Article 14 of the Constitution ensures equality before law to all persons within the territory of India. The strict compliance with rule is obligatory on the part of the State and a citizen cannot waive this right. Article 15 prohibits discrimination on the basis of sex or religion, race, caste, place of birth or any of them. Similarly under Article 16 no citizen is subjected to any disability or restriction to hold public offices or in matter of public employment. The right to freedom under Art. 19 guarantees



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from speech, expression, peaceful assembly, association, practice of any occupation. The right against exploitation prohibits forced labour and child labour. Cultural and educational rights concern the protection of the interests of minorities. Besides providing the above fundamental rights Part IV of the Constitution set out the "Directive Principles of State Policy" whereby the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice-Economic, Social and Political shall be provided to all citizen irrespective of sex. In pursuance of Constitutional Directive under Art. 39 to provide equal pay for equal work for both men and women, Equal Remuneration Act was passed in 1976. In 196 Maternity Benefit Act was passed in order to give effect to ILO Convention on Maternity benefit. Many other laws have also been passed and progressively interpreted to prevent the exploitation of women, especially family related laws i.e. marriage, divorce, property, inheritance and adoption in an effort to develop women's personality and to raise her status in the society.

In addition to Constitutional provisions some other measures have also been taken to improve women's needs and to raise their status. The first step in that direction is the drafting of the National Perspective Plan for Women; 1988-2000 A.D.¹⁸ The perspective plan for Women is an effort at a long term overall policy for Indian women, linked to national targets determined for the end of the century in respect of certain basic indicators especially of health, education and employment. Second important step is setting up of the National Commission for Women in 1992, pursuant to the enactment of the National Commission for Women Act 1990.

JUDICIAL RESPONSE:

The Indian judiciary is playing a significant role in comparison to judiciaries of the world. The public at large have faith in our Judiciary. The Supreme Court is the ultimate interpreter of the Constitution of India. The judiciary is the protector of Human Rights over decades. Some of the unpleasant violations of Human Rights like Sati, Child Marriage, Honor Killings, Slavery, and Child Labour have been abolished by the initiative of Judiciary.

CONCLUSION:

Human rights are for everyone, and everyone will be affected if we do not fight to preserve them. They took decades of tireless effort by countless committed individuals to establish, but –as we have seen all too clearly in recent months – they are fragile. If we do not defend them, we will lose them. As well as understanding our own rights, we can make a real difference by supporting others. In the street, in school, at work, in public transport; in the voting booth, on social media, at home and on the sports field. Wherever there is discrimination, we can step forward to help safeguard someone's right to live free from fear and abuse. We can all lobby for better leadership, better laws and greater respect for human dignity.

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GENDER JUSTICE IN HUMAN RIGHTS PERSPECTIVE TOWARDS ENVIRONMENTAL SUSTAINABILITY

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Introduction

Environment is the basis for existence of life on earth. If man causes damage to environment in turn it perishes the liveable space on earth. The climatic changes are the evidence of different kinds of increased pollution caused on the various elements of environment. The development of man is being built on the grave which results in extinction of life rather than execution of progress. Significant release of toxic substances in global scale is accelerating the environmental degradation leading to climatic changes.

Environmental pollution and climatic changes is closely related to various factors like economic Production, technological development, life style of human beings. It is high time the need of the hour is either to tackle this problem or perish. In this 21st century the demur encountered by humanity is climatic changes, degradation of environment, depletion of natural resources, and destruction of nature in pursuit of their economic and social prosperity. Effects of eroding earths replenishing capacity escalate the rise in global average temperature, global warming, ozone depletion, natural disasters and climatic changes. Thus sustaining environment is the only way out to overcome these problems. Though the pillars of sustainability are environmental, social and economic, Environmental sustainability is directly related to social and economic life.

Human rights principles strongly echo in its Agenda for Sustainable Development. The Sustainable Development Goals are the result of the most comprehensive review process of the UN. **The agenda international human rights law gives way to advancement and realization of human rights for all people without discrimination.** Human rights approaches to social justice and gender equality the Agenda for international assessment.

Human Rights and Environmental Sustainability

Human rights are natural rights to all human beings. Human beings are all equally entitled to human rights without discrimination no matter what the origin, place of residence, nationality, sex, colour, language, religion, or any other status. According to Rio Declaration Principles 1, 4, and 5, Human beings are in dire need for sustainable development. They have right to a healthy and productive life in harmony with nature to achieve sustainable development. Environmental protection and the development process are two sides of a coin and cannot be considered in isolation. Development approaches that are firmly rooted in principles of human rights and environmental sustainability address inequalities between people and states and rebalance justice resulting in sustained peace, equality, self-sufficiency of people and the safeguarding of the planet. Thus it has been recognized that a clean, healthy and functional environment is integral to the enjoyment of human rights, such as the rights to life, health, food and an adequate standard of living.¹

Present day climate change is the largest, most pervasive threat to the natural environment and human beings. The recent assessment report from the Intergovernmental Panel on Climate

¹The United Nations Environment Programme (UNEP) in cooperation with the Sabin Center for Climate Change Law at Columbia University in the City of New York. December 2015, Design and Layout: Jennifer Odallo, UNON Printshop, Printing: UNON Publishing Services Section, Nairobi.



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Change (IPCC) describes how observed and predicted changes in climate will adversely affect the life forms, ecosystems, natural resources and their sustenance. These harmful impacts include unpredicted events that cause direct threat to human life and safety on earth, gradually undermining access to life supporting resources of human beings. The consequences of climate change will have an intensive effect on the enjoyment of human rights of individuals across the globe. This is not merely a theoretical analysis but future possibility. The scientific revelations show that climate change is affecting temperatures, hydrologic conditions, ecosystem functioning, and agricultural productivity in many regions, especially the rapidly melting Arctic and low-lying coastal areas.²

Gender Justice in Human Rights Perspective

It is rightly said When environmental deterioration occurs, woman are the first to suffer; when economic gains occur, women are the last to receive the benefits. *Women* and children are chief victims and vulnerable to environmental contaminants. Women, especially those who are pregnant and those living in rural or marginal suburban areas in developing countries, are particularly susceptible to environmental threats.

Women are susceptible to health problems as the quality of food declines or a reduction in nutritional intake and prone to environmental hazards because of their multifarious roles as home-managers, economic providers, and their role in reproduction. Toxic substances alters environment during the reproductive process. These toxic substances may increase the risk of abortion, birth defects, foetal growth retardation, and peri-natal death.³

Women around the world nevertheless regularly suffer violations of their human rights throughout their lives, every aspect of life – health, education, political participation, economic well-being and freedom from violence, among many others. Thus eliminating all forms of discrimination against women are fundamental human rights and United Nations values. Thus women and girls are at liberty to access to the full and equal enjoyment of all of human rights and to be free from all forms of discrimination is essential to achieve human rights, peace and security, and sustainable development.⁴

Women represent fifty per cent of the world's population. Across the world, as many as one-third of all households were headed by women, large number of women managing alone in rural areas, on top of this, 75 per cent of the health care for elderly people was provided by women at home. Clearly, traditional family structures are either kept up or strained by women across the planet.⁵ Beijing platform also recognised women's strength and dedication and proposed women's participation in environment protection and sustainable development.

Conclusion

Women's efforts and work is undervalued, women's abilities and contribution throughout the society and the world also tend to be undervalued. *Although women* are chief victims and vulnerable of environmental problems, on the other hand they are strong dominant agents in protecting and preserving environment. Hence recent efforts have been made through international organizations to involvement women in different schemes to improve the environment, and increase their quality of

². Intergovernmental Panel on Climate Change (IPCC)

³ . César Chelala, Environmental Degradation Takes a Heavy Toll on Women and Children's Health, [Common Dreams](#), published on Saturday, February 20, 2016

⁴ . Bedri B, Osama S, [Environmental crisis and its impact on women: The case of the Sudan](#), Women 2000. 1992 Jun;(5):4-7, PMID:12318291, <https://www.ncbi.nlm.nih.gov/pubmed/12318291>

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life and well being. The SDGs Target is to ensure women's full and effective participation at all levels of decision-making in public life relates to the Conventions provisions on public participation and non-discrimination.

Women themselves are driving force for change because they play a key role in shaping the welfare of future generations. Public policies cannot be effective without the participation of the women, who make up for more than half of the world's people. The efficiency of women in the household decision-making process, allocation of and creative economic efficiency, growth and their views in designing future, must find place into the policy formulation.

Women bring about synergistic implementation of all the social and economic development programmes by drawing resources made available through various channels. Commitment of women, fixing up responsibilities for implementation of action plan, to ensure efficient implementation, monitoring and review of action and women participation in and sharing of the important decision-making process results in achieving gender justice in human rights perspective which in turn helps in accomplishing environment protection and sustainable development.

Every human being possess inherent in one self both masculine and feminine energies. Masculine energy can be supporting, protecting and caring energy, the feminine energy on the other side is a caring, nurturing and extremely nourishing energy. Thus if want healthy new era and golden age, success in sustainable development and environment one must learn to experience the feminine energy with us. Women are personifications of courage and determination. If their involvement is encouraged and respected in every walk of life one can easily realize the goals of environmental sustainability.



AN OVERVIEW OF WOMEN LABOUR RIGHTS WITH SPECIAL REFERENCE TO INDIAN LABOUR LEGISLATIONS

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INTRODUCTION:

Empowerment of women can be achieved only by the economic independency gained by them. From ancient time onwards she was suppressed by the various factors like family, religion, caste, sex, creed, etc. But that was slowly changing because of the education and employment she acquired. India is one of the nations built by the progressive thinkers. The makers of our Constitution drafted the fundamental law with caution and diligence. Constitution is giving protection to the women by eliminating discrimination against her, especially the provisions like Articles 14, 15, 16, 17, 21, 39(d), 41, 42, 43, 43 A and Universal Adult Franchise. She started to get education by the initiation of many leaders and they help females in getting the educational and employment opportunities. Now they started to work in all the fields without any disparity. After getting the job every female is not free to work due to physical, mental and social problems. That can be rectified by the protective labour legislations, International Conventions and Recommendations. In India the Labour Laws relating to women are meager when compared other area. This paper focuses on the Labour Laws available to women workers and need for improving the labour laws.

LABOUR LAWS IN INDIA RELATING TO WOMEN WORKERS:

In India the list of labour laws are enacted by the Central and State governments to protect the rights of the laborers but for the women only few labour laws are so far enacted. Maternity Benefit Act, 1961, Some of the provisions in The Factories Act, 1948, Equal Remuneration Act, 1976 and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

MATERNITY BENEFIT ACT, 1961:

Article 42 of the Indian Constitution is the base for this Act,

“The State shall make provision for securing just and humane conditions of work and for maternity relief”

Reproduction is an essential duty on a female imposed by the nature. In the modern era, half of the educated women are going to the work, in order to protect their interest this Act was enacted. Maternity benefit Act, 1961 is one of the important social security labour legislation enacted to protect women employees by providing paid leave during their maternity period. The scope and application of this act is extended by various amendments. It is providing benefit like the leave for miscarriage, medical terminations, tubectomy operations, nursing breaks, medical bonus, and prohibition of employment during last weeks of pregnancy, even in case of death of the women the maternity benefit will be provided to the child or nominees or legal representatives. This Act applies to all the working women in a factory, mines, plantations, where ten or more employees working. She has to work in the establishment for 80 days is the prior condition to avail benefit from this Act. Not only for the regular employees, Contract Labourers, and casual laborers can also get benefit by this Act.

Maternity Benefit Act, March, 2017 amendment has tried to give widest protection to women employees by the following changes like,

- 1) Extending maternity leave from 12 weeks to 26 weeks



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- 2) Twelve weeks of Leave for adoptive mother who adopts a child below three months and commissioning mother (biological mother who uses her egg to create an embryo implanted in any other woman) from the date of handing over of the child.
- 3) Work from home facility.
- 4) If a establishment is having fifty or more employees mandatory part on the employer to provide Crèche facility.
- 5) Intimation in writing and electronically to every woman regarding every benefit available to her.

THE EMPLOYEES STATE INSURANCE ACT : This Act gives five benefits to the employees that is the reason of having "panchadeep" as its symbol. In that one of the benefit is Maternity Benefit. If one woman avail benefit from the maternity benefit under ESI cannot claim benefit from the Maternity Benefit Act. If she is not covered under the ESI ACT , because of the wage ceiling under that Act, she can get benefit from the Maternity Benefit Act, 1961.

THE EQUAL REMUNERATION ACT, 1976: "Equal pay for Equal work " under Article 39 (d) stresses on the equality in paying remuneration for the workers without any discrimination especially without any sex differentiation. The Equal remuneration act , 1976 was enacted after the United Nations International Women's year 1975 celebration. The equal remuneration Act is a small piece of legislation having 18 sections insisting on "same pay for same nature of work"

- 1) Duty of an employer to pay equal remuneration to men and women workers for same work or work of a similar nature.
- 2) Prohibiting discrimination while recruiting.
- 3) Setting up of Advisory committees with female members representation.
- 4) Awards, Agreements, Contracts of Service shall be overridden by this Act.

THE FACTORIES ACT, 1948: The Factories act had the historical background of first enacted labour legislation in India in the year of 1882. The condition of Children and Women in the Jute mills of Bengal and Cotton mills of Bombay were very worse . This paved the way for the enactment and many changes were done like the reduction of working hours, lunch breaks etc., was provided. After Independence the Factories Act, 1948 was enacted to give protection for the workers in the factories involving in manufacturing process. Some of the provisions specially deals with the health, safety, and welfare measures for women and Children. The following are some of the provisions of the Act which deals with the women workers.

- 1) Section 27: Prohibitions of Employment of women and Children near Cotton openers.
- 2) Section 48: Creches facility should be provided by the employer.
- 3) Section 66 : Further restrictions on the employment of women workers like night shifts, working hours .

SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013: After the Visaka Case Judgement and guidelines delivered by the Honourable Supreme Court in the year of 1997 the need of an legislation was stressed. After 15 years of struggle this Act was enacted with the aim to protect the working women from the sexual harassment.

- 1) Various Committees constituted are Internal Complaints Committee and Local Complaints Committee to hear the cases related to the Sexual harassment of women at working places.
- 2) Work place includes almost all the departments, organisation, hospitals, educational institutions, private sector, public sector etc., including the dwelling place or house.



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- 3) Workers includes domestic workers in the homes.
- 4) Employees including the temporary, permanent, contractual, ad hoc, apprentice, probationers etc.
- 5) It is made as compulsory for all the working area to constitute the Internal complaints committee to receive and inquire the matters related to sexual harassment.

This act is not only giving protection to the organized sector of women but also to the unorganized workers as a extended labour welfare legislations. Apart from these some of the Acts are rarely talking about the women labor rights.

CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN: This convention was adopted by the United Nations in the Year of 1979. It is described as International Bill of Rights for Women.

ARTICLE 11 : It stressed on the right to work as an unalienable right of all human being. It says the importance of maternity benefit, equal pay, paid leaves, social security legislations, prohibition sexual harassment of women at working places.

As one of the country adopted this CEDAW convention India enacted various laws to protect women. Labour Laws also enacted to implement the Conventions.

NEED FOR IMPROVEMENT IN WOMEN LABOUR LAWS:

1) Special leaves are now providing by the various corporate such as, Period leave, menstrual leave, and First Day of period leave. Initiation of these type of leaves providing by the private organization for their women employees should be implemented for all other establishments'.

2) Flexible Timings should be provided to the women employees.

3) Tax exemption should be provided to the women employees now the present year slab changed earlier exemption availed by women employees.

4) Child Care facility should be given to every working women.

5) Night shift timing to the women employees should be changed. The necessary amendments should be done to the Shops and Establishments Act. Especially corporate timings, working hours should be regularized by the Government.

FAILURE IN THE IMPLEMENTATION PROCESS: Indian is a nation of man power and it is the reason for the unemployment and poverty. For a single job thousands are waiting and that is the reason why the Labour Laws are not implemented properly. Most of the Labour welfare provisions are not implemented properly by the employers because of the loopholes in the laws and time delaying process in getting the justice. Implementation process should be strengthen for to achieve the aim of these enactments.

CONCLUSION:

Working Women are not only doing her employment in the office, she is the pillar for her family. She should be given support by socially and legally. Social support can be acquired by the ideas of billions of people but legal support can be given by the parliament and State legislatures by the instrument of legislations. A Nation may do without millionaire and billionaire but a nation may do not without the laborers especially without the female employees. So her right should be protected by the labour legislations. Financial independency is the only weapon can be used and fight against all forms of discrimination facing by women. That can given only by proper enactment and implementation of Labour Laws.



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EDUCATION AND GENDER JUSTICE IN INDIA - A LEGAL PERSPECTIVE

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"....Every society that values social justice and is anxious to improve the lot of the common man and cultivate all available talent, must ensure progressive equality of opportunity to all sections of the population. This is the only guarantee for the building up of an egalitarian and human society in which the exploitation of the weak will be minimized".

(The Education Commission, GOI, 1966. 108)

Introduction:

India is a diverse country with one of the oldest civilizations of the world. With its rich cultural heritage, it has traversed a long distance during the last sixty one years of its independence. Though it accounts for 2.4 per cent of the world surface area, it supports 16.7 per cent of the world population. India with its mammoth population, 1.28 billion, lives in 28 States and 7 Union Territories. The uniqueness of the Indian society is 'Unity in Diversity', which is visible in its religions, languages, cultures and castes. India is a multi-religious country with Hindus accounting for 80.5 per cent, Muslims 13.43 per cent, Christian 2.3 per cent and others, constituting an important part of Indian diversity, accounting for the rest. Hindi in the 'Devanagari' script is the official language of the country but both Hindi & English are collectively used by the Union Government for certain specified administrative purposes. Besides, the eighth schedule of the Indian Constitution recognizes as many as 22 scheduled languages. By some count, there are over 200 languages and almost 1,600 dialects that are spoken in the country.

The Education system of a country does not function in isolation from the society of which it is a part. Hierarchies of castes, economic status, gender relations and cultural diversities as well as uneven economic development also deeply influence issues relating to access and equity in education. Our society has been characterized with deeply entrenched social inequalities between various social groups and castes since ancient times. Though India was widely acclaimed as a land of knowledge and wisdom during ancient times yet access to education was limited to select strata of the society. The marginalized groups of the society were subjected to social and economic oppression. These centuries old social prejudices and inequalities, based on caste at birth, continue to dog the modern Indian landscape.

Extending educational opportunities to the marginalized groups was considered an antidote to this longstanding discrimination. Several attempts have been made by social reformers and others to make education accessible to these marginal groups with varying degree of success.

The present paper discusses the constitutional provisions for education, equality and social justice as also critically examines the current educational status including that of SCs, STs, OBCs, minority groups and women at all levels of education. The policy interventions with the special reference to above stated social groups have been insightfully examined in the paper. It also



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discusses the significance and impact of affirmative policy interventions, key concerns which continue to confront the country in assuring access and equity in education. It gives broad directions on the milestones which define the way forward to meet the emerging challenges of providing equality of opportunity and social justice through the instrumentality of educational interventions.

Constitutional Provisions for Education, Equality & Social Justice:

The Indian Constitution enacted in 1949 and adopted in 1950 enshrines equality and social justice as the cardinal principles of the Indian democratic system. The unique feature of the Indian Constitution is that while it upholds the principle of equality before law, it provides for affirmative discriminatory actions to uplift the social, economic and educational well being of disadvantaged groups. The Constitution recognizes the Scheduled Castes (SCs), Scheduled Tribes (STs) and educationally Other Backward Classes (OBCs), Minorities and Women as disadvantaged groups.

The ultimate objective of the Constitution Framers was to establish a casteless society within the framework of a welfare state by gradually eliminating caste hierarchy, caste distinction and caste stigma and thus to ensure the dignity of the individual and equality of status among all the citizens of India. The Preamble of the Constitution assures Justice, social, economic and political, as well as Equality of status and of opportunity with a view to promoting among all citizens Fraternity, assuring the dignity of the individual and the unity and integrity of the nation. These ideals are clearly reflected in different clauses of the Constitution. Article 14 guarantees equality before the law and the equal protection of law to all persons. Article 15(1) prohibits discrimination against any citizen on grounds of religion, race, caste or sex. Article 16(1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

In order to make the Fundamental Rights referred to above meaningful to the socially disadvantaged people of this country, particularly those who had been badly maltreated and subjugated to social injustices for centuries, the Constitution makers made several provisions in the constitution to raise their level so that they may live with dignity and respect. Article 17 provides for abolition of untouchability, and the enforcement of any disability arising from it was made punishable as an offence according to law.

Article 15(4) was not there initially in the Constitution when it was enacted and was introduced as a first amendment to the Constitution. It enabled the government to make special provisions for the advancement of backward classes including the Scheduled Castes (SCs) and Scheduled Tribes (STs). As per Article 16(4), the Government can make reservations in favour of any backward class of citizens.

Political representation was guaranteed for SCs and STs through the proportionate reservation of seats in all elected legislative bodies from Parliament to Village Councils. Not only that, the Government of India instituted a programme of 'Compensatory discrimination', an Indian version of affirmative action, which provides for 15% reservation to SCs and 7.5% reservation to STs in all public services as well as in admissions to all public universities and colleges. Article 46 of the Constitution clearly states that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the SCs and the STs, and shall protect them from social injustice and all forms of exploitation. The 86th Amendment to the Constitution inserting Article 21 A, in 2002, making elementary education a fundamental right is going to make positive impact on the education of SCs, STs, OBCs and women.

Besides, the National Policy on Education (1968) calls for strenuous efforts to correct regional imbalances and inter-group disparities in education. Reinforcing the 1968 Resolutions, the National Policy on Education and Programme of Action (1968/1992) lay emphasis on the removal of disparities and equalization of educational opportunities by attending to the specific needs of those who have been denied equality so far. Both the Policies have dealt with the educational needs of the SCs, STs, Women and Minorities in great detail with a special concern for neglected groups like



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nomadic tribes and de-notified tribes. Based on the constitutional commitment and policy directives, planned efforts have been made since independence to promote educational development in equitable manner. Consequently, there has been considerable improvement in the educational status of the deprived groups.

Protective Measures for Inclusivity

Other Backward Classes (OBCs)

The Government of India set up the Kaka Kelkar Commission in 1952 with a view to identifying the OBCs and giving them similar benefits as it had extended to SCs and STs. The Commission submitted its report in 1955 but its recommendations were contested in the courts until the Supreme Court ruled in 1963 that total reservation, inclusive of the quantum for SCs and STs could not exceed 50%. Nothing happened for the next 15 years. It was in 1978 that the Government of India decided to set up the Second Backward Classes Commission under the Chairmanship of Mr. B.P. Mandal. The Commission aimed at providing affirmative action policies for backward and disadvantaged castes in order to redress caste discrimination.

The Commission used as many as 11 indicators to determine the backwardness. The Commission identified 3,743 castes and communities, constituting 52% of the total population, as OBCs. Driven by the 1963 Judgement of the Supreme Court, the Commission recommended 27% reservation to OBCs in all services and public sector undertakings under the Central Government. It also recommended 27% reservation to OBCs in admission to all public institutions of higher learning. Though the report of the Commission was submitted in 1978, it took 12 years for the government to implement its recommendations. In August 1990, The Government of India announced the implementation of the Commission's recommendation. The announcement met with tremendous resistance, and a writ petition was filed in the Supreme Court against the implementation of the Commission's recommendations. The Supreme Court, however, in its judgment (November 16, 1992) upheld 27% reservations in services for OBCs. Subsequently, the Central Government introduced the Bill. The Central Educational Institutions (Reservation in Admission) Bill No.76 of 2006 in the Parliament made 93rd Constitutional Amendment which provided for the reservation in admission of the students belonging to SCs, STs and OBCs to educational institutions established, maintained or aided by the Central Government, and for matters connected therewith or incidental thereto. The Bill was passed by both the Lower House and the Upper House of the Parliament on December 14 and 18, 2006 respectively. No sooner had the Bill received an assent of the President and became the Central Educational Institutions (Reservation in Admissions) Act, 2007 than its Constitutional validity was challenged in the Supreme Court. The Supreme Court in its judgment delivered on April 10, 2008 upheld the 93rd Amendment to the Constitution enabling the Government to reserve 27% per cent OBC quota in all centrally funded institutions of higher learning.

Minority Muslim Community

The muslim community in India constitutes 13.43% of the total population. Article 29 provides the minorities the right to conserve their language, script and culture. Article 30 gives the right to the minorities to establish and administer educational institutions of their choice. It has been expressed that amongst the minorities which have suffered educationally, the sense of inequity may be perpetual as a result of discrimination that the minority may face due to difference in 'identity'. In this connection, the Government of India is initiating several measures to bring about qualitative improvement in the status of the muslim community. The present government in the centre has created a new 'Ministry of Minority Affairs' which has been entrusted with the responsibility of overall policy, planning, coordination, evaluation and review of the regulatory and developmental programmes of the minority communities. The same government through an Act of Parliament has



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also established the National Commission for Minority Educational Institutions¹ on 11th November, 2004 to advise the central or any state government on any question relating to education of minorities. It minorities to establish and administer educational institutions of their choice and dispute relating affiliation to a scheduled university and has to do other acts and things necessary, incidental or conducive to the attainment of all or any of the objects of the commission.

The government has also set up a 'National Monitoring Committee for Minorities Education (NMCME)' under the chairmanship of Union Minister for Human Resource Development (MHRD) in the year 2004. A Standing Committee of the NMCME has also been constituted to attend to the problems related to the education of minorities on an ongoing basis. Not only that the Government of India also set up a higher powered Committee to understand social, economic and educational status of the muslim community in India under the Chairpersonship of Justice Rajindar Sachar in 2005. The report consolidates, collates and analyses information with regard to the states, the regions, the districts and blocks where muslims of India mostly live; geographical pattern of their economic activities; income levels; level of their socio-economic development; relative share in public and private sector employment; proportion of OBCs from the muslim community in total OBC population. Information on these aspects has been indicated in the report of this committee to identify areas of interventions by the government to address relevant issues relating to the social, economic and educational status of the muslim community. Besides, the Prime Minister has also introduced a new 15 point programme, for the welfare of minorities, which relate to enhancing opportunities for their education, equitable share in economic activities and employment, improving the conditions of living of minorities and prevention and control of communal riots.

Articles 350 (A) advocates instruction in mother tongue at primary stage and Article 350 (B) provides for a special officer to safeguard the interests of linguistic minorities. Further, the Constitution of India in its 'Union', 'State' and 'Concurrent List' defines the powers and functions of the Centre and the States. Under the Constitution originally adopted, education was primarily a State subject. Since this led to differential educational progress across the States, education was transferred to the Concurrent List through a Constitutional Amendment in 1976, which implies meaningful partnership between the Centre and the States. Though this shift did not change the role and responsibility of the States, it gave the Central Government a major role in strengthening the education system in the country. Since then, a large number of schemes and programmes in the form of affirmative policy interventions have been launched by the Central Government in collaboration with the State Governments to overcome the inadequacies hindering the educational progress. Consequently, the age-old discriminatory practices have nearly vanished. The educational status of marginal groups has greatly improved compared to the situation before country's independence.

Current Educational Scenario

Population and Literacy

India is a country with more than one billion people. Its population has experienced higher growth rates since independence largely owing to declining child and adult mortality rates as a result of improvement in health facilities and awareness. Table 1 shows the growth and composition of population in India. It may be noted that the composition of population is mildly changing in favour of SCs and STs. The proportion of SCs increased from 14.7 per cent in 1961 to 16.2 per cent in 2001. Similarly the proportion of ST also slightly increased from 6.8 to 8.2 per cent between 1961 and 2001. The literacy rate of population including those of marginal groups has improved a lot. For example, in case of SCs, the literacy rate has increased from a little over 10 per cent in 1961 to 55 per cent in 2001. In case of STs, it increased from less than 9 per cent to 47 per cent during the same period. The process of collection of data on socio-economic and educational status of minority muslim community

¹The National Commission for Minority Educational Institutions Act, 2004.



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has commenced from 2001 Census. According to the latest figures, muslim literacy stands at 59.13 per cent. The literacy rate with respect to total population has increased from 28.3 per cent to 65.4 per cent between 1961 and 2011. Though these are laudable achievements, the country has to make concerted efforts to make all people literate.

Educational Attainment of Population aged 15 years and above

As mentioned earlier, extending educational facilities to marginal groups forms the core of approach of the Government of India to operationalise the Constitutional provisions of equality of opportunity and social justice. The state has been striving to provide elementary schools in each and every habitation with special attention to the SC and ST dominant habitations. The number of secondary and higher education institutions has also been on an increase to provide easy access. Further, scholarships, fee waivers, incentives, and finally reservation provisions have been instituted to achieve social justice and equality of opportunity. One moot question is what impact these measures have on the educational credentials possessed by different social groups. Is the distribution of education credentials equitable?²

An examination of educational attainments of adults, more than 15 year of age, of various social groups throws up some interesting trends. The proportion of people above 15 years of age who possess a particular level of education by social groups, gender and rural & urban. It unambiguously establishes wide inequalities between social groups. It also hints a hierarchy sort of thing between social groups in the possession of educational credentials. At the bottom end are ST rural females with more than 70 per cent illiterate. The proportion of ST rural females with secondary and higher qualification is absolutely miniscule with 4.4 per cent mark. At the other end of spectrum are urban other males³ with a little over 60 per cent having secondary and above qualifications. The illiterates constitute a miniscule 7.5 per cent among urban other males. The educational status of SCs and STs particularly females living in rural areas has not changed much as significant proportions of them are either illiterate or have bare minimum educational attainments.

The Government of Tamil Nadu has taken a decision in 2017 that there would be State Board Examination for class 10, 11 and 12. So that the earlier practice of State Board Exam in 10 and 12 alone causes so much of pressure on students thus resulting in more number of suicides analyzing this, the new test and trial method have been announced by the Tamil Nadu Government.⁴

The National Level Eligibility and Entrance Examination (NEET Exam) for Medical Sciences.⁵ There was lot of confusion in deciding whether it is applicable to the students of Tamil Nadu because it was opposed by late J.Jayalalitha, former Chief Minister of Tamil Nadu. But the same was accepted by Edappadi Palaniswamy Government in Tamil Nadu after the demise of J.Jayalalitha and it was criticized by all the opposition parties. The Supreme Court on 22.08.2017 decided that exception cannot be given to one State of students alone as it is against the Indian Constitution. The bench headed by Justice Dipak Misra declined to exempt Tamil Nadu from NEET Exam after attorney general of India K.K.Venugopal told that the proposed ordinance by Tamil Nadu Government in this regard had not got the Centre's clearance. The Centre said it was not in favour of any ordinance offering one time exemption for any State.

Growth of Educational Institutions

The educational system has greatly expanded since independence to cater to the needs of all sections of society. Educational expansion was aimed at meeting the needs of growing economy and to foster equality among different sections of population. Accordingly, the educational needs of

² Agarwal, P. (2006), "Higher education in India: The Need for Change." Working Paper No.180. *Indian Council for Research on International Economic Relations*.

³ Other than SC and ST and includes Muslims

⁴ Minister of Higher Education Mr.Senkodaiyan, AIADMK Minister has declared it in June 2017.

⁵ BJP Government in the Centre, All India Medical Sciences joined and announced NEET exam in 2017.



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marginal groups like SCs and STs were addressed by opening educational institutions at elementary and secondary level in habitations dominated by them. The primary schools have grown by nearly four folds from 210 thousand in 1950-51 to 772 thousand schools in 2005-06. Similarly the number of upper primary and high/higher secondary schools has gone up by more than 20 times during the same period. The upper primary schools have gone up from 13 thousand schools to 288 thousand. The high/higher secondary schools have gone up from 7.4 thousand to 160 thousands during the same period. The higher education sector has also witnessed a steep increase during this period. The colleges have gone by more than 30 times from merely 578 colleges in 1950-51 to nearly 21 thousand colleges in 2005-06. Universities and other institutions of higher learning have also gone up from 28 in 1950-51 to 416 in 2005-06. The education sector is further poised to grow during the XI Five Year Plan (FYP) which aims at inclusive growth. The expansion of educational opportunities at all levels of education with an emphasis on marginal groups is the key to strategies adopted to promote inclusive growth.⁶

Gender Parity at School Level

Without removing gender disparities it is impossible to achieve universal elementary and secondary education. It is generally observed that girls are at a disadvantage due to several economic, cultural and social factors. A sizeable number of girl population is engaged in carrying out domestic chores. Some of them are prevented from attending school due to social pressures. Some are forced to discontinue studies on attainment of puberty. The Government of India have launched several initiatives to improve the enrolment as also attendance rates of girls. Some of those measures are like scholarships and fee waivers, free education up to college and even higher, separate toilets for girls, appointment of female teachers. Indeed, the enrolment of girls has improved quite a lot during the last couple of years. The gender gap has completely vanished at primary level and significantly reduced at upper primary and secondary level. For example, the GER for girls increased from 25 per cent in 1950-51 to over 100 per cent in 2005-06 at primary level. Similarly it increased from 4.6 per cent in 1950-51 to 67 per cent in 2005-06 at upper primary level. At secondary level, it increased from 4.6 per cent in 1960-61 to 36 per cent in 2005-06. However, the gender gap at upper primary and secondary levels is declining tardily and continues to be very high. The gender gap with respect to SCs and STs is even higher. Gender equality is normally expressed with the help of gender parity index⁷.

Measure of Social Equality at School Level

The comparison of GER of various social groups reveals the inequalities between them. However, it is useful and easy to comprehend if we can express the inequality with single indicator. An attempt has been made here. The social equality index has been defined as the ratio of NER of marginal groups to general (average of) population. If participation level of marginal groups equals the average participation level of population, then social equality index takes the value of 1. If no one from marginal groups enters the education system (NER is zero) then social equality index takes the value of zero. The equality index for advanced groups exceeds one. As the data on NER are not available we have substituted it with GER⁸. The social equality index is found to be higher than one at primary level. This implies that the disparities between different social groups have nearly vanished

⁶ Bakshi, P.M.(2003): The Constitution of India, Universal Law Publishing Co. Pvt. Ltd. Delhi.

⁷ Gender parity index is calculated as the ratio of boys NER and girls NER. In the absence of data on NER we have used GER in place of NER. This may not give inaccurate picture of reality if under and over aged children are distributed in similar proportion in both groups. In case the proportion of under and over aged children is higher among females then gender parity is lower than the one reported here.

⁸ If proportion of over and under aged children is same among marginal and total population groups then there is bias in using GER. If the proportion of over and under age children is more in marginal groups then, using GER may overestimate equality between social groups.



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as mentioned earlier. Similar is the case at upper primary level. However, one can notice lower social parity measure at secondary education level. The social parity measure at secondary level is found to be 0.91 for SCs and 0.71 for STs in 2005-06. As the under and over age children tend to be higher in marginal groups, the social parity may likely to be much lower than these numbers suggest.

Policy Interventions towards Education, Equality and

Social Justice at School Level

Elementary Level

The Government of India has initiated a number of policy interventions with a view to ensuring equality and social justice at elementary level of education. These programmes lay special emphasis on the education of SCs, STs, Girls and Minorities. The Government of India launched a nation wide Education for All (EFA) programme under the banner of 'Sarva Shiksha Abhiyan' (SSA) in 2001. The programme aims at providing eight years of contextually useful and quality elementary education to all the children in the age group of 6-14 by the year 2010. The programme which focuses on girls especially those belonging to SCs, STs and Minorities is committed to bridging both gender and social gaps in primary classes (I-V) by 2007 and in upper primary classes (VI-VIII) by 2010. In doing so, it is committed to ensuring universal retention by 2010 besides focusing on satisfactory quality (universal achievement) with emphasis on education for life.⁹

The targeted provisions for girls under SSA include:

- Free text books to all girls up to class VIII;
- Separate toilets for girls;
- Back to school camps for out-of-school girls;
- Bridge courses for older girls;
- Recruitment of 50% women teachers;
- Early Childhood Care and Education Centers (ECCE) in/near schools/convergences with Integrated Child Development Services (ICDS) programme, etc.;
- Gender-sensitive teaching-learning materials including textbooks;
- Intensive community mobilization efforts; and
- Innovation fund per district for need based interventions for ensuring girls' attendance and retention.

The Government of India has provided additional resources to implement two of its significant schemes, namely the schemes of National Programmes for Education of Girls at Elementary Level (NPEGEL) and the Kasturba Gandhi Balika Vidyalaya (KGBV). These schemes are specifically designed to reach out to girls from marginalized social groups in over 3,000 educationally backward blocks in the country where the female rural literacy is below and the gender gap in literacy is above the national average. The NPEGEL provides additional provisions for enhancing the education of underprivileged girls at elementary level through more intense community mobilization, the development of model schools in clusters, gender sensitization of teachers, development of gender sensitive learning materials, ECCE facilities and provision of need-based incentives like escorts, stationery, work books and uniforms, etc. for girls.

The KGBV is a scheme that was launched in July 2004 for setting up residential schools at upper primary level for girls belonging predominantly to the under-privileged sections of society, namely, SCs, STs, OBCs and Minority Communities. The scheme is being implemented in educationally backward blocks of the country where the female rural literacy is below and gender gap in literacy is above the national average. The scheme provides for a minimum reservation of 75%

⁹Beteille, A. (2000). "The Scheduled Castes: An Inter-Regional Perspective", in A. Beteille (ed.), *Journal of Indian School of Political Economy*, 12 (3 and 4): 367-80.



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of the seats for girls belonging to SCs, STs, OBCs and Minority Communities and priority for the remaining 25%, is accounted to girls from families below poverty line.¹⁰

For the education of SCs and STs, special interventions have been launched under SSA. They include supply of free text books and uniforms, remedial classes for improving the learning competency, development of instructional material in local dialect for ST children and training to the teachers at cluster resource centers and block resource centers on tribal pedagogy. In addition, the child tracking approach is also adopted in formal schools in the tribal areas so as to ensure that the children enrolled continue and complete their education.

All these initiatives at elementary stage have shown substantial progress on certain key indicators like access, enrolment, drop-out rates, transition rates and learning achievement. Access to schooling facilities among the most disadvantaged has improved remarkably. Enrolment in a single year 2006-07 has gone up by 3, 93,000 as compared to the previous year. Drop-out rates at primary have declined by 4.5 percentage points. There has been a reduction of 5 percentage points in girls' drop out. The transition rates from primary to upper primary have gone up from 74.15 % in 2003-04 to 83.36% in 2005-06. Student attendance and teacher attendance have also shown considerable improvement.¹¹

Secondary Level

The demand for secondary education has increased manifold because of the success of SSA on the one hand and increased aspirations for post secondary education on the other. Access, equity and quality are three major challenges of secondary education. Having regard to that, the Government of India has introduced various schemes at the secondary level with a view to improving access, equity and quality.

Remedial and special coaching are provided to SC and ST students in classes IX-XII. While the remedial coaching aims at removing deficiencies in various subjects, the special coaching is provided with a view to preparing the students for competitive examinations for seeking entry into professional courses like engineering and medical disciplines. In certain States like Haryana and Maharashtra, the Governments under the welfare schemes also provide free uniforms, free text books, free noon meals, free bus pass and free bicycles to all SC and ST girl students studying in XI and XII standards of government schools. Preference is given to educationally backward districts particularly those predominantly inhabited by SCs and STs and educationally backward minorities. Besides all these SC and ST students who live in hostels are provided a financial assistance at the rate of Rs.400 per month for 10 months in a year on account of hostel charges.¹²

In addition, the Government of India has established as many as 897 Kendriya Vidyalayas (KVs) wherein 15% seats are reserved for SCs and 7.5% seats for STs and no tuition fee is charged from either of the two. Besides, the Government has also established 567 Jawahar Navodaya Vidyalayas (JNVs) almost one in each district. These are boarding schools imparting education from classes VI-XII. These institutions are based on the principles of equity coupled with excellence. In these schools, 75% seats are meant for rural children while the remaining 25% seats are meant for urban children. Reservation of seats in favour of children belonging to SCs and STs is provided in proportion to their population in the concerned district provided that in no district such reservation will be less than the national average (15% for SCs and 7.5% for STs) but subject to a maximum of 50%

¹⁰Dasgupta, Partha and David, Paul A. (1994). 'Towards a New economics of Science.' Research Policy, Vol. 23, No. 5, pp. 487-521.

¹¹ Government of India (1955). The Backward Classes Commission, 1955 (Kelkar Commission), Volumes 3, New Delhi

¹² (2006): Social, Economic and Educational Status of the Muslim Community of India, (Chair: Justice R. Sachar), Prime Minister's High Level Committee, Cabinet Secretariat, Government of India, New Delhi.



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for both the categories taken together. These reservations are inter-changeable. One third of total seats in these schools are filled in by girls.¹³

Policy Interventions towards Equality and Social Justice at
Higher Education Level

From time to time the Government of India has launched a number of schemes and programmes for the purposes of enhancing the participation of deprived classes in higher education. India has about 21,092 institutions of higher learning including universities, institutes of national importance and colleges. The Government has made it mandatory for all these institutions to provide 15% reservation to SCs, 7.5% reservation to STs. In addition, the Central Government has now provided for 27% reservation to OBCs in all centrally funded institutions of higher learning. Apart from reservation, there is also a relaxation given in the minimum qualifying marks for admission for these children. Besides, seats are also reserved in hostels for these children. These measures are certainly going to make substantial improvement in the participation level of underprivileged sections of the society in higher education.¹⁴

The SC/ST students who secure admission in the notified institutions are given scholarship to meet the requirements for full tuition fees, living expenses, books and stationery. The scholarship once awarded continues till the completion of the course, subject to satisfactory performance. Under the 'Book Bank Scheme' the SC and ST students pursuing Medical, Engineering, Agriculture, Veterinary, Polytechnics, Law, Chartered Accountancy, MBA and Bio-Sciences courses are also provided books. The Scheme provides for sharing of text books by two students at undergraduate level and separate set of books at Post-Graduate level. Students with disabilities amongst SCs and STs are also provided specified special allowances like readers allowance, transport allowance, escort allowance etc. Not only that the Government of India provides 17 overseas scholarships each year to the meritorious SC and ST students who wish to pursue higher studies abroad. The SC and ST students pursuing higher education are also provided free remedial coaching to enable them to upgrade their merit. Besides, they are also provided free coaching for entry into services.¹⁵

In order to provide relevant and good quality higher education in an equitable manner the Government has proposed a number of measures to remove regional, social and gender disparities. The government proposes to establish 370 new colleges in districts with GER less than national average, 14 world class universities and 16 Central Universities in hitherto uncovered states. The government has also committed to provide increased financial assistance to institutions located in border, hilly, remote and educationally backward areas. The central government is also going to provide increased support to institutions with large percentage of SC, ST, OBC, girls and minority population. Besides, the government is also committed to build more hostels for the students belonging to underprivileged sections of the society.

Major Challenges and Way Forward
Elementary Education

Every country develops its system of education to express and promote its unique socio-cultural identity and also to meet the challenges of the times. The catalytic action of education in this complex and dynamic growth process needs to be planned meticulously and executed with great

¹³Jeffery, C. P. Jeffery and R. Jeffery (2005), 'Broken Trajectories: Dalit Young Men and Formal Education', in Radhika Chopra and Patricia Jeffery (Eds.) *Educational Regimes in Contemporary India*, pp. 256-275, Konrad Adenauer Stiftung and Sage, New Delhi.

¹⁴ (1992), National Policy on Education, 1986 (Revised 1992), Government of India, New Delhi.

¹⁵ Ministry of Human Resource Development (2005). Report of the Committee on National Common Minimum Programme's Commitment of Six Per Cent of GDP to Education, NIEPA, New Delhi.



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sensitivity. This has all the more significance for a country like India with a plural culture and a concern for an egalitarian society.¹⁶

Though India has made monumental progress in elementary education both in quantitative and qualitative terms, there still remains a wide gap between supply and demand because of its number and vastness. The biggest challenge before the country is to bring in all the children into the fold of elementary schooling as also to increasing the internal efficiency of its schools. This would warrant a number of complementary engagements like increasing the intake capacity of existing institutions, setting up of new institutions, ensuring competent and qualified teachers in each classroom, reinventing curriculum, introduction of appropriate pedagogy, implementation of continuous and comprehensive evaluation, increasing the number of learners with increased learning, improving the transition rate from lower primary to upper primary, creating equal opportunities for accessing elementary schooling, bridging gender and social gaps, reducing dropout rates, providing research based interventions in backward areas, mobilization of public resources, etc.¹⁷

Secondary Education

The challenges of secondary education are much more daunting as this sector has always been sandwiched between elementary education because of constitutional obligation towards EFA and higher education because of its potential for creating higher level expertise in knowledge areas. The principal challenge is to increase access to secondary education besides creating equal opportunities for accessing secondary schooling facilities in backward areas.

Another huge challenge is to upgrade and rationalize infrastructure and teaching learning facilities of existing institutions on the basis of given norms. The country will also have to undertake school mapping exercise with a view to ensuring the requirements of existing schools and opening of new institutions.¹⁸ Teacher preparation, meeting additional teacher requirements and professional development of teachers will be another big challenge. Equity concerns with regard to gender, social groups and minority communities acquire a bigger dimension at secondary stage as this would warrant special interventions in terms of differential treatment to ensure both participation and success of one and all. Special attention will have to be paid to upgrade and diversify the curriculum to make it more relevant in today's context. Yet other challenges in secondary education are integration of ICT in all public institutions, expansion of open and distance learning facilities and building district and sub-district data base.

Higher Education

Despite being the largest system of higher education in terms of number of institutions, the access ratio in India is still lower (12%) than the average of the developing nations (13%). Therefore, major challenge in higher education is to increase the access ratio to a minimum threshold of 20%. This would mean optimizing the existing institutions and creating new facilities, more so in backward areas to make higher education more inclusive. The pace of affirmative action ought to be accelerated to ensure larger participation of SCs, STs, Women and minority students in progressive disciplines.

¹⁶Padma Velaskar (2006) National Commitment to Education of the Dalits :A Critical Commentary on the Report of the Education Commission (1964-66) Paper presented at National Seminar on "The Education Commission: Revisiting the Commission's Premises, Vision and Impact on Policy Formulation" organized by NUEPA, 26-28 December 2006, New Delhi.

¹⁷Prakash Ved (2007). Trends in Growth and Financing of Higher Education in India, *Economic and Political Weekly*, August 4, 2007.

¹⁸Rao Bhaskara N and Kulkarni Suresh Disparities in School facilities in India: The Case of Scheduled Castes and scheduled Tribe Children. *Journal of Educational Planning and Administration*, Vol XII, Number2, April 1999.



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The initiatives like scholarships, hostels, special coaching for students belonging to marginal classes must be further strengthened. Increasing tuition fees beyond a certain level may lead to regressive effects and deprive the children of the underprivileged classes from accessing higher education. Responding to the specific economic and academic needs of the first generation entrants to higher education is yet another major challenge. Therefore, the public funding will have to be increased manifold.¹⁹

Besides, privatization of higher education in the recent past has led to commercialization which has made an adverse impact not only on access and equity but also on the overall development of higher education. Foreign institutions, which have been operating in a variety of ways have also contributed to commercialization. Therefore, the biggest challenge for the government is to come up with appropriate regulations to contain the menace of commercialization and at the same time to ensure the co-existence of both public and private systems. The privatization and internationalization of higher education should not be allowed to create a wedge between different sections of the society. Distance education is yet another area which ought to be properly regulated in terms of its quality and cost. Other major challenges include, promotion of research and its integration with teaching, industry-academia collaboration, successful implementation of affirmative actions for the promotion of deprived sections, granting autonomy, periodic assessment and accreditation of institutions, use of ICT in higher education, development of educational management information system, etc.

CONCLUSION:

It hardly needs any mention that any vibrant civil society would undoubtedly require that all humans are treated equal and with dignity and that all must be supported to the fullest possible development. Such a conviction would obviously warrant a wise affirmative action policy on the grounds of social justice and equity. Here, one needs to know that while access could be ensured in a variety of ways, it is the equality of opportunity which is much more important than anything else as it requires the support of whole range of antecedental variables commencing from curriculum to pedagogy, differential inputs, assessment, remediation, feedback, attitude, institutional care, etc.²⁰

It may not be out of the context to mention that by ignoring less privileged children, who are more in number and whose talent remains untapped, the system has to accommodate less talented people from privileged class. In the process, it is the system which gets plagued with ineptitude. This is based on a known premise that talent is evenly distributed in a sizeable society. Therefore, those who argue that affirmative action, resulting in increased participation of less privileged sections, will compromise the quality should not forget that excellence is the ultimate outcome of diversity. In fact, it is the latter which is a necessary condition for the former. What it means is that quality without social equity is as bad as social equity without quality.

Despite lot of measures employed for ensuring equity, there are a number of key challenges which continue to confront the country. There is a need to have an affirmative policy which must percolate through to the last person in the queue. It should also ensure the diverse student population on each and every campus representing every section of the society. Besides improving the access and success of one and all, it should also provide for systemic responses with a view to improving the quality of output indicators. A range of educational concerns that have been highlighted in this paper require a number of possible interventions that can bring about equality and social justice to the citizens. Of them, the prominent ones are like developing the concept of knowledge to include new areas of knowledge and experience, inclusivity in selecting learning tasks,

¹⁹Ministry of Social Justice & Empowerment (2006), Annual Report, 2005-06, Government of India, New Delhi.

²⁰NSSO (2006), Employment and Unemployment Situation among Social Groups in India, 2004-05, NSS, 61st Round (July 2004-June 2005), Report No. 516.



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pedagogic practices that are alert to promoting participation, building self confidence & critical awareness and an openness of engaging with the community.

It is evident that the social context of education in any country presents a number of challenges which must be addressed by policy makers both in its design and its implementation. It must, however, be appreciated that the cardinal principle of promoting equality is not only to provide for equal opportunity to all in terms of access but also in the condition for success.



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WOMEN STATUS IN LEGAL PROFESSION -A QUEST FOR EXCELLENCE

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"Gender justice should not become a war between two sexes. Both should complement each other rather than suspect each other"¹

Introduction:

The fundamental human rights, remains in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small..."² Emancipation to empowerment of women have come a long way. Empowerment would be achieved only when advancement in the conditions of women practitioners is accompanied by their ability to influence the direction of social change gained through equal opportunities in economic, social and political spheres of life.³ This is a right based approach⁴The Constitution of India conveys a powerful mandate for equality and rights of women and it forms the bedrock of gender justice by stressing upon equality and non-discrimination for women.⁵

India is a signatory to a number of International UN Conventions, primarily Convention on Elimination of all Forms of Discrimination against Women, Beijing Platform for Action and Convention on Rights of the Child where the commitment of the nation to protect and empower its women and girls. The recent endorsement by India, of the ambitious 2030 Sustainable Development Goals will further change the course of development⁶. Gender issues also need to be addressed and there is many drop outs in the profession. The National Policy for women 2016⁷in its priority areas does not make any special reference to women in legal profession. The Ministry of Justice⁸, and the Ministry of Legal Affairs⁹ strengthened its website by updating all relevant data with regard to the update of the number of women judges appointed and for the purpose of this paper the data available in the websites utilized, On the other hand there is no such data available on the website of the Bar Council of India as to the number of women enrolled as practitioners. Certificate of

¹ The Chief Justice of India Shri Justice R C Lahoti, 'All India Meeting of Chief Justices of High Courts on Women', National Commission For

en, <http://ncw.nic.in/pdfReports/All%20India%20Meeting%20of%20chief%20Justice.pdf> last visited 6.1.2018

² Report of the United Nations Commission on Status of Women.

<http://www.un.org/womenwatch/daw/CSW60YRS/index.htm> last visited 6.1.2018.

³ National Policy for women

2016, http://wcd.nic.in/sites/default/files/women%20empowerment%20poliy_Final_17May.pdf last visited 6.1.2018

⁴ National Commission For women All India Meeting of Chief Justices of High Courts on Women <http://ncw.nic.in/pdfReports/All%20India%20Meeting%20of%20chief%20Justice.pdf> last visited 6.1.2018

⁵ Ibid.,

⁶ Ibid.,

⁷ Articulating a vision for empowerment for women, National Policy for women Ministry of Child Development, Government of India,

2016, http://wcd.nic.in/sites/default/files/womn%20empowerment%20poliy_Final_17May.pdf.

⁸ <http://doj.gov.in/> last visited 7.1.2018

⁹ <http://lawmin.nic.in/Legal.htm> last visited 7.1.2018.



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Practitioners Rules enable to identify the practitioners there is absence of any kind of data on the website.¹⁰

Status of Legal Profession in United States of America: The American Bar Association for instance has year wise data updated since 2000 till date and gives exact figure as to the number of Judges, Prosecutors, Practitioners¹¹. etc., Statistical report 2017 reveal that 36 percentage of women practice in the bar compared to men 64 percent. 50 percent of the women are in Private practice¹². 18 percent of the women are equity partners.¹³ 200 largest firms has 18 percent managing partners.¹⁴ 45 percent of women serve as associates¹⁵. 48.7 percent serve as summer associates.¹⁶ Women in Corporations are 24.8 percent.¹⁷ Women as general counsel are 18.9 percent.¹⁸ As far as the number of women Judges serving in United States Supreme Court has 3 women judges out of 8 seats which is 37.5 percent representation. Circuit court has 60 women out of 167 which is 35.9 percent. Federal district court has 33 percent women.¹⁹ State Final Appellate Jurisdiction Courts 122 women judges out of 353 which is 34.6 percent. In State Intermediate Appellate Jurisdiction 344 women judges out of 991 judges which is 34.7 percent. In State General Jurisdiction Courts. 1628 judges out of 4884 judges which is 33.3 percent. All State Courts Judges in U.S HAS 18006 judges out of 5596 which is 31.1 percent.²⁰ Total representation of women in States Judgeship is 27.1 percent.²¹ Thus the statistics of American Bar Association is able to give a complete scenario about the status of women in legal profession.

The advent of Foreign Direct Investment coupled with the growing effect of globalization, is giving bigger opportunities to the Indian lawyers general and women lawyers in particular and, with the evolution of Information technology, Artificial Intelligence, Big data and internet of things and

¹⁰www.barcouncilofindia.org/ last visited 7.1.2018.

¹¹<https://www.americanbar.org/groups/women/resources/statistics.html> last visited 6.1.2018

¹² 2016 Report on Diversity in U.S. Law Firms. National Association for Law Placement, January, 2017. www.nalp.org/uploads/2016NALPReportonDiversityinUSLawFirms.pdf last visited 6.1.2018.

¹³ Report of the Ninth Annual National Survey on Retention and Promotion of Women in Law Firms. National Association of Women Lawyers and NAWL Foundation, October 2015. www.nawl.org/p/cm/ld/fid=82#surveyslast visited 7.1.2018.

¹⁴ Report of the Ninth Annual National Survey on Retention and Promotion of Women in Law Firms. National Association of Women Lawyers and NAWL Foundation, October 2015. This figure represents the 25 firms that reported having a single managing partner. www.nawl.org/p/cm/ld/fid=82#surveys last visited 7.1.2018.

¹⁵ 2016 Report on Diversity in U.S. Law Firms. National Association for Law Placement, January, 2017. www.nalp.org/uploads/2016NALPReportonDiversityinUSLawFirms.pdf last visited 7.1.2018.

¹⁶ 2016 Report on Diversity in U.S. Law Firms. National Association for Law Placement, January, 2017. www.nalp.org/uploads/2016NALPReportonDiversityinUSLawFirms.pdf last visited 7.1.2018.

¹⁷ MCCA's 17th Annual General Counsel Survey: Breaking Barriers, One Person at a Time. Minority Corporate Counsel Association, November/ December 2016.

www.diversityandthebardigital.com/datb/november_december_2016?pg=21#pg22 last visited 7.1.2018.

¹⁸ MCCA's 17th Annual General Counsel Survey: Breaking Barriers, One Person at a Time. Minority Corporate Counsel Association, November/ December 2016.

www.diversityandthebardigital.com/datb/november_december_2016?pg=26#pg26 last visited 7.1.2018.

¹⁹ Women in the Federal Judiciary: Still a Long Way to Go. National Women's Law Center, October, 2016. <http://nwlc.org/wp-content/uploads/2016/07/JudgesCourtsWomeninFedJud10.13.2016.pdf> last visited 7.1.2018.

²⁰ National Association of Women Judges. www.nawj.org/statistics/2016-us-state-court-women-judgeshttps://www.americanbar.org/content/dam/aba/marketing/women/current_glance_statistics_january_2017.authcheckdam.pdf last visited 6.1.2018.

²¹ Women in Federal and State-Level Judgeships: A Report of the Center for Women in Government & Civil Society, Rockefeller College of Public Affairs & Policy, University at Albany, State University of New York. Summer 2012. www.albany.edu/womeningov/publications/summer2012_judgeships.pdf last visited 7.1.2018.



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advancement is the means of transport, there is a dire need to bring transformation in traditional techniques and reforms which have been practiced here for years.".. "It is crucial to expand the sphere of Indian legal services not only within the court system, but outside it as well. In this women participating in the legal profession ought to be strengthened. Furthermore, a robust mechanism is required for developing the legal system on the basis of reciprocity. Besides, there is also a need for comprehensive consultation with all stakeholders. This has to be gradual and in a calibrated manner, not a high inaugural activity," ...²²

Women vitally induce for expansion to a great extent to drift their occupational mobility to work as equal partners in the common enterprise the world over.²³ Women today stand for all round competition in almost all the spheres and are found to be in abundant quest for their suitable position in the society. Transformation is taking place continuously ever since the inception of Legal profession. The estimated total value of Indian Legal Market is 1.25 billion U.S Dollars .In this women also contribute to the growth of the Indian Legal Market;. Women has potential as men to overall contribute to the economic development of the country. Awareness among the women professionals led them to participate in the completion.

History of women in legal profession : Indian Legal Profession had the influence of the common law and its thinkers as Lord Coke pointed out that" The Law will not suffer if women are unfit to be attorneys" "Women are generally unfitted for the duties of the legal profession. . . Female Attorneys at law were unknown in England, and a proposition that a woman should enter the courts at Westminster Hall in that capacity or as a Barrister would have created hardly less astonishment than one that she should ascend the Bench of Bishop or be elected to a seat in the House of Commons", ²⁴ The Common Law held that inveterate usage which imposed an absolute and positive prohibition against women practicing the profession of law and held that women could not be allowed to be solicitors. Common Law of England, founded on inveterate usage which imposed an absolute and positive prohibition against women practicing the profession of law and held that women could not be allowed to be solicitors²⁵ In England a legislation Sex Disqualification and Removal Act of 1919, passed which women were allowed to enter all professions, including law. A British woman called to the Bar in England, was allowed to practice in India as well, but an Indian woman or a woman who qualified in India was not allowed to practice even in her own country.²⁶ After passing of the Legal Practitioners Act, 1879 Miss Regina Guha ²⁷was refused enrollment as a pleader and therefore she file In re Guha Case but her enrollment was denied based on Bobb case²⁸. Women fought for her identity to plead before the Bar. Notable example is the case of Sudhan Shubala Hazra²⁹ who pleaded again on the basis of Regina case. Again the case was decided on the basis of Legal Practitioners Act ,as it only specifies the term men and it cannot be interpreted so as to include women .

²² Suresh Chandra ,Law Secretary,Government of India.Globalization of Indian Market: Need of the Hour. lobahttp://www.livelaw.in/globalisation-indian-legal-market-need-hour-inbai last visited 6.1.2018

²³Women in Legal Profession,

http://shodhganga.inflibnet.ac.in/bitstream/10603/29299/12/12_chapter%204.pdf

²⁴ In re, Bradwell, (1870) 55 Ill. 5.35.

²⁵ Bobb versus The Law Society, reported in (1914) 1 Ch. 286

²⁶ Remo Devi Gupta,'Advent of Women in Profession of

Law'http://www.allahabadhighcourt.in/event/AdventOfWomenInTheProfessionMrsRDGupta.pdf last visited 6.1.2018

²⁷ I. L. R. 44 Cal. 290.

²⁸ Id to 23.

²⁹ I. L. R. 1 Pat. 104.



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The passing of the Legal Practitioners Act, XX111 of 1923 which removed the bar on women practicing. Subsequent to establishment of the Allahabad High Court, the legal profession in Uttar Pradesh was mainly dominated by men. Cornelia Sorabji was the first woman allowed by the Allahabad High Court to practice. She had fought for the upliftment of pardanshin women and stood as a eye opener for every other women who took inspiration from her to opt for pleading. All class of women did not opt for this profession. There were many reasons issues of poverty, married status, custom, illiteracy. Women were oppressed and subjugated class. The first Woman judge is Anna Chandy of Kerala High Court served during pre-Independent India. In Independent India the Supreme Court of India had 229 judges so far had 6 women Judges only for 67 years, Justice M Fathima Beevi³⁰, is the first women Judge of Supreme Court of India and took 39 years to be appointed as a judge after 39 years of Independence in 1989.

Followed by Justice Sujatha V Manohar³¹, Justice Ruma Pal³², Justice Gyana Sudha Sharma³³ and Justice Ranjana Prakash Desai.³⁴ At present Justice Bhanumati ³⁵ is the first woman judge to be

³⁰(Justice M. Fathima Beevi(1989-1992) was the first woman to be appointed to the Supreme Court. This was 39 years after the top court was established. Born in Kerala, she had an illustrious career chart, starting as an advocate who practised in Kerala for eight years before being appointed judge in the Kerala high court in 1983. She retired from the Supreme Court in 1992, and went on to serve as the governor of Tamil Nadu. During her tenure as governor, she was criticized for the appointment of J. Jayalithaa, then embroiled in a corruption case, as chief minister. According to senior advocate Dushyant Dave, Justice Beevi was as courteous as she was balanced, always well prepared with the case history as she sat at the bench. He attributes the paucity of women in the higher judiciary to bias at both the bar and the bench. "We are still a feudal country, which is unlikely to change anytime soon.")

³¹ (Justice Sujata V Manohar (1994-99)She may have been the second woman judge of the Supreme Court but she was the first woman chief judge and the first woman chief justice of the Bombay high court. Having practised as an advocate for almost 20 years, she was known for taking up public interest litigation and doing pro bono work. In her stint at the apex court, she was on the three-judge bench that dealt with the issue of sexual harassment at the workplace and paved the way for the Vishaka Guidelines.)

³²Justice Ruma Pal (2000-06)With a six-year stint at the Supreme Court, she was a strong legal personality who was apparently also considered for the post of chief justice of India. She addressed women-related issues, stressing, for example, on cruelty and mental cruelty being grounds for divorce. As a former judge, she has voiced concerns about judicial accountability and the lack of a mechanism for this. She developed a reputation for speaking her mind fearlessly even if it involved criticizing her own colleagues. She was part of a three-judge collegium that refused an extension to a Madras high court judge on grounds of corruption. She pitched for greater transparency in the appointment of judges. At a memorial lecture, she slammed the higher judiciary for its "seven sins", including arrogance, nepotism, and turning a blind eye to a colleague's injudicious conduct)

³¹(Justice Ranjana Prakash Desai (2011-14)As a lawyer, Desai leaned towards criminal matters before being appointed special public prosecutor for preventive detention matters in 1986. With years of expertise in criminal law, she served as one of the judges who upheld the death sentence awarded to Ajmal Kasab, the lone surviving terrorist of the Mumbai attacks of 26 November 2008. She was also part of the bench that held that registration of FIR in cognizable offences was mandatory. In a unique instance, she, along with Justice Gyan Sudha Misra, formed an "all women bench" which heard matters for the day in April 2013 due to non-availability of another judge who was supposed to be part of the bench.)

³³Justice Gyan Sudha Misra (2010-14)Having served as the chief justice of the Jharkhand high court for almost two years, her tenure at the apex court saw four eventful years during which she was part of various landmark cases. She was part of the bench that rolled out the initial clean-up of the Board of Control for Cricket in India by barring Narayanaswami Srinivasan from contesting elections to the board in the wake of a spot-fixing scandal. She was also lauded for drawing a distinction between active and passive euthanasia in the case of Aruna Shanbaug, who had been kept on life support following a sexual assault in 1973. Despite her achievements, she drew criticism for being perpetually late to court)



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elevated from Tamil Nadu to adorn the Supreme court since August 2014 for the past three years. Prior to his service justice served as the Chief Justices of Jharkhand.

The irony is that 45 Chief Justices have been appointed so far till now no women so far has been appointed as the Chief Justice of India since independence era. Recently, landmark decisions made by the Supreme Court, declaring Triple talaq to be unconstitutional³⁶, where five member Judge Bench heard the case. ³⁷No women judge sat to hear the case of women. Even in Justice Puttuswamy case³⁸ on right to privacy declared as a fundamental right out of 9 judge bench no women judge sat in the bench. The former Justice Prabha Sridevan observes "The problem is far more deeply ingrained. It is the fact that there is just one woman judge and that this does not seem to matter to anyone."³⁹ Eminent Senior Counsel Indra Jaisingh feels "Women are available but they are just not on the horizon of those who appoint judges," ⁴⁰Chief Justices of High Courts at present Justice Tahir Ramani is appointed as Chief justice of Bombay and Justice Indira Banerjee is appointed as Chief Justice of High Court of Judicature Madras.⁴¹

The Annual Report of the 2016-2017 ⁴² overall sanctioned strength of the High Court reveals 10,79,650 judges were appointed and 429 vacancies remain. The data of the Ministry of Justice as to the number of women Judges in various High Courts are as follows: In Allahabad High Court there are 49 judges out of which only 3 judges, Justice Kumari Bharathi Supra, Justice Naheed, Justice Vijayalakshmi serve as judges. Besides two Additional women justices Sangeetha Chandra and Justice Rekha Dixit serve as judges amongst 24 other fellow Additional Judges.

In Telengana, Justice Kumari Javalkar Umadevi, Justice Telaprolu Ranjan, Justice Kongra Vijayalakshmi serve as judges amongst 31 overall strength of judges. There is not even a single women judge appointed as Additional Judge. In Telengana.

In Bombay High Court Justice Tahir Ramamani, Justice Vasanthi Anil Nayak, Justice Mridula Bhaskar, Justice Sadhana Sanjay Jadhav, Justice Revathy Prashanth Mohit, Justice Anuja Prabha Desai, Justice Shalini Shashank and Justice Phasalka Joshi were the 8 woman judges appointed out of overall strength 50. Additional judges Justice. Swapna Sanju Joshi, Justice Kumari Nutan D Sardesai, Justice. Bharathi Harish Dangre and Justice Vibha Vasanth Kankan were the four judges appointed out of 20 Additional Judges.

³⁵ (Justice R Banumathi (2014-20) More than halfway into her tenure as a Supreme Court judge, she is currently the only sitting woman judge. She was part of the bench that passed the death sentence in the 16 December Nirbhaya gang-rape case. Penning a separate judgement, for which she was lauded, she said that the case came within the category of "rarest of rare", where the question of any other punishment is "unquestionably foreclosed". She added that if at all there was a case warranting death sentence, it was this. Amongst the bar, Justice Banumathi is known to be a low-key judge who is focused on the brief and is guided strictly by the law. If there is a feminist side to her, she does not put it on display)

³⁶ Shayara Bano v Union of India and Others. W.P NO.118 of 2016 (Unreported).

³⁷ Namita Bhandre, 67 years of Supreme Court 6 Women Judges, <http://www.livemint.com/Leisure/Ak3TNcLWpQuoFaD3gJUnmM/67-years-of-Supreme-Court-6-women-judges.html> last visited 6.1.2018.

³⁸ Puttuswamy V Union of India W.P.No 494 of 2012.

³⁹ Ibid.,

⁴⁰ Supra Note 30

⁴¹ <http://doj.gov.in/appointment-of-judges/list-chief-justice-high-court> last visited 6.1.2016

⁴² <http://doj.gov.in/page/annual-report-1> last visited 7.1.2018.



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In Calcutta High Court three Judges Justice. Nadira Patherya, Justice Sanapti Chatterji and Justice Asha Arora serve as judges out of overall strength 26. Justice Moushmi Bhattacharya the only woman judge out of 7 additional Judges.

In Chattisgarh, there is no Woman Justice appointed at all. In Delhi High court out of 37 overall strength of judges Justice Kumari Gita Mittal, Justice. Kumari Hima Kohli, Justice Indermeet Kaur Kocchar, Justice Mukta Gupta, Justice Shrimati Prabha Rani, Justice Deepa Sharma and Justice Sangit Dhingra Sehgal, Justice Anu Malhotra, Justice Rekha Pillai, and Justice Pratibha were the 10 woman judges. No Additional Judges are appointed.

In Gauhati High Court Justice Rumi Kumari Puha is the only women Judge. In Gujarat High Court out of 24 overall judges four woman judges, Justice H.N.Devani, Justice. Abilasha Kumari, Justice. Bela Madhurya Trivedi, and Justice Sona Siridhar Gokhani were appointed No Additional Woman Judges were appointed. In Himachal Pradesh there is no woman judges appointed at all out of 6 Judges. In Jammu and Kashmir also the same situation no woman judges were appointed out of overall 11 judges. In Jharkhand also the same situation no woman judges were appointed out of 8 permanent judges and 6 additional judges.

In Karnataka High Court Justice Smt.Ratna kala, Justice.Shivanna Sujatha, were appointed as permanent judge out of overall strength 18.Justice Kotravva Somappa Mudagal appointed as Additional Judge out of seven judges. In Kerala High Court, Justice Pokkath Vijayan Asha,Justice Anu Sivaraman, Justice. Mary Joseph, were the three women judges appointed out of overall strength 29. Justice Shircy and Justice Annie John are two Additional Judges out of overall strength 8.

In Madhya Pradesh High Court, Justice Vandana Kasrakar serves out of overall strength 16. Justice. Nanditha Dubbey and Justice Anjuli Palo serve as Additional Judges out of overall strength 18.

In High Court of Madras headed by Chief Justice Indira Banerjee and four permanent judges,Justice. Vimala, Justice Puspha Satyanarayan Justice Nisha ban, Justice Anita Sumanth and Additional judges, Justice Hemalatha, Justice Krishnavali, Justice Ramathilingam and Justice Bhavani Subburayon in altogether 11 women judges out of overall strength 45.

In Manipur High Court and Meghalaya High Court no woman judge is appointed. In Orissa High Court, Justice Kumari Sanju is the only woman judge out of overall strength 17. In Patna High Court Justice. Anjana Mishra and Justice Nilu Agarwal serve out of overall 21 judges. In Punjab High Court Justice Dhaya Chandhary and Justice Kumari Ritu Bahri and Justice Rekha Mittal, Justice Anita Chowdhary, Justice Lisa Gill and Justice Jayshree were the 6 women judges serving out of the overall strength 48.

In Rajasthan High Court Justice Sabina and Justice Nirmaljit Kaur were the two judges serving out of 19 In Sikkim High Court Justice.Meenakshi mandarin serving out of overall strength 3. The High Court of Tripura and the High Court of Uttarkhand does not have any woman Judges at all. All these data shows that there is no equitable distribution of women judges in the High Courts of India. Principles of Rationale of examination must be done before appointing women judge.

Lets take the Law Commission of India,⁴³ the office is constituted by the Chairperson, Member Secretary,Secretary and Six Members. Not even one of the constitution is women. The Law

⁴³ Annual Report 2016-2017 p.24 <http://doj.gov.in/sites/default/files/Annual%20report-2016-17.pdf> last visited



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Commission Appellate Authority Administrative Officer is a woman Smt.Pawan Sharma. In the present scenario when education is in the door steps woman practitioners are more capable of performing the function of the Law Commission namely, .Reviewing the existing Laws repealing the obsolete laws. Can identify or otherwise change that are required to make suggestion and amendment. Can suggest to various department Can serve in the expert group Women by nature good at coordination. Must be given such an option to examine the existing laws, say that affect the poor and the needy and review the system of judicial administration . Revise a Central Acts and promote gender Equality. What could be witnessed is promoting gender equality is the agenda of the Law Commission but it not only having any of its members as women.

The Bar Council of India ⁴⁴ constitutes Chairperson, Vice-Chariman, Managing Trustee,Co-Chairman, Two Ex-Officio Member, and 13 Members. Not even a single women is part of it. However, Women Bar Association do exists in every court though majority of women practitioners are making their contribution but woman professionals are not being considered in the decision making of the Bar council .

In Department of Legal Affairs⁴⁵, Group A officers out of 97 employees 15 woman employees exist . Group B officers out of 135 officers only 4 women employees in Group C officers cadre out of 172 employees 15 women in altogether out of overall 654 employees 127 women employees work in the Department.

The list of Government Counsels ,top officers of the dept of Legal affairs, The Minister,The Law Secretary,AttorneyGeneral of India,Additional Solicitory general of India,and 8 of legal Advisors none of the women is appointed . The government must ensure equitable distribution is made in appointing such officers. Indira Jaising, the senior counsel, tweeted⁴⁶ as she raised that in the senior designation case an arbitrary and discriminatory process was being followed for the designations and has called for formulation of specific rules. In the 2009 Report no lady practitioner is appointed as the Government Counsel the 2017 report is not update yet in the Ministry o f Law and Justice website.

In Income Tax Appellate Authority ⁴⁷ In Group A Cadre 8 women out of 123 in Group B cadre 25 women out of 163 and in Group C Cadre 89 women out of 249 in Group D Cadre 13 women out of 201. In all totally amounting to 135 women who serve the authority out of 736.

Gender Issues: The gender basic differences are different from the past. Situation at time becomes grim . Majority of the women law students on passing the examination get enrolled and start their practice. Gradually there are many drop outs. Number of Women practitioners diminishes . Reasons may be Marriage, when it comes to personal life and professional life. Women at times find it difficult to balance. Non- encouragement from the family members ,colleagues, Seniors can be the reason. Their are reported cases of Sexual Harassment⁴⁸ where women being cornered out of practice. Women finds it difficult in compromising situation to cope up with the profession. Many women

⁴⁴www.barcouncilofindia.org last visited 7.1.2018.

⁴⁵<http://doj.gov.in/sites/default/files/Annual%20report-2016-17.pdf> last visited 7.1.2018.

⁴⁶Here Is Why Indira Jaising Decided To Give Up Her 'Senior Counsel' Gown After Independence Day.: <http://www.livelaw.in/indira-jaising-decided-give-senior-counsel-gown-independence-day/> last visited 7.1.2018.

⁴⁷ Ibid.,

⁴⁸<http://www.livemint.com/Politics/pFtUC0E0NMctwDcB52eNKP/SC-bars-MP-judge-from-holding-administrative-role-in-sexual.html> last visited 7.1.2018.



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who may not be the hard working type give up easily as this profession requisite is sincerity, dedication, hardwork, Punctuality and last but not he least consistency. Maternity issues also becomes the reason for women to give up the profession. Many women migrate to other fields of law to avoid practice. have issues to deal with male practitioners. " Justice Prabha Sridevan. observes "This sort of gender bias is deeply ingrained. The fact that you don't even think you need more women judges is part of that bias." A woman judge will understand the realities of a woman's life better." At a time when civil society and women themselves are increasingly vocal about their rights, it might not be a bad time for the courts to start setting their own house in order. Treat women with courtesy and dignity. ⁴⁹There should be no comment, gesture or action detrimental to the honour of women. Gender bias comments, gestures or actions should be avoided in and around the courtroom. The court proceedings should begin on time and in an orderly manner to avoid repeated hearings so that women witnesses are not harassed. The examination and cross-examination of women witnesses should be done by the presiding judge himself or under the direct supervision of the presiding judge. The female members of the Bar should be encouraged in the profession by assigning jobs like court commissioner for inspection, amicus curiae, legal aid work, etc. In cases of Crime Against Women, delay in disposal should not defeat justice itself.

Conclusion :

Indian courts need to fill up the vacuum left by the legislature pertaining to women. Women always faces the brunt. Women need to be protected from discrimination. Indian Judiciary has enjoyed the repute of being gender sensitive. The Prime Minister ought to bring vision Statement to women. Projects need to be undertaken to study about women in legal Profession and Bar council of India and the Government of India can encourage such projects. Bar Council can make comparative study and practice of other countries especially United States and its American Bar Association. Updating the data would give a clear picture as to where women practitioners stand in legal profession and that would be useful for encouraging women practitioners not to give up the practice and other fields of law. The need of the hour is active participation of women in Legal Profession. Thirty Three percent reservation should be implemented in all aspects of legal profession. With the courts of India being digitized, in the days to come its going to be e-filing in every court the task would become easier for women to practice. Women are good at multi-tasking and the art of balancing both the family and the professional life. Women should not give up the profession so easily must strive hard towards the quest for excellence.

⁴⁹ Chief Justice Lahoti, speech on the Book release of Vision Statement 'Women Empowerment- Role of Judiciary and Legislation, National Commission for women, Eastern Book Company 2005.

http://www.ebc-india.com/lawyer/articles/2005_2_49.htm last visited 7.1.2018.

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A STUDY ON THE WOMEN MANAGERS MOBILITY BARRIERS TOWARDS SECTORIAL SEGMENTS OF PRIVATE AND PUBLIC SECTORS

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1.Introduction

Like many other Asian countries, labour force statistics of Sri Lanka gathered through the latter part of the 20th century demonstrate an increase in the number of women in paid work. The increase in number of women professionally educated and entering management will change the social fabric and accept new role definitions for women and men. As a result of these changes the women in management profession perform and achieve the barriers to corporate ladder would decrease and accordingly new opportunities be created. The proportion of women in management of different levels of the organizations has increased and the number of women in the administrative and management categories decreased during the period of 1980-1990 (Department of Census and statistics 1995). While women are thus concentrated at the bottom of the occupational hierarchy the access of qualified women to the highest decision- making positions in the public and private sectors continues to be impeded by the 'glass ceiling' created chiefly by gendered norms and consequently by conscious or unconscious gender bias (Jayaweera2000). While women are concentrated in specific professions vertical segregation is also evident.

The statistical overview of women in the workforce demonstrates that public and private sectors show an increase in the numbers of women managers over time. However women are more numerous in the public sector and are in more senior positions than in the private sector. However towards the end of the 20th century the participation of women in decision making at various levels in the public and private sectors have increased only by 20 percent (Department of Census and Statistics 2000). There has been sufficient research focused on leadership application including exploring gender differences in leadership and management. Effective managerial behaviors, requirements for successful leaders, and feminine management have been the topics of various articles in both professional and popular media. However, most of these sources determinants of managerial advancement have not been well established, as only a few studies have examined broad range of personal and situational variables. This study seeks to build the knowledge base specifically for the 'feminization of management' field by exploring and describing the specific development and barriers experiences of women leaders. Exploring women's unique needs and experiences of leadership roles can help for success in leadership and management.

2.Objectives of the study

The problem of the glass ceiling is that women management face and the invisible barriers that prevent them from advancing upwards to higher levels of the managerial ladder in most countries of the world, have been analyzed and discussed extensively in a large number of research articles (ILO,1998). The gendered analysis of organizational cultures is considered, as reasons are sought for the higher representation of women in public sector, as compared with private sector management. The general objective of this study is to examine 'whether women have become discriminative in the arena of top management in the public and private sector organizations in Sri Lanka'. Accordingly the specific objectives of the study can be indicated as follows.



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The female participation rate in the public and private sector labour force in Sri Lanka has increased from 55.1 per cent in the 1990 to 55.2 per cent in the 2009 s (Department of Census and Statistics 2009). Despite such economic achievement, relatively little research has been done on the status of women, the general working environment of women in management, wage differentials, personal differentials, sexual segregation, discrimination, and perception and attitudes towards women as managers, etc. Based on this, another specific objective could be raised as 'to explore the barriers that impede career development of Sri Lankan women managers in public and private sectors'.

3.Literature Review

Women Managers and Career Motivation

Jawahar and Hemmasi (2006) results suggested that organizational support for women's advancement is related to turnover intentions. This relationship is mediated by employer satisfaction. Burke et al., (2006) purpose of the study is to examine the relationship of the perceived presence of organizational practices designed to support women's career advancement and their work attitudes and satisfaction and their psychological well-being. Women reporting more supportive organizational experiences and practices were more engaged in their work, more job and career satisfied and indicated greater levels of psychological well-being.

Women Managers and Job Commitment

According to Headlam-Wells et al., (2006) study, mentees showed improvements in many key employability skills. For example, their ability to identify their weaknesses and ways to develop professionally improved substantially as did their networking skills and ability to identify their strengths. Mentors also indicated that women had experienced development, for example, greater self-awareness, increased confidence, improved reflective skills and development online skills. Mentoring is frequently cited as playing an important role in the career development of successful women managers (Headlam-Wells, 2004).

Women Managers and Work-Family Interface

Rana et al., (1998) paper examines the experiences of British South Asia full-time managerial or professional women combining work and family. Managerial or professional British South Asian women are subjected to the same cultural family commitments and expectations as other non-professional British South Asian working women. Role conflicts for career women constitute a major source of stress and need for developmental planning and can result in costs to efforts to meet personal needs (Zunker, 2002).

4.Research Methodology Overview

The research approach for this study was a qualitative method with a feminist orientation for the purpose of describing and exploring women leaders' experiences of their perceived barriers for upward mobility. Characteristic of exploratory research, conducted within a qualitative pattern, the methodology was designed to allow the researcher to build rich description of case-organizations management practices were developed, created and maintained which 'filled and worked' participants' perspectives (Glaser, 1992). Using qualitative methods and a feminist perspective to develop and explore individual leader perspectives and experiences can assist to more fully understand the question of women's leadership roles: a perspective lost in contemporary women in management research.

The intent of the study is to interview 40 women managers in public and private sectors. The sample was a purposefully selected group of 20 women from the public sector and 20 women from the private sector who hold senior-level management positions in the fields of Education, Accountancy, Engineering, Insurance, Banking and Medical Service. To gain these perspectives, qualitative interviews are typically used. The researcher develops semi-structured, open-ended interview questions which provide the participants the opportunity for in-depth discussion. The current study is exploratory and uses how and why questions. Yin (2003) posited that when the relevant behavior of



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the participants cannot be manipulated and contemporary events are examined, case study is the preferred research design; both are conditions of the current research.

A Grounded theory (Glaser, 1992) data analysis method was used to explore and analyze the interview data to discover the central themes and meanings the women ascribe to their perceived barriers for upward mobility. It is considered particularly suitable to the opening of a relatively new area of study and to the goal of generating valid data for a limited number of cases, rather than generalizable data for a whole population. As a means of triangulation to ensure research validity (Yin, 2003), the women were asked to review the analysis and make comments, edits, and additions to authenticate and validate the analysis used in the final report. This study has triangulated the investigation by methods of observation, interviews and documentations. The method is designed to give voice to the participating women leaders in the tradition of feminist research perspectives. According to the Grounded Theory, sub topics of the cases which have been discussed in the following section are found. It was decided that the following set of criteria would help the researcher, when in the field to make objective decisions about the women in the organizations were approached.

5. Discussion and Analysis

Job Satisfaction

Personal factors are the common obstacles faced by the women when they accede to top positions. Examination of this problem provides an opportunity to identify gender differences in leadership effectiveness and leadership behavior and styles. All the interviewees spoke extensively about the attributes of their personal factors on women in management. The personal factor profile of the interviewees has the following attributes. In our study women in the sample appear to be highly motivated and highly committed to their careers. Research here has often found women reporting higher levels of job satisfaction. In this sample, women report higher levels of job satisfaction on both extrinsic and intrinsic features. This satisfaction is further supported by loyalty expressed to the organization, where women managers feel significantly more committed to their organizations.

Judgment of Women's Work Performance

To understand the judgment of women's work performance it has asked the question "Do you think that women receive more unfair judgment of their work performance than men?" Same answer was given by almost all the women in this regard. According to their views, if they are working with commitment, efficient and effective manner proper judgment will be given by others. It means that, there is no discrimination in evaluation of performance.

Accomplish More and Push Hard to be Promoted

According to the views of the majority of the public sector women managers, same procedures are followed by the management when promotions are given to women officers. Accordingly promotions are given on the base of efficiency and the paper qualifications. Therefore, there is no need to get separate effort in this regard. Promotion is given as usual. According to the views of interviewed five women managers in private sector, the works should be done very hard to get promotions. Because, they are always compared with males.

Promotion as an upward change of position, normally involving greater responsibility and different duties from those of the present position and is a move of an employee to a job within the company which has greater importance and usually higher pay. Due to these reasons, promotion is an important matter to almost all the women in the sample. According to the agreement of thirty five women, accomplish more and push hard not applicable for that purpose.

Professional Development at Work

Training and development are organizationally directed experiences designed to improve employee competency levels and enhance organizational performance. The literature suggests that managerial advancement is positively related to human capital credentials. More specifically,



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women's advancement to top management is directly related to their increased knowledge and skills and professional development opportunities made available to them throughout their careers. According to the interviewed to women, the opportunity for their professional development is less due to work related with their children at home. However, according to many women, professional development is a necessary thing. Therefore, the significant should be given that purpose too while on engage with other works. These findings were confirmed in our study. A good percentage of women managers (80 per cent) considered that the opportunities for professional development made available in the context of their organizations were adequate.

Number of Task and Too Much Work to Do

According to majority of the women interviewed they have huge work load to do. Due to this reason they have work stress. However, it was observed that they are doing all the works with prefer. Expressing views in this regard Mrs. SP mentioned that,

"Really I feel that the work load not sufficient for me. I can do more works"

However, according to the majority of the women interviewed, number of tasks and the work load is much more. This situation has been indirectly affected for their career development. However, there is no evidence of previous research in this regard. Therefore, this personal factor can be considered us a topic in future research.

Fellow Managers and Support

Fellow managers and support is also an important aspect when doing a job. Because it is difficult to go forward in a particular urgent situation without the support and advice from them. According to one third support is given by fellow managers. For an example of a Dean, when there are some problems in a faculty, other Deans are not talking against faculty and they are giving their support to solve such problems.

Feel alone in the job

The last question asked related to personal factors was "do you feel alone in your job". Different answers were given by different women managers for this question. According to two fourth of women managers, they do not feel aloneness when doing the job and according to another two fourth of women managers, they feel aloneness when doing their job. Accordingly one woman said that, "In the field of insurance only I am here. So I feel alone particularly in cases of out of my field".

Personal factor has changed significantly to accommodate women as managers. Our study looked at a number of different criteria for managerial effectiveness and found out that there are barriers in organizational support, number of task and working load, nearest colleagues and friendship and fellow managers and support.

7.Summary and Conclusions

In the emerging realities of globalization and liberal business environment of Sri Lanka and the influx of women into the labour market create more opportunities for Sri Lankan women to reach management positions. As a result of these changes, the women in management perform and achieve the barriers to corporate ladder would decrease and new opportunities would be created. Therefore, the proportion of women in management of different levels of the organizations has increased. However, the statistics presented in Department of Census and Statistics indicate that only around 20 per cent of employees who have reached the highest decision making positions in the public and private sector are women. Towards the end of year 2012, the participation of women in decision making at various levels in the public and private sector is very low and the women in the highest management levels have increased only by 20 per cent. The study found that smooth progress in upward career mobility was impeded by personal factors affect on women in management. This study looked at a number of different criteria of personal factors for managerial effectiveness and



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found out that there are barriers in organizational support, number of task and working load, nearest colleagues and friendship and fellow managers and support.

8.Recommendations

- i. Introduce special programmes to increase their self-confidence and capacity for management at any level.
- ii. Policies and programmes have to be focused to promote equitable gender relations and division of labour within the household and the economy.
- iii. Women in leadership positions should engage in self-development programs in order to update their knowledge, enhance their professional and leadership skills and develop other personal skills that would make them efficient in male organizations. In addition, engaging in a mentoring relationship could enhance self-development.
- iv. A series of measures related to improving working conditions for women are recommended. This included: the employment of more women managers: more flexible working conditions with more home-working, flexi-time, job-sharing, workplace childcare, career breaks and flexible contracts: the identification of role models through team working: workplace job shadowing and secondments: a greater focus on job specifications rather than person specifications: and the restructuring of bonus schemes.
- v. Policy decisions as well as more accurate societal beliefs can be informed with greater understanding of the explicit challenges managerial women as well as all working parents of children of various ages confront when navigating the arenas of work and home.

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MENSTRUATION A TABOO!

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Introduction

Menstruation is a natural process faced by almost all women in their lifetime. It is normal vaginal bleeding that occurs as part of a woman's monthly cycle. It is a biological phenomenon that occurs to women with the onset of puberty. The word Menstruation is derived from the Latin word "mensis" which means monthly. Menstruation thus can be outlined as corresponding to the monthly courses.¹ The etymology of the name sounds relevant but the stigma it has within the society is something irrelevant of its nature. Menstruation, also known as a period, is the regular discharge of blood and mucosal tissue from the inner lining of the uterus through the vagina. Every month an egg is released from an ovary and the inner lining of the uterus thickens in order to support the growth of the egg by providing nutrients to the embryo after implantation. If pregnancy does not occur, then the level of Estrogen and Progesterone will be dropped and thus pushes the uterine lining to shed through the vagina. This process is said to be a menstrual cycle. On an average; Girls start menstruation between the ages of 10-15. The average age for the ceasing of menopause is 51. Menstruation cycle varies from one woman to another. Most of them experiences painful periods or menstrual cramps which is called as dysmenorrhea.

In most part of the world including India, menstruation is given little to no sufficient importance. Often both men and women lack a complete knowledge about menstruation. In many cases women are kept in isolation and the menstrual blood is considered as impure. The mental and physical pain one goes through during each cycle is often left unnoticed and unheard. Despite the drastic development of science and technology many men don't have enough knowledge about menstruation because majority of women are not ready for an open conversation as she was brought up in a society where menstruation is a "Mother-Daughter secret" and a Taboo. The bleeding vagina remains silent and relinquishes all its rights when the society treats "bleeding is a sin", if bleeding is a sin, then will it equally applies to bleeding from injury for a man? This paper is an attempt to discuss about the violation of Gender Justice in the name of Menstruation.

Menstruation a Taboo - Unlocking the Myth.

Menstruation brings physical pain coupled with untold pain in every girl's life each month, which pushes them to lead a miserable 3-5 days. Girls are restricted to enjoy many of her inherited rights during this time. Most of them find it a taboo and are not willing to talk about it. It is considered as restricted and highly shameful to discuss it out in the open. As a consequence, a majority of them are unaware of the hygiene conditions required during periods & how to handle the products related to it. This adversely affects the health and also could create a sense of inferiority among the women. The real problem lies with the society that stamps menstruating women as dirty. Society imposes restriction not only on women's dressing style, routine habit, but it also determines what she can touch and cannot touch. In India, people have a belief that used menstrual cloth brings evil and there are some other illogical myths that can be traced across the world such as not to touch

¹etymology (n.d), online etymology dictionary, retrieved (9/1/2017) from
<http://www.etymonline.com/index.php?term=menstrual>.
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plants, Pickle etc. A study conducted by Caucasian American university students reveal the bitter truth of society attitude towards menstruating women. The participants were asked to drop a tampon on a public place. It concluded that "dropping of tampon led to lower evaluations of the subject's competence, decreased liking for her and a marginal tendency to avoid sitting close to her."² The taboos are justified by saying that "women are closer to nature because of their reproductive power"³ Lee conducted a survey which revealed that even women has a feeling of dirt, Shameful, unclean and fearful during their first period.⁴ In 2002, Robert conducted a research to examine the attitude of Men and women by asking them to touch a new tampon on their lips.⁵

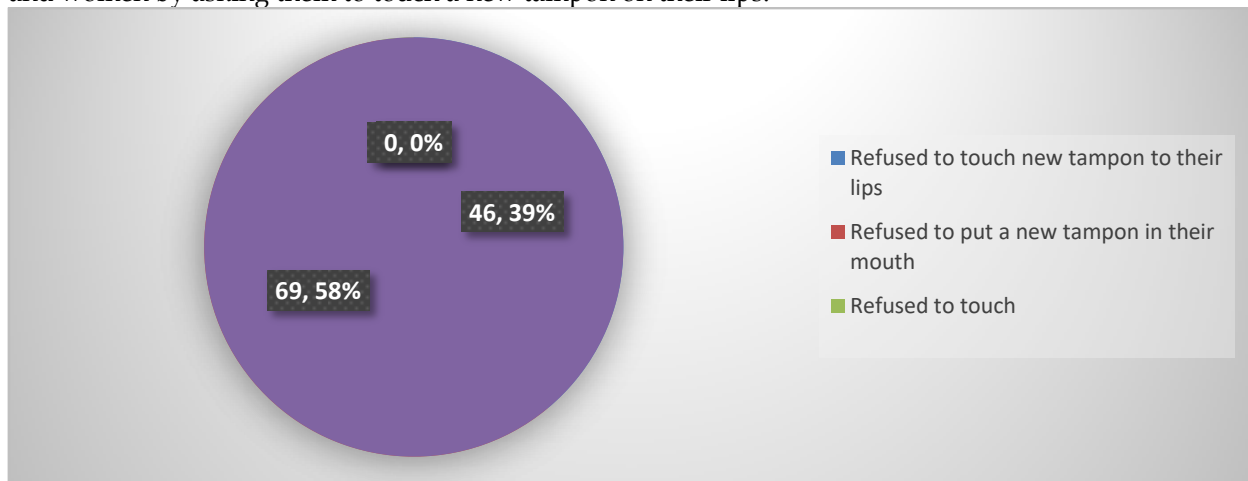


Fig 1: A social experiment on men and women to examine the attitude of people towards menstrual products (tampons)

Source: extracted from secondary sources

In the experiment it is found out that 58% refused to put a new tampon in their mouth and 39% refused to touch a new tampon to their lips. 3% refused to touch a new tampon. This clearly explains the stigma around menstruation and menstrual products.

All the negative attitude towards menstruating drives women into an unimaginable anguish because of their reproductive organs and its natural biological functions which puts them into not only physically but also morally inferior. Thesis done by Ishwari states that it is evident that the perceptions on treating menstruation, as Dirt, unclean, ashamed, impure were not changed much even after half a century.

Legal Perspectives of Right to Religion

There is no universally accepted Definition for the word religion. Respecting the religion and freedom of conscience and religion is a Human right enshrined under Article 18 of The Universal Declaration of Human Rights 1948,⁶ Article 18 of The International Covenant on Civil and Political

²IshwariRajak (2015), she got her period: Men's Knowledge and Perspectives on Menstruation, Cornerstone, P 24.

³Ortner, S. (1974). Is female to male as nature is to culture? *Woman, Culture, and Society*, 68-87.

⁴ Lee, J. (1994). Menarche and the (hetero)sexualization of the female body. *Gender & Society*, 8(3), 343-362

⁵ Roberts, T., Goldenberg, J., Power, C., &Pysczynski, T. (2006). "Feminine protection": The effects of menstruation on attitudes towards women. *Psychology of Women Quarterly*, 26, 131-139.

⁶Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance



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Rights,⁷ Article 1(2) of Declaration of the General Assembly 1981,⁸ Article - Convention on the Prevention and Punishment of the Crime of Genocide 1948, states that genocide means any act done with an intent to destroy in whole or in part, Religious group⁹. Article 5 of International Convention on the Elimination of All forms of Racial Discrimination,¹⁰ India is a country which protects all religion, but interferes with none. In KeshavanandaBarathi vs. State of Kerala, the Supreme Court held that, Basic structure of constitution includes Secularism. Article 25 of Indian constitution guarantees the freedom of conscience and free profession, practice and propagation of religion.¹¹In ratilal vs. St.of.Bombay, court held that "the word 'religion' is not only restricted to an opinion, doctrine or belief but also extends to the outward expressions/acts of the same i.e. any religious practises or performance of acts in pursuance of any religious belief" In sardarsaifudin vs. st of Bombay the learned judge stated, "a right to office or property or to worship in any religious place or a right to burial or cremation is included as a right legally enforceable by suit." In Punjab rao vs.D.P.Meshramit was held that "To profess a religion means the right to declare freely and openly one's faith" In seshammal vs. state of TN it was held that "What constitutes an integral or essential part of a religion or religious practice is to be decided by the courts with reference to the doctrine of a particular religion and includes practices regarded by the community as parts of its religion" International instruments and Indian constitution make it clear that Freedom of religion is a Human as well as fundamental rights. The word secular in our constitution doesn't interpret in a negative way as Anti-God or no religion state in lieu of neutral towards religion. The Right to religion and worship is an inherited right for an individual. As there is no universally accepted definition for the term religion, this paper relies upon scholars definition such as the definition by William James who states religion as, "Religion shall means for us the feelings, acts and experiences of individual men in their solitude, so far as they apprehend themselves to stand in relation to whatever they may consider the divine. Since the relation may be either moral, physical or ritual, it is evident that out of religion in the sense in which we take it, theologies, philosophies and ecclesiastical organizations may secondarily grow."¹² In line with Karl Marx, Man makes religion, religion does not make man.No person should suffer any form of disability or discrimination because of his religion, but all alike

71.Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching. 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice. 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others. 4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions

⁸No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

⁹ In the present convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: Killing members of the group; Causing serious bodily or mental harm to members of the group; Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; Imposing measures intended to prevent births within the group; Forcibly transferring children of the group to another group.

¹⁰(vii) The right to freedom of thought, conscience and religion . . .

¹¹Freedom of conscience and free profession, practice and propagation of religion, Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

¹²Manmeetsingh (2015), Freedom of religion, Legalservicesindia, retrieved (9/2/2017) from <http://www.legalservicesindia.com/article/article/freedom-of-religion-1881-1.html>



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should be free to share to the fullest degree in the common life¹³ India as a diverse country recognized various religions with various practices but nowhere in the constitution prevents the entry of women into the Temple. Recently, many incidents were occurring at as an alarming tone to indicate the miseries of women and the unjust in the name of menstruation. Considering menstruating as a valid justification to restrict women to enjoy her religious rights is an appalling tradition. As laid down in Seshammal case the issue of religious practice should be decided by court with reference to the doctrines and original scriptures. This paper tries to delve into the scriptures and customs to examine the unjust and real intention behind restricting women religious rights.

Religious Restriction towards Menstruating women

In AngirasaSmriti, it was quoted that "Menstruating women don't engage in holy/sacred activities¹⁴VashishtaDharmasutra restricts menstruating women not to touch the fire.¹⁵ By the misinterpretation of the above text people restricts the women not to engage in religious activity and to cook at the time of menstruating in the name of scriptures. The real intention was that menstruating blood contains subtle odor, which affects the religious practices and also the long participation, which adversely affects the women's health as they are physically weak during that time. It is clear that the intention is not to restrict the Temple entry of menstruating women. In Christianity, when a woman has her regular flow of blood, the impurity of her monthly period will last seven days, and anyone who touches her will be unclean till evening.¹⁶ It is a myth that women should not enter into the church during her menses, but delving into the scriptures makes us clear that following, All God's creatures are good and clean....¹⁷To the pure, all things are pure, but to those who are corrupted and do not believe, nothing is pure¹⁸Jesus clearly taught his disciples that the only things which make everyone impure or unclean are sins which proceed from the evil intentions of the heart.¹⁹ "The idea of uncleanness of women during the menstrual cycle is one that takes of the Old Testament and Jewish tradition. It says nowhere in the New Testament that the woman is stopped from entering the church during the cycle²⁰. "The Old Law has become our tutor to lead us to Christ, so that we may be justified by faith. But now that faith has come, we are no longer under a tutor."²¹In Islam, Menstruating women should not touch Quran, not to do religious practices and she has to stay away from male members of the family. In Quran, it was pronounced about menstruation as, "They will ask you about menstruation. Say, 'It is harmful, so keep away from women during it. Do not approach them until they are purified of it, when they are purified you may approach them as Allah has ordained."²²These verses were misinterpreted as it creates misconception about the command of Allah on Menstruation. It is clear that Allah poses restriction on menstruating women which is only on Sexual Intercourse during that particular time. This can be very well explained by quoting 'I will not allow the deeds of any one of you to be lost, whether you are male or female, each is like the other.'²³ImpliedlyAllah is merciful on menstruating women as they are experiencing pain

¹³ Ibid.

¹⁴AngirasaSmriti, Verse 37

¹⁵VashishtaDharmasutra, (5.6)

¹⁶Leviticus 15:19

¹⁷(2 Corinthians 2, 15)

¹⁸(Titus 1:15)

¹⁹"It is from within, from people's hearts that evil intentions emerge: fornication, theft, murder, adultery, avarice, malice, deceit, indecency, envy, slander, pride, folly. All these evil things come from within (the heart). They make a person unclean" (Mark 7,14-23).

²⁰IPS NIFON of Targoviste

²¹(Galatians 3:24-25)

²²(Qur'an 2:222)

²³(Qur'an 3:193-195)



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during menstruation,²⁴ Allah treats everyone equally when it comes to worship. Women is a creation of Allah, Allah used the word Harmful in the verse (Quran 2:222) but nothing about spiritually impure. Restriction such as Entry to mosque, Touch Quran, Participation in Namazetc, are not to be considered inequality rather to be kindness towards women excluding her to be free from the religious duty during these times, such obedience is considered to be a form of worship rather than an exclusion or mistreatment. Our Indian Constitution provides various provisions to achieve gender equality such as Article 14, 15(1), 25 which provides non-discrimination based on sex, religion. In The State of Bombay vsNarasuAppa Mali the court held that, "Religion in a modern democratic State is purely a matter of the individual and his God; with the religious beliefs of the citizen and his religious practices normally the State would not interfere. But if these religious beliefs or practices conflict with matters of social reform or welfare on which the State wants to legislate, such religious beliefs or practices must yield to the higher requirements of social welfare and reform."²⁵From the above discussion and examination of Scriptures, it is evident that no religion treats menstruating women as sign of Impurity and it works only for the welfare of Menstruating women.

Conclusion

Women's rights were hindered in the name of Tradition. Tradition is nothing but Patriarchal dominance to suppress women. As stated by Eleanor Roosevelt "A woman is like a tea bag—you never know how strong she is until she gets in hot water." The modern women broke the stereotype and started many campaigns (Happyto bleed), even NGOs and various social media groups have entered the campaign. Many of these were created when the Indian temple chief recently said that he would allow women to enter the shrine only after a machine was invented to detect if they were "pure" - meaning that they weren't menstruating. In Indian Young Lawyers Association vs. The state of Kerala²⁶ the Supreme Court held that "Unless you have a constitutional right to prohibit women entry, you cannot prevent them from worshipping at the shrine. There is a difference between a temple meant for the public to worship and a mutt," Many countries created a law to end the practice of exiling women for menstruating and various positive steps were taken by introducing period leave. Even though we achieved drastic technological development, we are in a primitive stage towards the knowledge of menstruation. Still, the advertisements shows blue ink instead of red blood. Blood is not a sin and therefore menstrual blood should not be treated as sin. It is the same blood where everyone grew up in when they were in the mother's womb. One should not deny that, no one would exist if a women cease to bleed. Recently in Tamil Nadu a 12 year old girl committed suicide because of period shaming done by her school teacher. There are many unnoticed unjust incidents and exploitations occurring towards menstruating women. The State should take appropriate steps to safeguard women against the so called social evil "Exiling women for Menstruating" It is the duty of the State to provide gender equality. Hence, it is the need of the hour to enact a legislation for the welfare of menstruating women and the state should conduct programs to disseminate awareness. As a concluding note, one shall quote Mahatma Gandhi's articulation on women as "To call woman the weaker sex is a libel; it is man's injustice to woman. If by strength is meant brute strength, then, indeed, is woman less brute than man. If by strength is meant moral power, then woman is immeasurably man's superior. Has she not greater intuition, is she not more self-sacrificing, has she not greater powers of endurance, has she not greater courage? Without her, man could not be. If nonviolence is the law of our being, the future is with woman. Who can make a more effective appeal to the heart than woman?"

²⁴"Allah does not wish to place any hardship on you(Qur'an 5:6)

²⁵AIR 1952 Bom 84, (1951) 53 BOMLR 779

²⁶W.P.Civil no. 373 of 2006



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DOMESTIC VIOLENCE:- LEGAL AND SOCIAL PERSPECTIVE

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INTRODUCTION:

Kanyadaan system in the Hindu marriage which literally means the gift of a virgin. In shastras it is recommended as 'she' adorned with jewellery and then be gifted away. So when the bridegroom was given something in cash or kind along with Kanyadaan it was Varadakshina. The act was voluntary in nature without any coercive overtones. The custom which had its origin in sublime sentiments has now become a curse for the whole society.

The Britishers cast a disapproving eye on the practice of dowry. Indian social reformers also realized the malaise. Even before independence, to curb the evil of dowry laws were passed which prohibited the giving and taking of dowry known as Sind Deti-leti Act 1939 and punishment was also prescribed for violation of the provisions of Act.

After independence, the malady continued. Brides were tortured for not bringing sufficient dowry. We could see cases of suicide or accidental death by explosion of kerosene stoves became suddenly explicable as dowry death. The anger and militant protest by a small group of women snow balled in to a campaign demanding legislation against it. The struggle led to passing of Dowry prohibition Act and the act also made the offences non cognizable, bailable and non compoundable under the Act. In spite of the best efforts of the central and state governments to their utter surprise, the Dowry prohibition Act 1961 proved to be a complete failure. Violence against women are unreported often due to societal norms, taboos, stigma and sensitive, nature of the subject.

Even if it is reported also it is less. Violence against women is not only the most widespread example of a human rights Violation but probably the least evident going largely unpunished the reports published and research conducted by the UN, International human rights agencies and global womens and feminist movements have been denouncing.

On Analyzing the Act I felt there are some short comings relating to certain provisions which rendered it weak. One is definition of Dowry under section 2. Secondly the punishment under the Act was not sufficient. Thirdly the offence was made non-cognizable and a magistrate could not act suo motto and who would file the complaint when the giver and taker of dowry under the act were offenders. The act also did not fix the criminal liability of a person who failed to return dowry to the women concerned. Taking in to account of the loopholes of the Act 1961 the joint committee of the parliament amended the Act in 1984 Even after the amendments the Dowry prohibition Act was found inadequate.

In spite of non acceptance the joint committee highlighted the role of legislation. According to Pandit Jawaharlal Nehru:-

"legislation cannot by itself solve deep rooted problems. one has to approach in other ways too. law is necessary and essential so that it may give that push and have that educating factor as well as legal sanction behind it which helps public opinion to give a certain shape".

Now I like to mention some of the cases to show the right of women over sridhana property. In Shersingh V Virinder Kaur. In this case it was held that what so ever property is given to the wife by way of gift or will it will constitute her sridhan and she is its absolute owner. Any person who holds the property of his wife and denies if to her is guilty of criminal breach of trust. In Vinod Kumar Vs. State of Punjab, here also the court was charged with the offence of criminal breach of



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trust for refusing to return dowry to his wife. Any property given at the time of the marriage constitutes sridhan. In Prathiba Rani Vs. Suraj Kumar. In this case also when sridhana property was not returned to her by her in laws court gave direction to return to the wife when demanded by her. This shows the exclusive right of womens over sridhana.

DOWRY DEATH AND SUICIDE (SECTION 304 B (IPC):Wazir Chand Vs. State of Haryana. This was a case involving the death by burning of newly married woman. In this case a large number of articles were taken back by the father of the deceased after her death from the matrimonial home, showed the pressure by in laws for money and articles which continued to be exerted till her death. In Premawati Vs. State of MP¹¹. It was held that section 304 B would be attracted not only when the death is caused by someone but also when the death occurs unnaturally. If occurrence of death is preceded by cruelty of harassment by in laws for or in connection with a dowry demand. Ram Badan Sharma V State of Bihar¹². This is yet another case where there were evidences which showed that there was continuous demand of dowry and because of non fulfillment of the said demands there was harassment of the deceased. Court found the conviction of the husband under sect 304-B of IPC.

In spite of the inadequacy in law the above cases shows that the accused have been given punishment severely for the harassment towards the women in case of dowry. Thus the law both procedural and substantive law facilitate the punishment of guilty and created terror in minds which are criminally inclined.

CONCLUSION: The law enforcement is below expectations with a marginal impact in society. The implementation of the Act and rules were not effective. It is necessary to arouse the conscience of the people against the demand and acceptance of dowry. India boasts of social justice but women are victims of social justice. In 1971 Anti Dowry Act was passed. But it was not able to check the dowry death and entire system. Law alone cannot amend these matters. People should come forward and should mobilize public opinion against it and take pledge not to accept dowry. Similarly girls should have enough self respect and should refuse to marry a boy who is greedy enough to demand anything from her parents. For this every girl has to be educated well so that she has the ability to earn before she is married. It gives her a lot of confidence and she would have the guts to raise voice against this social evil. No way women are inferior to man. The real solution can come only if public opinion is strongly mobilized against the giving and taking of dowry social and religious organization should come forward to check this evil. By passing legislation does not create terror in the minds of the public. Government should take necessary steps to curb the social menace. When laws are tilted in favour of women I feel pity on the man in demanding dowry and they themselves are behind the bars. This awareness have to be strongly reached to the public. It is the duty of all of us to make the antidowry a grand success.

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WOMEN EMPOWERMENT IN INDIA: A HUMAN RIGHTS PERSPECTIVE

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1. Introduction

People in India are united in spite of the much diversity of races, religions, castes, sub-castes, communities and languages. Indians are highly spiritual and god fearing in nature so they give respect to everyone's religions. In every religion women are given a special place and every religion teaches us to treat women with respect and dignity. Unfortunately, various types of ill practices, both physical and mental, against women have become very common in the society. For example, practice of dowry, female infanticide, sexual harassment, domestic violence and other kinds of discriminatory practices unleashed on women in the society.

2. Historical Background

Various studies indicate that, women enjoyed equal status and rights during the ancient and the early Vedic period. However in approximately 500 B.C., the status of women began to decline, and with the Islamic invasion of Babur and the Mughal Empire and Christianity later worsened women's freedom and rights. Indian women's position in society further deteriorated during the medieval period, when child marriages and a ban on remarriage by widows became part of social life in some communities in India. The Muslim conquest in the Indian subcontinent brought purdah to Indian society. Among the Rajputs of Rajasthan, the Jauhar was practiced. In some parts of India, some of Devadasis were sexually exploited. Polygamy was practiced among Hindu Kshatriya rulers for some political reasons. In many Muslim families, women were restricted to Zenana areas of the house.

A few enlightened Indians such as Raja Ram Mohun Roy influenced by the modern concept of freedom, liberty, equality and justice started to question the prevailing discriminatory practices against women. Through his unrelenting efforts, the British were forced to abolish the ill-practice of Sati. Similarly several other social reformers such as Ishwar Chandra Vidyasagar, Swami Vivekananda, Acharya Vinoba Bhave etc. worked for the betterment of women in India.

Indian National Congress supported women's political rights in 1917. The Child Marriage Restraint Act in 1929 was passed due to the efforts of Mahammad Ali Jinnah, Mahatma Gandhi requested the young men to marry the young widows and urged people to put an end to child marriages. Various provisions have been included in the constitution of India which would help eliminate age-old exploitative customs and traditions and also such provisions which would help in empowering women socially, economically and politically. Women have to swim against various hurdles in the society which requires physical and mental strength. Such strength comes from the process of empowerment. The women empowerment can be done through providing proper education, employment and nutrition facilities¹.

3. Women Empowerment and its Components

Empowerment of women means developing them as an individual with more awareness. Women should be politically active, economically productive and independent and are able to make intelligent decisions in matters that affect them². Women empowerment as a concept was introduced

¹ V.S. Ganeswamurthy, *op.cit.*, page 173, 2008.

² U. Koko, "Empowering People for Health and Family Planning", *IASSI Quarterly*, page 2, 1992.



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at the International women Conference in 1985 at Nairobi, which defined it as redistribution of social power and control of resources in favor of women³.

According to the **United Nations**, women's empowerment mainly has five components. They include;(i) generating women's sense of self-worth, (ii) women's right to have and to determine their choices, (iii) women's right to have access to equal opportunities and all kinds of resources, (iv) women's right to have the power to regulate and control their own lives, within and outside the home and(v) women's ability to contribute in creating a more social and economic order. Thus, women empowerment is nothing but recognition of women's basic human rights and creating an environment where they are treated as equals to men. Therefore, the concept of women empowerment not only focuses on giving women strength and skills to rise above from their miserable situation but also stresses on the need to educate men regarding women issues and inculcating a sense of respect towards women.

4. Women Empowerment in India

Women's empowerment in India is heavily dependent on many different variables that include geographical location (urban / rural) educational status, social status (caste and class) and age. The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favor of women. Within the framework of a democratic polity, our laws, development policies, plans and programs have aimed at women's advancement in different spheres. From the fifth Five-Year Plan (1974-78) onwards there has been a marked shift in the approach to women's issues from welfare to development and then from eighth Five-Year Plan emphasis was shifted from development to empowerment. In recent years, the empowerment of women has been recognized as the central issue in determining the status of women. India has also ratified various International conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993. The National Commission for Women was set up by an Act of Parliament in 1990 to safeguard the rights and legal entitlements of women⁴.

5. Government Policies and Schemes for Women's empowerment

Whatever improvement and empowerment women have received is due to their efforts and struggle. The governmental schemes are also there to help them in their endeavor. In the year 2001, the Government of India launched a **National Policy for Empowerment of Women**. The specific objectives of the policy include; (i) Creation of an environment through positive economic and social policies for full development of women to enable them to realize their full potential, (ii) Creation of an environment for enjoyments of all human rights and fundamental freedom by women on equal basis with men in all political, economic, social, cultural and civil spheres, (iii) Providing equal access to participation and decision making by women in social political and economic life of the nation, (iv) Providing equal access to women to health care, quality education at all levels, career and vocational guidance, employment, equal remuneration, occupational health and safety, social security and public life etc. (v) Strengthening legal systems aimed at elimination of all forms of discrimination against women, (vi) Changing societal attitudes and community practices by active participation and involvement of both men and women, (vii) Mainstreaming a gender perspective in the development process, (viii) Elimination of discrimination and all forms of violence against women and the girl child

³. Suman Panucha and Ankita Khatik, "Empowerment of Rural Woman", *Social Action*, page 349, 2005.

⁴. Empowerment of Women in India: A Critical Analysis, Mamta Mokta, *Indian Journal of Public Administration*, July-September, 2014.



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and (ix) Building and strengthening partnerships with civil society, particularly women's organizations.

The Ministry of Women and Child Development is the nodal agency for all matters pertaining to welfare, development and empowerment of women. It has evolved schemes and programs for their benefit. These schemes are spread across a very wide spectrum such as women's need for shelter, security, safety, legal aid, justice, information, maternal health, food, nutrition etc., as well as their need for economic sustenance through skill development, education and access to credit and marketing.

6. Constitutional Rights and Specific Laws for Women Empowerment in India

Constitution of India provides fundamental rights and fundamental duties to the citizens of India; each and every citizen of this country is equally entitled of these rights and duties. The Constitution of India guarantees to all Indian women equality (Article 14), no discrimination by the State (Article 15(1)), equality of opportunity (Article 16), and equal pay for equal work (Article 39(d)). In addition, it allows special provisions to be made by the State in favor of women and children (Article 15(3)), renounces practices derogatory to the dignity of women (Article 51(A) (e)), and also allows for provisions to be made by the State for securing just and humane conditions of work and for maternity relief (Article 42).

6.1 Legal Security

Women in India are being provided with the legal security to secure their economic, social and cultural lives. The following acts show the efforts made by Indian Government in interest of women's life safeguard. Dowry Prohibition Act 1961, Maternity Benefit Act 1961, Births, Deaths & Marriages Registration Act 1886, Medical Termination of Pregnancy Act 1971, National Commission for Women Act 1990, Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1999, Protection of Women from Domestic Violence Act 2005, Sexual Harassment of Women at Work Place (Prevention, Prohibition & Redressal) Act 2013, Hindu Widows Remarriage Act 1856, Muslim women (protection of rights on divorce) Act 1986, Guardians and Wards Act 1890, Indian Penal Code 1860, Christian Marriages Act 1872, etc.

Recently, a historic judgement has been delivered by Supreme Court of India against Triple 'talaq' which has given big a relief for the Muslim women. Triple 'talaq' is a form of divorce that was practiced in India, whereby a Muslim man could legally divorce his wife by pronouncing 'talaq' three times. The man did not need to cite any cause for the divorce and the wife need not be present at the time of pronouncement. After a period of iddat, during which it is ascertained whether the wife is pregnant, the divorce becomes irrevocable⁵. In the recommended practice, a waiting period was required before each pronouncement of talaq, during which reconciliation is attempted. However, it had become common to make all three pronouncements in one sitting. A divorced woman could not remarry her divorced husband unless she first married another man, a practice called nikahhalala. The practice faced opposition from Muslim women and some of whom filed public interest litigation in the Supreme Court against the practice, terming it "regressive"^{6&7}. The petitioners asked for section 2 of the Muslim Personal Law (Shariat) Application Act, 1937, to be scrapped, describing it as being against Article 14 of the Constitution⁸.

In February 2017, the Supreme Court said a five judge multi-faith bench would be set up to hear and decide on whether 'triple talaq' is constitutionally valid. On 22 August 2017, the Indian Supreme Court deemed instant triple talaq (talaq-e-biddat) unconstitutional. Three judges of the five-

⁵ Rao, Kinship, Descent Systems and State – South Asia (2003), p. 341.

⁶ Barkha Dutt, What India's liberals get wrong about women and Sharia law, The Washington Post, May 5, 2017.

⁷ "Muslim Personal Law Board to discuss Ayodhya dispute, triple talaq on Saturday", *Hindustan Times*, 14 April 2017

⁸ "Triple 'Talaq': Law panel studies practices of Muslim nations", *The Times of India*, 24 January 2017.



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judge panel decided that the practice of instant 'triple talaq' was unconstitutional while two judges ruled that the practice is constitutional, but simultaneously asking the government to ban the practice by enacting a law⁹.

6.2 Women and Family

Family is a cooperative unit based on the common interest and mutual support. A woman is the key role of a family. The support of husband, children and in-laws is must to make a happy family. Earlier woman was just treated as a house keeper. She needs to serve her children, in-laws and her husband. But the scenario has changed now, woman enjoys the equal status in the family and contributes more than her husband as she earns for the family and performs all their responsibilities of the household. Women have now stepped out of the house to live their lives in their own manner. Contribution of woman is more than a man in the present era. The acts for the working women and housewives are, Guardians and Wards Act 1890, Married Woman's Property Act 1872, Indian Succession Act, 1925, Dowry Prohibition Act 1961, Hindu Marriage Act 1955, Muslim Women (protection of rights of divorce) Act 1986.

6.3 Literacy Status

Several studies indicates that, a lower level of women literacy rates results in higher level of fertility and infant mortality, poorer nutrition, lower earning potential and the lack of an ability to make decisions within a household. In India, it was found that there is a large disparity between female literacy rates in different states. For example, while Kerala has a female literacy rate of about 86%, Bihar and Uttar Pradesh have female literacy rates around 55-60%. These values are further correlated with health levels of the Indians, where it was found that Kerala was the state with the lowest infant mortality rate while Bihar and Uttar Pradesh are the states with the lowest life expectancies in India. The number of literate women among the female population of India was between 2-6% from the British Raj onwards to the formation of the Republic of India in 1947. Concerted efforts by Indian Government led to improvement from 15.3% in 1961 to 28.5% in 1981. By 2001 literacy level of women had exceeded 50% of the overall female population, though these statistics were still very low compared to world standards and even male literacy within India. Recently the Indian Government has launched Saakshar Bharat Mission for Female Literacy. This mission aims to bring down female illiteracy by half of its present level.

6.4 Women Reservation

Reservation for women in various segments gives them an opportunity to make the society feel that they are not less than man in any aspect. In 1993 the constitutional amendment called for random one third village council leader or pradhan position in gram panchayat to be reserved for women. Recent researches on quota system has revealed that it has changed perception on women's abilities, improved women electoral chances, and raised aspirations and educational attainment for adolescent girls. There is a long term plan to extend this reservation to parliament as well as legislative assemblies. For instance some of educational institutions in India have 33% reservation for females^{10&11}. The Women's Reservation Bill was passed by the Rajya Sabha on 9th March 2010 by a majority vote of 186 members in favor and 1 against. The Lok Sabha has not voted on the bill till today.

6.5 Women Safety in Society

⁹. Supreme Court scraps instant triple talaq: Here's what you should know about the practice, Hindustan Times, August 22, 2017.

¹⁰. Women Empowerment in India: A Brief Discussion, Dhruva Hazarika, International Journal of Educational Planning & Administration, page 199, 2011.

¹¹. Recent Trends in Women Empowerment: An Analysis, D. Srinivasa, and Y. S. Siddegowda, International Education & Research Journal, page 101, 2015.



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The Government of India has made many laws and acts to safeguard and secure the life of women in the country. In spite of such laws, rules and regulations, the life of women is still not secure completely. Inequality between men and women runs around every sphere of the country whether it may be education, governance or economic opportunities. Some recent statistics on women reveals; (i) One bride was murdered every hour over dowry demands (National Crime Records Bureau, 2010), (ii) Almost 45% of Indian girls are married before they turn 18 (International Centre for Research on Women), (iii) Upto 50 million of girls are missing over due to female infanticide and female foeticide, (iv) 66% of women who have experienced physical violence in their lifetimes are divorced, widowed or deserted, (v) 85.3% of women reporting violence and claim that their husbands are perpetrators, (vi) Particularly women and girls from the northeast region in India living in urban center have reported experiencing social discrimination and marginalization and many times physical violence. Majority of women in this region living in rural areas and they are unaware of law or lack of necessary economic and moral support from their natal families.

7. Gender Inequality in India

In order to analyze the state of women in country several methods are available such as Gender related Development Index (GDI) and the Gender Empowerment Measure (GEM). But these methods have conceptual and methodological limitations¹². Therefore the Gender Inequality Index was introduced as an experimental index in 2010¹³. The Gender Inequality Index (GII) is a new index for measurement of gender disparity that was introduced in the 2010 Human Development Report by the United Nations Development Program (UNDP). According to the UNDP, this index is a composite measure which captures the loss of achievement within a country due to gender inequality. This method provides data which has been generated by taking into the account of three dimensions such as reproductive health, empowerment, and labor market participation.

8. Conclusion

Women in India, through their own unrelenting efforts and with the help of constitutional and other legal provisions and also with the aid of Government's various welfare schemes, are trying to find their own place under the sun. Women participation in employment, in socio-political activities of the nation and also their presence at the highest decision making bodies has improved significantly. But this change is visible only in metro cities or in urban areas and the situation is not much improved in semi-urban areas and villages. This disparity is due to lack of education and job opportunities and negative mind set of the society which does not approve women education. Various problems related to women are still subsisting; female infanticide is growing, dowry is still prevalent, domestic violence against women is practiced; sexual harassment at workplace and other heinous sex crimes against women are increasing in the society. There is a need to educate and sensitize men in the society regarding women issues and try to inculcate a feeling of togetherness and equality among them so that they would stop their discriminatory practices. India can become a powerful nation only if it truly empowers its women.

¹². http://en.wikipedia.org/wiki/Gender_Inequality_Index.

¹³. <http://hdr.undp.org/en/content/why-has-gender-inequality-index-replaced-underdevelopment-index-and-gender-empowerment>.



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INCLUSION OF THIRD GENDER AND THEIR RIGHTS

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Introduction

Third gender or third sex is a concept in which individuals are categorized, either by themselves or by society, as neither man nor woman. It also describes a social category present in those societies that recognize three or more genders. The term third is usually understood to mean "other. Biology determines whether a human's chromosomal and anatomical sex is male, female, or one of the uncommon variations on this sexual dimorphism that can create a degree of ambiguity known as intersex. The state of personally identifying as, or being identified by society as, a man, a woman, or other, is usually also defined by the individual's gender identity and gender role in the particular culture in which they live. Not all cultures have strictly defined gender roles.

Transgender people are people who have a gender identity or gender expression that differs from their assigned sex. Transgender people are sometimes called transsexual if they desire medical assistance to transition from one sex to another. Transgender is also an umbrella term: in addition to including people whose gender identity is the opposite of their assigned sex (trans men and trans women), it may include people who are not exclusively masculine or feminine (people who are genderqueer, e.g. bigender, pangender, genderfluid, or agender). Other definitions of transgender also include people who belong to a third gender, or conceptualize transgender people as a third gender. Infrequently, the term transgender is defined very broadly to include cross-dressers, regardless of their gender identity.

Being transgender is independent of sexual orientation: transgender people may identify as heterosexual, homosexual, bisexual, asexual, etc., or may consider conventional sexual orientation labels inadequate or inapplicable. The term transgender can also be distinguished from intersex, a term that describes people born with physical sex characteristics "that do not fit typical binary notions of male or female bodies".

Condition of Transgenders in our society

Transgenders, in our society, encompass all races, ethnicity, religious and social classes, yet, they've never enjoyed a respectable life, because of "what they are" and "how they are". They are subjected to confusions and anguish, resulting from the rigid, forced conformity to sexual dimorphism throughout the recorded history. They are facing disparities linked to societal stigma, discrimination, and denial of their civil and human rights. Discrimination against them have been associated with high rates of substance abuse and suicides, and they are facing rampant discrimination in the areas of family life, social life, housing, education, health etc.

They've been continuously subjected to hear and assimilate abuses from people about them. Their lives have always been subjected to abstaining from the colors of the world, just because of the denial of social acceptance. The society views them as eccentric characters, which wouldn't fit into the prescribed sanctimonious bounds.

Transgender is generally described as an umbrella term for persons whose gender identity, gender expression or behavior does not conform to their biological sex. TG may also takes in persons who do not identify with their sex assigned at birth, which include Hijras/Eunuchs who, in this writ petition, describe themselves as "third gender" and they do not identify as either male or female. Hijras are not men by virtue of anatomy appearance and psychologically, they are also not women, though they are like women with no female reproduction organ and no menstruation. Since Hijras do



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not have reproduction capacities as either men or women, they are neither men nor women and claim to be an institutional "third gender".

According to one estimate, India has about two million transgender people. In India, a common term used to describe transgender people, transsexuals, cross-dressers, eunuchs and transvestites is hijra. Campaigners say they live on the fringes of society, often in poverty, ostracised because of their gender identity. Most make a living by singing and dancing or by begging and prostitution.

Position of Transgenders in the past

The abominable state of the third gender can be traced back from the colonial era, when the legislation was enacted to supervise the deeds of Hijras/TG community, called the Criminal Tribes Act, 1871, which deemed the entire community of Hijras persons as innately 'criminal' and 'addicted to the systematic commission of non-bailable offences'. The Act provided for the registration, surveillance and control of certain criminal tribes and eunuchs and had penalized eunuchs, who were registered, and appeared to be dressed or ornamented like a woman, in a public street or place. Such persons also could be arrested without warrant and sentenced to imprisonment up to two years or fine or both.

Section 377 of the IPC found a place in the Indian Penal Code, 1860, prior to the enactment of Criminal Tribes Act that criminalized all penile-non-vaginal sexual acts between persons, including anal sex and oral sex, at a time when transgender persons were also typically associated with the prescribed sexual practices. Reference may be made to the judgment of the Allahabad High Court in *Queen Empress v. Khairati* (1884) ILR 6 All 204, wherein a transgender person was arrested and prosecuted under Section 377 on the suspicion that he was a 'habitual sodomite' and was later acquitted on appeal.

This judicial legislation plays in contrast to the historical times in India where TG Community had got a strong historical presence in our country in the Hindu mythology and other religious texts. Lord Rama, in epic Ramayana, impressed with their devotion, sanctions them the power to confer blessings on 11 people on auspicious occasions like childbirth and marriage, and also at inaugural functions. Jain Texts also make a detailed reference to TG which mentions the concept of 'psychological sex'. Hijras also played a prominent role in the royal courts of the Islamic world, especially in the Ottoman empires and the Mughal rule in the Medieval India.

Steps taken by various State Governments improve the conditions of transgenders in recent days

However, the abject conditions of the Transgender communities have been redressed through a step taken by The National Legal Services Authority, constituted under the Legal Services Authority Act, 1997, to provide free legal services to the weaker and other marginalized sections of the society, has come forward to advocate their cause.

In 2009, India's Election Commission took a first step by allowing transgenders to choose their gender as "other" on ballot forms. The aforementioned judgment is buttressed by the recent landmark judgment (April, 2014) by Justice KS. Radhakrishnan, who headed the two-judge Supreme Court bench, which recognition to transgenders as the third gender. The landmark ruling asks the Centre and state governments to treat them as socially and 'economically backward classes', to enable them to get reservations in jobs and education. This goes along with the court's decision to grant them all facilities including a voters ID, passport and driving license. Further, The Centre and States were also directed to take steps for bringing the community into the mainstream by providing adequate healthcare, education and employment.

Ironically, Section 377 of the Indian Penal Code, according to which same-sex relationship is an "unnatural offence" is existing in conjunction with the court's recent decision of giving 'recognition' to the third gender. Legal experts say that the aforementioned judgment puts



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transgender people in a strange situation: On the one hand, they are now legally recognised and protected under the Constitution, but on the other hand they may be breaking the law if they have consensual gay sex.

It was only as recent as 2014 that the Supreme Court of India legally recognized the transgender community as the "Third Gender". Prior to the verdict, transgender people were treated as objects of ridicule, prejudice and humiliation who were not only denied their basic human rights but also not recognized as citizens of India. They are also a community negatively stereotyped as eking out a living from begging and commercial sex work. However, with the increasing strength of queer politics, awareness about sexuality, and the recognition of the LGBTQIA community by law, it would seem that people have become more tolerant to the queer community as a whole.

Recently, the appointment of a transgender principal, Manabi Bandyopadhyay to a government college in West Bengal and a transgender representative, Amruta Alpesh Soni as the advocacy officer for the states of Punjab, Haryana and Chhattisgarh for the National AIDS Control Project took the entire country by storm and was regarded to be the first step towards busting stereotypes and including the transgender community into the mainstream.

In India, Tamil Nadu has been the only state which has successfully pioneered transgender inclusion by introducing the transgender (*aravani*, as they are locally called) welfare policy. According to the policy, transgenders can access free Male-to-Female Sex Reassignment Surgery (SRS) in the Government Hospital, a free housing program, various citizenship documents, admission in government colleges with full scholarship for higher studies, and alternative sources of livelihood through formation of self-help groups and initiating income-generation programmes (IGP). It was also the first state to form a Transgender Welfare Board in 2008 with representatives from the transgender community. In March 2009, Tamil Nadu government set up a telephone helpline called "Manasu" for transgenders, an initiative which was responsible for the formation of India's first helpline for the LGBTQIA community in 2011 at Madurai.

In April this year, a member of parliament moved the popular bill to ensure that the transgender community gets benefits similar to reserved communities like SC/STs. The bill was supported by all political parties in Rajya Sabha (Upper House of the Indian Parliament), and will address enrolment in schools and jobs in the government, besides protection from sexual harassment.

The Chhattisgarh government is also making efforts to empower the transgender community by drafting an action plan for the welfare of around 3000 eunuchs in the state. The welfare plan aims to include Sex Reassignment Surgery as per the choice of the person concerned, along with development schemes to make them financially independent. Joining these efforts, is the Tripura government which announced in July an allowance of Rs 500 per month to the transgender people in the state to ensure their financial independence. The West Bengal government is not far behind. On October 1st, 2015 the government has requested the Kolkata Police to recruit transgenders in the Civic Police Volunteer Force (CPVF) to end the stigma and discrimination against the community.

The Rights of Transgender Persons Bill, 2014 is a proposed Act of the Parliament of India which seeks to end the discrimination faced by transgender people in India. The Bill was passed by the upper house Rajya Sabha on 24 April 2015. It was introduced in the lower house Lok Sabha on 26 February 2016.

The Clauses 21 and 22 of Chapter V aim to reserve 2% of seats in primary, secondary and higher education institutions funded by the government, and in government jobs. The Clause 24 for Chapter V mandates formation of special employment exchanges for transgender people. The Chapter VII details the formation of national and state-levels commission for transgender people. The Chapter VIII details the formation of special transgender rights courts. The Clause 11 of Chapter II specifies the right of a transgender child to a home and imposes conditions for foster care. The



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Chapter IX details the offenses and penalties. The maximum penalty for hate speech against transgender people is 1 year imprisonment with fine.

Conclusion

While these development initiatives have made it possible for the disempowered and previously 'ghettoised' community to make their voices heard and to put forward their demands, the overall development of the community has been marginal and appears to be only on the surface.

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LEGAL REMEDIES FOR DOMESTIC VIOLENCE IN INDIA - A CRITICAL ANALYSIS

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"Domestic violence causes far more pain than the visible marks of bruises and scars. It is devastating to be abused by someone that you love and think loves you in return."

- Dianne Feinstein

INTRODUCTION

Violence against women in recent days has been brought to lime light as a sensational social issue, but violence against women is something which has its history for more than a century. A society will have a progressive development only when people are treated equally irrespective of all the social and biological differences. Generally violence is characterised by the power of the dominant over the weaker. In a patriarchal society the violence implicated by men over women has been prerogative of men which has its lineage in the philosophy of religion and law. The violence inflicted by men against women is considered to be a method of reforming women and it is necessary for their well-being. There is also a big misconception that only men from socially and economically backward class inflict violence against women. This is totally wrong understanding, men irrespective of their social, economical, educational background, mental stableness impose their violent attitude either verbally or physically towards women. This is the impact of the stereotyping of the gender roles distributing the powers to men and duties to women. Indian society which has number of Goddesses praise the divinity in women for namesake but the true social status of women is completely opposite. Men are considered physically and socially powerful by which they are naturally tend to implicate their power over women, and women are prone to believe themselves weak and accepts the patriarchal notions as their fate. The only difference to the olden days and the present days is that the violence against women never comes to limelight very easily but these days due to various statutory rights and guidance many such violence are brought to the knowledge of the public. One such Statute which has been enacted exclusively to have a check over "Domestic Violence" is the "Protection of Women From Domestic Violence Act, 2005". Domestic violence in most of the cases is the invisible granted social right exercised by a husband over his wife for centuries. But then as per the Act domestic violence is not only confined to violence by a husband to his wife it is also found in all other domestic relations (i.e) between a father and daughter, brother and sister, son and mother and it also can be between a female and another female of the same family who lives or lived together in a same shared household or as a joint family. The said Act provides remedies to the victim through civil law, the paper tries to analyse whether the Act is gender specific or gender discriminative and whether the legal remedies under the Act is content enough to address all forms of domestic violence or should it be complemented with some penal provisions to make the Act more effective.

GENDER JUSTICE AND INDIAN CONSTITUTION

Indian Constitution is one of the best constitutions in the world which has an extensive analysis of a multiple cultured society. The preamble of the Indian Constitution guarantees equal economic, political and social rights to its citizens. The Constitution also guarantees various rights to the people of India irrespective of their religion, race, cast, sex, or place of birth or any of them (Art.15(1)). The drafters of the Indian Constitution were keen in granting affirmative discrimination to women to compensate the social discrimination faced by them for ages (Art.15(3)). Though such



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rights are guaranteed under constitution they can come in to force only either by an legislation or by judicial activism. One such act is the Protection of Women from Domestic Violence Act, 2005.

PWDV ACT, 2005 – AN OVERVIEW

Since early 1980's there were no any special provision to address the violence inside the home. Violence within home has been confined to abetment to commit suicide, causing simple or grievous hurt or under general provisions of murder or culpable homicide. S.304B of Indian Penal Code defines dowry death that if the wife has been dead with burns or any bodily injuries other than any normal circumstances within seven years of marriage. S.306 of IPC penalises a person with ten years of imprisonment for abetting to commit suicide. Similarly S.498A incorporates matrimonial cruelty. Which was followed by "The Dowry Prohibition Act, 1986", "The Commission of Sati Prevention Act, 1987", all the codified personal laws had cruelty as a valid ground for divorce. In spite of all these laws violence among the domestic relationship and domestic circumstances was not properly addressed. Hence, the Protection of Women From Domestic Violence Act, 2005 hereinafter Act has been enacted by the ratification of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by India. The Act takes into account the fact that women are disproportionately affected by domestic violence and hence falls under the category of legislation relating to protective discrimination (Anuja, 2013). The Act has the main objective to protect women who have been abused by any person with whom she is or was living with, in the shared household related by birth, marriage, live in relationship and all other relations living together as joint family. The term domestic violence not only includes actual abuse but also threat to abuse, it includes physical abuse, verbal abuse, sexual abuse, economic abuse and emotional abuse (S.3). The Act provides various civil remedies like protection orders (S.18), residence orders (S.19), monetary reliefs (S.20), custody orders (S.21) and compensation orders (S.22). The Act also granted powers to the service providers and protection officers to guide women who are victim of the domestic violence. The protection officers are responsible to make a preliminary inquiry of the complaint, prepare the domestic inquiry report and assist the magistrate. The respondent(s) shall be penalised under the only penal provision of this Act when the protection order is breached by the respondent(s) (S.31).

GENDER DISCRIMINATIVE v. GENDER SPECIFIC

The Act being a special act protecting only women from domestic violence was challenged as unconstitutional as violating Article 14 of the Indian Constitution. It was claimed that the Act is gender discriminative favouring only the women and not men. In a matter the court observed that "There is a perception, not unfounded or unjustified, that the lot and fate of women in India is an abjectly dismal one, which requires bringing into place, on an urgent basis, protective and ameliorative measures against exploitation of women. The argument that the Act is ultra vires the Constitution of India because it accords protection only to women and not to men is, therefore, wholly devoid of any merit. We do not rule out the possibility of a man becoming the victim of domestic violence, but such cases would be few and far between, thus not requiring or justifying the protection of Parliament" (Aruna Parmod Shah vs Union Of India, 2008). Further court also observed that the definition of domestic relationship under Section 2(f) of the Act also includes for a couple who are in living-in-relationship. In another recent case the word "adult male" in Section 2(q) was challenged because a complaint which had three female respondents were discharged from the complaint when a Bombay High Court construed the word "adult male" in the section in its literal sense. The section which originally reads "'respondent' means any adult male person who is, or has been, in a domestic relationship with the aggrieved person and against whom the aggrieved person has sought any relief under this Act: Provided that an aggrieved wife or female living in a relationship in the nature of a marriage may also file a complaint against a relative of the husband or the male partner" Which was again challenged before the Supreme Court and the apex court held that "the words "adult male person" are contrary to the object of affording protection to women who have



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suffered from domestic violence “of any kind”. We, therefore, strike down the words “adult male” before the word “person” in Section 2(q), as these words discriminate between persons similarly situated, and far from being in tune with, are contrary to the object sought to be achieved by the 2005 Act” (Hiral P. Harsora And Ors vs Kusum Narottamdas Harsora And Ors, 2016). By all accounts, the Court’s attempts at making the law gender neutral is contrary to the lived reality of the women who are abused at home on a regular basis. An appallingly unfair dynamic exists already, and the Court’s decision might end up intensifying and complicating this (Palit, 2016).

DOMESTIC VIOLENCE – CIVIL OR CRIMINAL?

Generally the legal system has two major classifications of law (i.e) civil law and criminal law. They are governed by different laws and courts having their respective subject matter jurisdiction. Violence is generally defined as the use of physical force intended to harm someone or to damage property etc. The preamble of the Act says that it is “An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto”. Generally it is easy in differentiating the nature of cases whether it is civil or criminal in nature. But the Act though defines domestic violence as physical, verbal, economic and emotional abuse it provides only civil remedy for a criminal act. Forced sexual intercourse without the consent of the wife and marital rapes are exempted under IPC but the Act recognizes these acts as sexual violence and provides protection orders to the victim of such sexual violence. A Rajasthan High court (Jodhpur) has stated that the object of the Act is to provide civil remedy to women who are facing domestic violence and hence it provides only civil remedies but it also provide criminal remedy on few instances as provided under section 31 and 33 where there is a breach of protection orders and when there is a failure on the part of the protection officer in discharging their duty (Smt.Sabana @ Chand Bai & Anr vs Mohd.Talib Ali & Anr , 2013). But various social organisations have the feeling that the impact of the Act doesn’t sound remarkable. The conviction rates in domestic violence are very few. This may be due to a patriarchal impact on all of us. Even Jhuma Sen, assistant director at the Centre for Human Rights Studies, Jindal Global Law School, Sonapat, Haryana has stated that “If one looks at orders under the PWDVA, it will be noted that most orders do not specifically mention the category of sexual abuse even when alleged; when it is mentioned, the same is usually viewed through a patriarchal lens—from a moral viewpoint and less as violence or abuse, (sen, 2016)”

REMEDIES FOR DOMESTIC VIOLENCE

The remedies under Act are civil remedies, if the Magistrate is satisfied that domestic violence has been inflicted against the victim or if domestic violence is likely to happen may pass protection orders prohibiting the respondent from committing any kind of domestic violence. Likewise the Magistrate may also pass residence orders restraining the respondents to dispossess the victim from any manner from the shared household or to provide an alternate accommodation. Monetary reliefs may also be granted to meet the losses incurred due to the domestic violence to the victim and the expenses done for children if any. At any stage of the hearing a temporary custody order for child may also be granted. In addition to other reliefs orders for compensation and damages may also be granted for the injuries, including mental torture, distress occurred due to domestic violence. The Act does not forbid a simultaneous remedy from other legal proceedings (S.26). But this was challenged in a few cases, in a matter before the Madhya Pradesh High Court, the court ruled that double jeopardy does not apply here. It was held that “proceedings under section 498A IPC and proceedings under Domestic Violence Act can go together simultaneously. In view of the clear provisions under the Act of 2005 itself, it cannot be said to be an instance of double jeopardy if different cases like trial of offence under section 498AIPC, matter of award of maintenance under section 125 Cr.P.C and case of Domestic Violence Act, 2005 are going together simultaneously between the couple in respective courts”(Sirajuddin Khan @ Siraj vs Dr. Shahnaz Firdous, 2013). In



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another matter the Madras High Court held that the pending divorce proceedings did not affect grants of relief under the PWDVA (P. Babu Venkatesh & Ors. v. Rani, 2008). These positively interpreted precedents are exceptions but in reality the implementation of the Act does not show cent percent success rate. Numerous advocates pointed to the lack of training of police officers and magistrates regarding the Act's requirements and its purpose, as well as a lack of sensitivity training towards the issue of domestic violence, an old evil but newly recognized concept in Indian society (Lahiri, 2009).

CONCLUSION

"Domestic violence can be so easy for people to ignore, as it often happens without any witnesses and it is sometimes easier not to get involved. Yet, by publicly speaking out against domestic violence, together we can challenge attitudes towards violence in the home and show that domestic violence is a crime and not merely unacceptable."

- Honor Blackman

From the above discussions it is clear that there is an unclear application of the Act. In spite of the positive discrimination for women and children granted under the Indian Constitution, this Act which has its legacy from this aspect of the Constitution is now sailing towards a diametrically opposite direction. The Indian culture which gives importance to mutual respect among the human relations must value the womanhood. Indian legislature must draft even more stringent and a law which provides both civil and criminal remedy under a single Act, so that it could prevent multiple litigations. The Court should not appreciate the social stigma which always favours the men to women. The recent discussions that this law which is very gender specific (i.e) to protect only women from domestic violence has taken a new shape of becoming gender-neutral, which can be interpreted in such a way that women could be targeted rather protecting them. Though legislations can be legislated in favour of women and judiciary comes to protect women whenever needed, the absolute freedom and respect for women could be achieved only by creating awareness and socially educating the people that women are no way lesser to men in any aspect.

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RIGHTS OF WOMEN WITH SPECIAL REFERENCE TO ROLE OF JUDICIARY UNDER THE CONSTITUTION OF INDIA

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INTRODUCTION

Indian Constitution is having a special legal sanctity and it sets the framework and principal functions of the organs of the Government and declares the principles governing the organised action of these organs. "The Constitution aims at creating legal norms, social philosophy and economic values which are to be effected by striking synthesis, harmony and fundamental adjustment between individual rights and social interest to achieve the desired community goals."¹ When drafting the Constitution our Constitutional makers were very sensitive to the problems suffered by the women. They made specific provisions for them. But those provisions acquire socio-legal locomotion only by State action.

OBJECTIVES

The main objectives of this research paper are (i) to analyse the Rights of Women available under Indian Constitution; and (ii) to analyse the role of Indian judiciary in interpreting the provisions of Constitution for protecting the Rights of Women. In order to highlight the above said objectives Doctrinal Methodology was adopted. The study is based on primary sources, secondary sources and tertiary sources.

RIGHTS OF WOMEN UNDER INDIAN CONSTITUTION AND THE ROLE OF JUDICIARY

Women Rights have been adopted in Preamble, Part III, Part IV and Part V of our Constitution. Various articles in our Constitution under these Parts give special protection to Women. The Preamble sets out the main objects which have been provided under the Constitution. It secures all its citizens Justice, Liberty, Equality and Fraternity without any discrimination of sex. The above mentioned objects have been enlightened in Articles 14, 15(3), 21, 21A, 39(a)(d), 42, 44 and 51(A) (e), 73rd Amendment Act, 74th Amendment Act and Article 325. If these provisions were violated then any person can approach the Supreme Court under Article 32 and High Courts under Article 226 of the Constitution for the protection of Rights of Women.

Article 14 provides that "the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."² This provision was explained by the judiciary in the many cases. In *Gita Hariharan v. Reserve Bank of India*,³ court held that the mother can act as a natural guardian even when the father is alive. The Word "After" in Section 6(a) of the Hindu Minority and Guardianship Act, 1956 was read to mean 'in absence of father' so that the section is consistent with the constitutional safeguard of gender equality.⁴

The Court held:

"Gender Equality is one of the basic principles of our Constitution and in the event the word 'after' is to be read to mean a disqualification of a mother to act as a guardian during the lifetime of the father. The same would definitely run counter to the basic requirement of the

¹Myneni, S.R.(Dr), *Women and Law*, Asia law House, Hyderabad, 2002

² Article 14 of the Constitution of India

³(1999) 2 SCC 228

⁴Mamta Rao, "Law relating to Women and Children," 2nd Ed, 2008, EBC Publishing (P) Ltd, P.60



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constitutional mandate and would lead to a differentiation between male and female. Normal rules of interpretation shall have to bow down to the requirement of the Constitution since Constitution is supreme and the statute shall have to be in accordance therewith and not de hors the same. The father by reason of a dominant personality cannot be ascribed to have a preferential right over the mother in the matter of guardianship since both fall within the same category and in that view of the matter the word 'after' shall have to be interpreted in terms of constitutional safeguards and guarantee so as to give a proper and effective meaning to the word used."

In *Air India v. Nergeesh Meerza*,⁵ the Apex Court faced with constitutional validity of Regulation 46(i) (c) of *Air India Employees Service Regulations*. The Court held that "the termination of service on pregnancy was manifestly unreasonable and arbitrary and was, therefore clearly violative of Article 14 of the Constitution."

Article 15 provides "that the State shall not discriminate against any citizen on grounds only of religion, race, sex, or place of birth or any of them."⁶ Article 15(3) states that "Nothing in this Article shall prevent the State from making any special provision for women and children."⁷ Article 15 prohibits gender discrimination and Article 15(3) lifts that rigour and permits the State to positively discriminate in favour of women to make special provisions to ameliorate their social condition and provide political economic and social justice.⁸ In *Union of India v. K.P. Prabakaran*,⁹ the Supreme Court held "Reservation of certain posts exclusively for women is valid under Article 15(3) and Article 15 covers every sphere of State action." Similarly in *Dattatraya v. State of Bombay*¹⁰ and in *P. Sagar v. State of Andhra Pradesh*,¹¹ the court held "provisions providing for reservation of seats for women in local bodies or in educational institutions are valid." Clause (3) of Article 15, which permits special provision for women and children, has been widely resorted to and courts have upheld the validity of special measures in legislation or executive orders favouring women.¹² The provisions in the criminal law, in favour of women, or in procedural law discriminating in favour of women, have been upheld¹³ in many cases. From the above judicial decisions it is crystal clear that judiciary is protecting the equality rights of women on the basis of the constitutional mandate.

Article 21 provides "No person shall be deprived of his life or personal liberty except according to procedure established by law."¹⁴ The Article prohibits the deprivation of the above rights except according to a procedure established by law.¹⁵ The fundamental under Article 21 is one of the most important rights provided under the Constitution which has been described as heart of fundamental rights by the Apex Court.¹⁶ The right provided under this article is not an absolute right as it can be restricted or taken away by proper execution of law. In *Maneka Gandhi v. Union of India*,¹⁷ the Supreme Court held that any state action affecting life and liberty of a person has to be "right, just, fair and reasonable and not arbitrary."

⁵ AIR 1981 SC 1829

⁶ Article 15 of the Constitution of India

⁷ Article 15(3) of the Constitution of India

⁸ Mamta Rao, "Law relating to Women and Children," 2nd Ed, 2008, EBC Publishing (P) Ltd, P.56

⁹ (1997) 11 SCC 638

¹⁰ AIR 1953 Bom 311

¹¹ AIR 1968 AP 165

¹² P.M. Bakshi, "The Constitution of India," 13th Ed, 2015, Universal Law Publishing, P.38

¹³ *Ibid*

¹⁴ Article 21 of the Constitution of India

¹⁵ <https://www.oneindia.com/india/what-is-article-21-of-the-indian-constitution-2528713.html> accessed on 10th January 2018

¹⁶ <http://www.legalserviceindia.com/articles/art222.htm> accessed on 10th January 2018

¹⁷ AIR 1978 SC 597



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In *Lillu @ Rajesh & Anr v. State of Haryana*,¹⁸ the Supreme Court for the first time realized the agony and trauma of a rape victim who had to go through two finger test give her character certification and after analyzing through various precedents, held that it is violation of victim's right to privacy and dignity.¹⁹ The decision shows approval and it gave a sense of confidence and security to the rape victims. It did not grant any new right because women have already been conferred right to privacy by our Constitution but, it stopped the violation of their right to privacy and dignity which was going on from years and years and that too was of no use in the investigation.²⁰ The Supreme Court very objectively and scientifically determined if it was helpful or not and even if it could be helpful, there can be nothing that can be kept on a pedestal higher than a woman's dignity, that too an already traumatized woman.²¹

In *Budhadev Karmarkar v. State of West Bengal*,²² the Supreme Court held "The sex workers are also human beings hence they are also entitled to a life of dignity as the word 'life' under Article 21 is a life of dignity and not just as an animal existence." In *Suchita Srivatsava v. Chandigarh Administration*,²³ the Supreme Court held "The personal liberty includes right of women to make reproductive choices. She can refuse to participate in sexual act." The Supreme Court of India extended the ambit of Article 21 of the Constitution of India and held that mere existence is not the right to live-it is the right to live with dignity. Thus, wherever crimes are committed against women the same should be viewed in the context of violation of her right under Article 21 of the Constitution of India and not merely as a crime against the society.²⁴

Article 21A was inserted in Part III by the Constitution (86th Amendment) Act, 2002. It provides "The State shall, provide free and compulsory education to all children of the age of six to fourteen years in such manner in as the State may, by law, determine."²⁵ In *Mohini Jain v. State of Karnataka*,²⁶ the Court held that "the right to education is concomitant to the fundamental rights enshrined in Part III of the Constitution the State is under a constitutional mandate to provide educational institutions at all levels for the benefits of the citizens. The educational institutions must function to the best advantage of the citizens of the citizens and the opportunity to acquire education cannot be confined to the richer section of the society recognizing the importance of education, the court further observed that fundamental rights and other rights under Article 19 cannot be appreciated and fully enjoyed unless a citizen is educated and is conscious of his individualistic dignity."

Article 23 provides "Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law."²⁷ 'Traffic in human beings' means buying and selling men and women like goods for immoral and other purposes. In *Vishal Jeet v. Union of India*,²⁸ it has been held that "traffic in human beings includes 'devadasis'." Trafficking in human beings has been prevalent in India for a long time in the form of prostitution and selling and purchasing for a price just like vegetables.²⁹ On

¹⁸*Ibid*

¹⁹<https://blog.ipleaders.in/supreme-courts-on-womens-rights/> accessed on 5th January 2018

²⁰*Ibid*

²¹<https://blog.ipleaders.in/supreme-courts-on-womens-rights/> accessed on 5th January 2018

²² (2011) 10 SCC 277

²³ AIR 2010 SC 235

²⁴ A.S.Anand, *Justice for Women*, 2nd Ed., 2003, Universal Law Publishing Co.Pvt.Ltd., Delhi, P.6

²⁵ Article 21A of the Constitution of India

²⁶ (1992) 3 SCC 666

²⁷ Article 23 of the Constitution of India

²⁸ AIR 1990 SC 1412

²⁹ G.B.Reddy, "Women and the Law," 5th Ed, 2006, Gogia Law Agency, Hyderabad, P.5



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the strength of Article 23(1) of the Constitution, the legislature has passed the Suppression of Immoral Traffic Act, 1956 (now renamed as The Immoral Traffic (prevention) Act, 1956) which aims at abolishing the practice of prostitution and other forms of trafficking.³⁰

Article 39(a) provides "that the State shall, in particular, direct its policy towards securing:

- a) That the citizens, men and women equally, have the right to an adequate means of livelihood."³¹

This article was explained in *Madhu Kishwar v. State of Bihar*.³² In this case the Supreme Court held that in case of death of the last tribal male member holding agricultural land, the land will be succeeded by his wife as long as she is dependent on such land for her livelihood. Otherwise she will be rendered destitute. It is only when she abandons the land; the male family members in line of descent may claim any exclusive rights over such land. A mere reading of Article 39(a) of the Constitution obligates the equal treatment of men and women for right to adequate livelihood. This protects the economic interests and independence of tribal women depending on agricultural land for livelihood.

Article 39(d) states "that there is a equal pay for equal work for both men and women."³³ Based on this article the Parliament had enacted the Equal Remuneration Act 1976. The Act provides payment of equal remuneration to men and women workers for the same work or work of a similar nature and for the prevention of discrimination on grounds of sex. In *Randhir Singh v. Union of India*,³⁴ the Apex Court held that "principle of 'equal pay for equal work' though not a fundamental right is certainly a constitutional goal."

Article 42 states "that the State shall make provision for securing just and humane conditions of work and for maternity relief."³⁵ The State has implemented this directive by incorporating health provisions in Factories Act, Maternity Act, Beedi and Cigar Workers (Conditions of Employment) Act, etc.³⁶ In *Dr. Shanti Mehra case* (2016) the court held that "the objective of ILO to conduct the survey was to promote motherhood and child care as well as to promote gender equality."³⁷ Every female employee and male employee whether appointed on regular basis, contractual basis, ad hoc/tenure or temporary basis have a fundamental right to reasonable duration of maternity leave as well as paternity leave, child care leave (CCL) and adoption leave to promote motherhood and child care under Article 21 of the Constitution of India read with Article 42 of the Constitution of India.³⁸ Article 42 was stressed by the Supreme Court in the case of *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*,³⁹ and the court held "social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due."

Article 44 of the Constitution of India provides that "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."⁴⁰ In *Sarla Mudgal v. Union of India*,⁴¹ a Hindu husband married under the Hindu law, embraced Islam and solemnized second marriage. It was held bigamy if the first marriage was not dissolved. Different personal laws like

³⁰*Ibid*, P.6

³¹Article 39(a) of the Constitution of India

³²AIR 1996 SC 1870

³³Article 39(d) of the Constitution of India

³⁴AIR 982 SC 879

³⁵Article 42 of the Constitution of India

³⁶Mamta Rao, "Law relating to Women and Children," 2nd Ed, 2008, EBC Publishing (P) Ltd, P.65

³⁷<http://indian.kanoon.org/> accessed on 9th January 2018

³⁸*Ibid*

³⁹AIR 2000 SC 1274

⁴⁰Article 44 of the Constitution of India

⁴¹AIR 1995 SC 1531



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succession, inheritance, guardianship, divorce etc. restrict women rights. Uniform civil code is the need of the hour and it was stressed by Supreme Court in large number of cases. In a recent case which is popularly known as Triple talaq case was decided by the Supreme Court on 22nd August 2017. Shayara Bano was married to Rizwan Ahmed for 15 years. In 2016, he divorced her through instantaneous triple talaq (*talaq -e bidat*). She filed a Writ Petition in the Supreme Court challenging the constitutional validity of three practices – talaq-e-bidat, polygamy, nikah-halala – for violating Articles 14, 15, 21, 25 of the Constitution.⁴² In this case the majority of the Judges held “deemed instant talaq is unconstitutional.”

After the Apex Court verdict in August 2017, the present Government introduced the Muslim Women (Protection of Rights on Marriage) Bill, 2017 in Lok Sabha on 28th December 2017. The bill make instant triple talaq (*talaq-e-biddah*) in any form – spoken, in writing or by electronic means such as email, SMS and WhatsApp illegal and void, with up to three years in jail for the husband.⁴³ This bill was introduced mainly because of the tremendous effort taken by the Supreme Court by declaring triple talaq unconstitutional.

Clause (e) of Article 51 A provides “it shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people India transcending religious, linguistic and regional or sectional diversities, to renounce practices derogatory to the dignity of women.”⁴⁴ The passing of the Commission of Sati (Prevention) Act 1987 emphasizes the importance of the duty. Many laws have been passed by the Central Government and the State Government which punish practices derogatory to the dignity of women.⁴⁵

The Seventy Third Amendment and Seventy Fourth Amendments effected in 1992 provide for the reservation of seats to the women in Elections to the Panchayats and Municipalities.⁴⁶ Part IX and IXA were added to the Constitution by these amendments. These amendments were called as “Panchayati Raj” and “Nagarpalika” Constitution Amendment Act. It contains Articles 243, 243-A to 243-D, and 243-P to 243-ZG. This is a welcoming measure towards correcting the gender injustice.

Article 325 provides that “there shall be one general electoral roll for every territorial constituency for election to either House Parliament or to the House of either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.”⁴⁷

Article 32 provides remedies for enforcement of rights conferred by the Part III of the Constitution. In *Assam Public Works V. Union of India*⁴⁸ the Supreme Court held “Article 32 of the Constitution guarantees the right to move the Supreme Court for the enforcement of all or any of the fundamental rights conferred by Part III of the Constitution. This Article is therefore, itself a fundamental right.” In *Vikram Deo Singh Tomar v. State of Bihar*,⁴⁹ a public interest has been filed concerning the plight of female inmates of the ‘Care Home, Patna.’ They were compelled to live in inhuman conditions in an old ruined building. They were illiterates. They were provided with insufficient and poor quality of food and no medical attention was provided to them. The Court

⁴²<http://scobserver.clpr.org.in/cases/triple-talaq-case/> accessed on 8th January 2018

⁴³http://en.wikipedia.org/wiki/Tripлетalaq_in_India/ accessed on 8th January 2018 at 10.30 P.M

⁴⁴ Article 51A (e) of the Constitution of India

⁴⁵<https://atulkulkarni123.wordpress.com/2015/07/26/fundamental-duties-as-an-indian-way-of-life/> accessed on 10th January 2018

⁴⁶G.B.Reddy, “*Women and the Law*,” 5th Ed, 2006, Gogia Law Agency, Hyderabad, P.5

⁴⁷Article 325 of the Constitution of India

⁴⁸AIR 2015 SC 783

⁴⁹ AIR 1988 SC 1782



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directed the State to make immediate steps providing them the minimum conditions ensuring human dignity as the article 21 of the Constitution of India guarantees the right to live with human dignity.⁵⁰

Article 226 deals with the power of the High Courts to issue certain writs.⁵¹ The power of the High Court to issue writs under article 226 is wider than that of the Supreme Court. It is not confined to fundamental rights, but extends to all cases where the breach of a right is alleged.⁵² In *State of Orissa v. MadanGopalRungta*,⁵³ the Court held "the writ may be issued for the enforcement of fundamental rights of for any other purpose." In *Nand Kishore Sharma v. Union of India*⁵⁴ public interest litigation was filed by the social activist under Article 226 of the Constitution for questioning the vires of Medical Termination of Pregnancy Act 1971. The Court held that "the object is to save life of pregnant women; it is in consonance with Article 21 of the Constitution." From the above cases it is understood that women can approach the High Courts for the enforcement of their rights under the Constitution. It is not necessary that always they should approach the Supreme Court to get justice.

Conclusion

The Judiciary has a constitutional obligation to enforce women rights which may lead to apply the principles of international law, not as a source of law as such, but rather as a rule of interpretation that is to be utilized in progressively interpreting constitutional guarantees.⁵⁵ The Indian judiciary is playing a significant role in comparison of judiciaries of the world. The public at large have faith in our judiciary. The Supreme Court is ultimate interpreter of the Constitution of India. The Judiciary is protector of women rights over decades. Some of the unpleasant violations of Women Rights over decades have been abolished by the initiative of judiciary.⁵⁶ Though Indian judiciary has done a commendable job in protecting the rights of women, it has to continue its efforts until parliament takes enough legislative measures.

⁵⁰*Ibid*

⁵¹Article 226 of the Constitution of India

⁵²P.M.Bakshi, "The Constitution of India," 13th Ed, 2015, Universal Law Publishing, P.231

⁵³ (1952) SCR 28

⁵⁴ AIR 2006 Raj 166

⁵⁵*KesavanandaBharati v. State of Kerala*, AIR 1973 SC 1416

⁵⁶Sandip B. Satbhai, "Protection of Human Rights of Women-International and National Perspectives", (cited in Dr. Annie John, (2012), P. 321



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HUMAN RIGHTS VIOLATIONS WITH SPECIAL REFERENCE TO DALIT WOMEN

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"I measure the progress of a community by the degree of progress which women have achieved."

-Dr. B.R. Ambedkar

INTRODUCTION

The word Dalit derived from Sanskrit and it means suppressed or crushed or broken to pieces¹. The terms Scheduled Caste and Scheduled Tribes are the official terms used by the Indian Government². But some state government were using the word dalit in their official documents. In 2008, It was noticed by the national Commission for Scheduled Caste and directions were given to the state governments for interchanging the term Scheduled Caste instead of Dalit.³ Inspite of stringent laws caste related atrocities against Dalit women are rapidly increasing.

LEGAL INSTRUMENTS TO PROTECT HUMAN RIGHTS OF DALIT WOMEN

CONSTITUTIONAL PROVISIONS

Article 14 states that the state shall not deny any person equality before law or the equal protection of laws within the territory. Under Directive Principles of State Policy Article 46 states, "The state shall promote with special care, the educational and economic interest of weaker sections of the people and in particular of Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation"⁴. Article 15 (4) empowers the State to make special provisions for advancement of any socially and economically backward classes or citizens and for Scheduled Castes/Scheduled Tribes. This provision has enabled the State to reserve seats for Scheduled Castes/Scheduled Tribes in educational institutions.⁵ Under Article 243-T provides reservation of sets for Scheduled Caste/Scheduled Tribes in the Municipal Bodies. In reserved seats atleast 1/3rd has been reserved for SC/STs women.⁶

SPECIAL LEGISLATIONS TO PROTECT THE SCHEDULED CASTE PEOPLE

UNTOUCHABILITY OFFENCES ACT, 1955

Under Indian Constitution Article 17 abolishes the untouchability in the society. To implement this article the government of India of enacted a legislation known as The Untouchability offences Act 1955. But the legislation failed to serve its object and the punishments were not adequate. So the Government of India decided to appoint a committee in April 1965 under the chairmanship of Shri Ilaya Perumal to study the problems of untouchability and to suggest the changes in the untouchability offences Act, 1955. The committee submitted its report in 1969.⁷ The recommendations of the Committee the parliament enacted a new legislation which is known as Protection of Civil Rights Act, 1955.

¹Dinesh Sharma, (2012). Dalit Constitution and Human Rights: Arise Publishers and Distributors, New Delhi

² ibid

³ Ibid.

⁴ Report on Prevention of Atrocities Against SCs and STs

⁵ Ibid.

⁶ ibid

⁷ ibid



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Protection of Civil Rights Act, 1955

The Untouchability Act was replaced with Protection of Civil Rights Act, 1955 and terms of punishment were enhanced, the powers were given to the State Government to impose fine and it lay down the elaborate procedure to protect the victims.

Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act, 1989

The society is not ready to accept the protection of civil rights Act, 1955 and the Hindu community keep on involving in the atrocities against the Scheduled Caste and Scheduled Tribes. So the provisions of Protection of Civil Rights Act, 1955 and IPC doesnot give solution to the atrocities against the Scheduled Caste and Scheduled Tribes. The necessity arose to enact a new legislation for protection the Scheduled Caste and Scheduled Tribes from the atrocities. Then the parliament came with new enactment known as "The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989". This Act provides the strong punishment to accused person and compensation for the victims. In the year of 2016 the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act was amended. The new offences like tonsuring of head, moustache or similar acts which are derogatory to the dignity of members of SCs and STs, Hurting a SC/ST women by removing her garments and touching or using words, acts or gestures of a sexual nature against members of SCs and STs⁸. Other highlighting points are new chapter on the Rights of Victims and witnesses were added, provision to speedy trial of the cases and constitution of special courts to conduct trials related to atrocities against SC and STs⁹. After this amendment in Asharfi V. State of U.P.¹⁰ the apex Court observed that mere knowledge of the accused that the person upon whom the offence is committed belongs to the community suffices to bring home the charge under section 3 (2)(v) of SC/ST Prevention of Atrocities Act.

NATIONAL HUMAN RIGHTS COMMISSION ON DALIT HUMAN RIGHTS

The national Human Rights Commission taken many initiatives to protect their rights. One of the notable initiative is that the redressal of Individual Complaints, Constitution of Dalit cell in 2003 to monitor implementation of Programmes; research studies on the socio-economic conditions of the Musahars and the political and Cultural status of women in Haryana.¹¹

CASTE RELATED ATROCITIES AGAINST DALIT WOMEN

The Human Rights Watch report stated that the Dalits are facing discrimination, exclusion in the society. The Indian Government passed strong laws to curb the discrimination against the dalit. But the local authorities are not implemented properly.

PHOOLAN DEVI

Phoolan Devi was an Indian Dacoit. Later, turned as politician. She was born in lower caste community called as "Mallah". She was abandoned by her husband. Then she was rescued by the Vikram. But, Thakur who belongs to Upper caste, killed Vikram and abducted Phoolan devi and raped her for 3 weeks. She escaped from the village and formed a gang of Mallahs. She carried out many robberies in north and Central India. The local village people stated that she targeted upper caste people to loot the belongings and it was shared among the lower caste people. In 1981, she returned to the village where upper caste men raped her. But the upper caste people refused to reveal whereabouts of the remaining persons. So, she killed 22 members from the upper caste. Finally, she surrendered after government agreed to fulfil her demands to return her family property, and not to offer death sentence to the gang members. Later, She was released from jail in 1994 and after 2 years she contested in the Parliament election for Samajwadi Party from Mirzapur area in U.P. She won the

⁸<https://www.google.co.in/amp/s/www.betterindia.com/52655/amended-sc-st-atrocities-act/amp/> last visited on 13.01.2018

⁹ ibid

¹⁰ Criminal Appeal No. 1182 of 2015

¹¹www.nhrc.nic.in/hrissues.htm. Last visited on 13.01.2018



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election and served as MP. Finally, on July 25, 2001 phoolan devi was shot dead by 3 masked persons outside her residence.¹²

RAMVATI DEVI

In the village Panchayat of Bhungar Khera Village paraded a handicapped Dalit woman, Ramvati devi naked through the village¹³. But the police officials were not ready to take action despite Dalit Protest. After the intervention of State Home Department the police were compelled to arrest panchayat members.¹⁴

KHERLANJI MASSACRE

The kherlanji is a small village in Bhandara District of Maharashtra. On 29, September, 2006 the four members of Mahar Dalit family were slaughtered in Kherlanji. The women members of the family were paraded naked in public and gang raped by the upper caste men before killing them.¹⁵

CHITRALEKHA

In Kerala, Chitralkha, a Dalit woman started her carrier as an autorickshaw driver in 2005. The profession of Chitralkha angered the upper caste people who are living in the village. So, her autorickshaw was set ablaze by the upper caste people. In 2014, the district collector gifted a new autorickshaw for chitralkha, but once again the autorickshaw was destroyed by the upper caste people in the year of 2016¹⁶.

She is unclear about her future, but she is clear that she is a victim of Hinduism's deep-rooted caste discrimination. "My house was ransacked by Nair (upper caste) men. My son was humiliated and forced to drop out of school after eighth grade when stories started doing the rounds that I was a woman of loose morals," she said. "He's 22 now and still to find a job."¹⁷

She is a Pulaya, a people termed adiyar, or slaves, in her village of Edatt. "We are low born," she explained. "We are not permitted to draw water from the same well or eat from the same plates or drink from the same glasses used by the upper castes."¹⁸ The destruction of Chitralkha's autorickshaw was one of numerous crimes reported in 2016 against Dalits.¹⁹

These are few caste based atrocities. Many incidents were unnoticed. The National Commission of Human Rights of India stated that more than 62,000 human rights violations are recorded annually. Two dalits are assaulted every hour and 3 dalit women and children are raped every day.²⁰

¹²<http://www.indiatoday.in/fyi/story/remembering-the-bandit-queen-10-things-to-know-about-phoolan-devi-287450-2015-08-10>

¹³Dinesh Sharma, (2012). Dalit Constitution and Human Rights: Arise Publishers and Distributors, New Delhi

¹⁴ ibid

¹⁵ ibid

¹⁶<http://www.indiaspend.com/cover-story/why-crime-is-rising-against-indias-lowest-castes-and-tribes-29049> last visited on 23.07.2017

¹⁷ ibid

¹⁸ ibid

¹⁹ ibid

²⁰ ibid



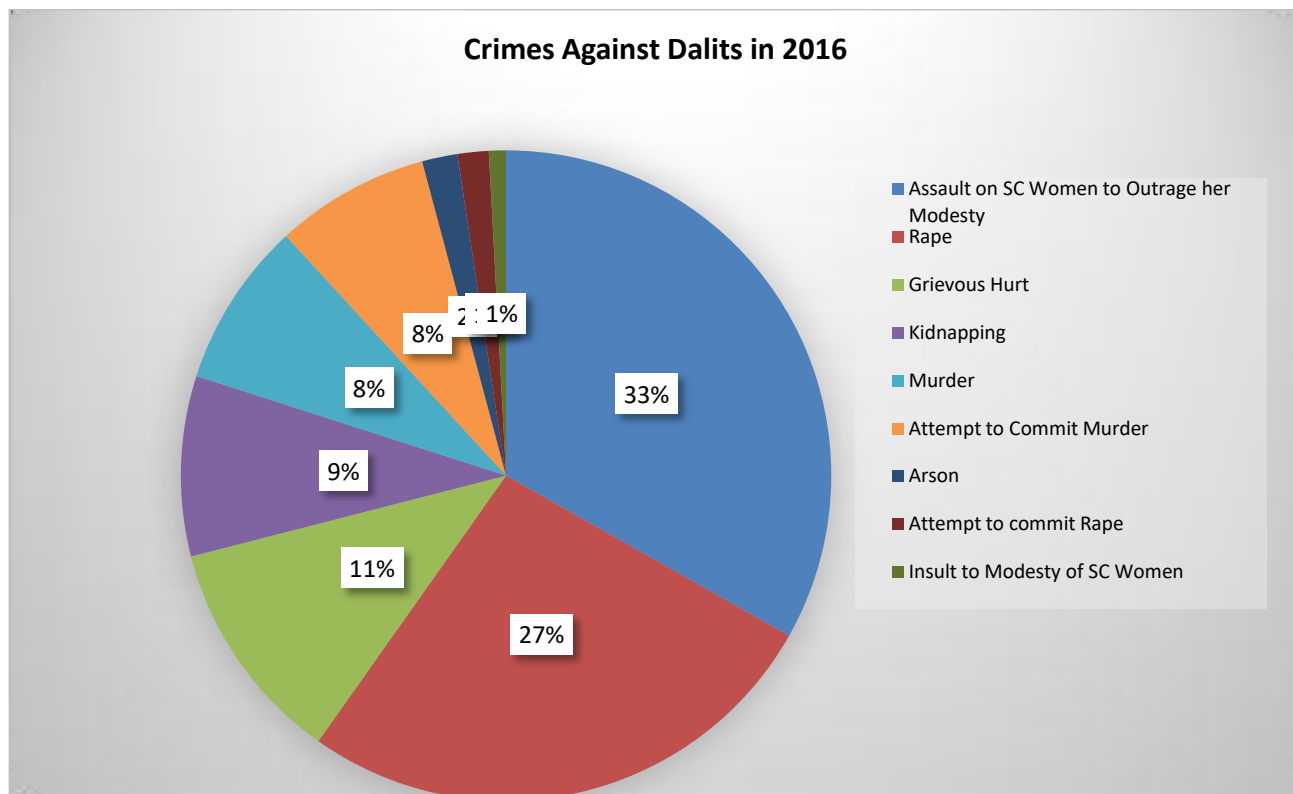
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Sources: National Crime Bureau

In all over India, 40,801 atrocities against Dalits were reported in 2016²¹. The following table explains various offences happened in 2016 against dalits.

S.no.	Offence Against Dalits	No. of cases filed
1	Assault on SC women to outrage her Modesty	3172
2	Rape	2541
3	Grievous Hurt	1071
4	Kidnapping and Abduction	855
5	Murder	786
6	Attempt to Commit Murder	733
7	Arson	168
8	Attempt to Commit Rape	148
9	Insult to Modesty of SC women	81

CONCLUSION AND SUGGESTIONS

The government of India enacted stringent legislations to protect the SC and ST people from the atrocities. But the local authorities are not ready to implement the Act properly. The following suggestions to be taken into consideration for the effective implementation of the legislation.

The upper caste domination is high in the villages. So, the SC and ST people afraid to file a complaint against them and many people doesn't have sufficient knowledge about the legal protection. The government should create awareness programs to remove the fear in the minds of the affected people.

²¹ ibid



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The society should treat the SC/ST community people with dignity. The change has to create in the society for the effective implementation of legislations and to protect the SC/ST people from the atrocities. In rural areas the police officials and other government officials supports for the accused person who belongs to the upper caste rather than the victims of the atrocities.

The victims are afraid to mention their community in the police station to avoid degrading treatment of the police officials. So, the police officials should treat all community people equally irrespective of the community. The disciplinary action should be taken against the police officials who refuse to file a case under Scheduled Caste and Scheduled Tribes Act.

Unless other community people accepts the SC/ST in the society it will be very difficult to reduce the atrocities against the SC/ST communities.



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LEGAL PROTECTION OF ELDERLY WOMEN IN INDIA- AN OVERVIEW

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Introduction

Population ageing is a major demographic phenomenon that is drawing the attention of policy makers worldwide as it is bound to have a profound impact in the social and economic areas as well. In India, according to the information provided by the Ministry of Statistics and Programme Implementation in 2016, the life expectancy at birth has almost doubled in the last six decades. This improvement in life expectancy at birth is due to the developments in science and technology which led to remarkable improvements in the field of medicine, health and nutrition of the population. These developments have consequently led to the steady increase in the proportion of older population in India, in the last two decades. Feminisation of the elderly is a key concern area as the sex ratio of the elderly has increased from 938 women to 1,000 men in 1971 to 1,033 in 2011 and is projected to increase to 1,060 by 2026. Elderly as a segment of a population are at the end of their life cycle are marginalised and are perceived as a burden by the younger population. The effects of globalisation and consequent migration of the population has eroded the traditional family structure of India which was the bedrock of support and care to the elderly.

Elderly women

The plight of the elderly women in India is further accentuated by the fact that they face gender discrimination all through their lives. Patriarchal bias is deep rooted in the Indian psyche and therefore an elderly woman is likely to be less educated and have low economic security. A woman is typically type cast as a care giver and burdened with household chores all her life time. The absence of gender specific health services, poor health care and nutrition especially after child birth combined with economic insecurity is the major cause for health concerns of elderly women. In the present scenario where a considerable number of women are employed, they are still burdened with both the responsibilities of their jobs and their care giving obligations. It is a reality that most women who are employed do not have economic independence. The loss of status attributed to a widow makes ageing more challenging to women as they outlive their partners and over 50% of women above the age of 80 are widows. The major issues faced by the elderly women are social insecurity, isolation, abandonment, abuse ; economic insecurity and health issues that is exacerbated by malnutrition and denial of proper health care. Considering the fact that law is the tool for social change, to address the situation of the elderly women, the presence of a strong legal framework is essential. This article looks into the legal framework existent in India to protect the interest of the elderly women.

Constitution of India

The Constitution is an embodiment of rights . It is observed that the rights that are set out in the Constitution are applicable without any discrimination, therefore the elderly of India are also entitled to the same. The Preamble denotes three facets of justice - social, economic and political, which are available through the provisions of Fundamental Rights and Directive Principles to all the citizens of India including the senior citizens.



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The genesis for Elder law in India is seen in the provisions of the Constitution of India. One of the important provisions under the Constitution is the Right to Equality (Article 14)¹. The underlying principles of this right is 'equality before law' implies law should be equally administered to people in similar circumstances or conditions without any discrimination. Non-discrimination obligates the State to take appropriate action to achieve substantial equality. The Courts have insisted that equality is a positive right and requires the State to reduce the existing inequalities and to treat unequals or underprivileged with special care as mandated in the Constitution.² Article 14 has been invoked to prohibit sexual harassment of women at work place as a violation of right to gender equality. The State is obligated to take affirmative action under Article 14 to ensure the wellbeing of the elderly in the country.

Article 21 of the Constitution of India³ is of particular significance to the older people. It guarantees right to life and personal liberty and it has been given the widest connotation by the Courts of India to encompass a whole range of rights to both foreigners and the citizens of India⁴.

Justice Bhagawathi further held :

“the right to life includes the right to live with human dignity and all that goes with it, namely the bare necessities of life, such as, adequate nutrition, clothing, shelter over the head, facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and comingle with fellow human beings”

He emphasised that the right included 'the right to basic necessities of life and also the right to carry on such functions and activities so as to constitute the bare minimum expression of the human self'.⁵ This right to live with human dignity enshrined in Article 21 derives its life breath from Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42.⁶

These developments in Constitutional Jurisprudence in India of interpreting the Fundamental right of right to life in Article 21 to include the social equity concept enshrined in the Directive Principle of State Policy is of particular significance to the rights and wellbeing of the elderly. Article 38⁷ enjoins the State to promote the concept of a welfare state. Article 41⁸ mandates that the State has to make provisions of social security to the aged people through public assistance and Article

¹Article 14 - The State shall not deny to any person equality before the law, or the equal protection of the laws within the territory of India

²*Indra Sawhney v Union of India* 1992 Supp (3) SCC 217: AIR 1993 SC 477

³Article 21 - No person shall be deprived of his life or personal liberty except according to procedure established by law

⁴*National Human Rights Commission v State of Arunachal Pradesh* (1996) 1 SCC 742;

Chairman, Rly, Board v Chandrima Das (2000) 2 SCC 465: AIR 2000 SC 988; *Amir Hamza v Union of India* (2003) 12 SCC 213; *Noor Mohammad v Union of India* (2003) 12 SCC 218

⁵*Francis Coralie v Union Territory of Delhi* (1981) 1 SCC 608: AIR 1981 SC 746

⁶*Ibid*; also *Vikram Deo Singh Tomar v State of Bihar* 1988 Supp SCC 734: AIR 1988 SC 1782

⁷Article 38 - (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. (2) The State shall, in particular, strive to minimise the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations

⁸Article 41- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.



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47⁹ provides that it is the primary duty of the State to improve the standard of living of its people, increase the level of nutrition and improve public health. These Articles have a direct bearing to the wellbeing of the elderly. The other Articles of the Directive Principles such as clauses (a), (d) and (e) of Article 39¹⁰ elaborate on the right of adequate means of livelihood, right of work and the health of the workers; Article 39A¹¹ provides for provision of legal aid which is an essential precondition to the access of justice of everyone including the senior citizens; Article 42¹² provides for humane conditions of work including maternity relief, this provision goes a long way in ensuring the health of women as it is proven that the health conditions at old age are indicative of the care taken during their lifetime; Article 43¹³ provides for ensuring decent standard of living and enjoyment of leisure all of which have a bearing on the quality of life during old age; Article 43A¹⁴ makes way for participation of the aged workers in the decisions that may affect them; Article 46¹⁵ will ensure protection against exploitation and social injustice and Article 48A¹⁶ provides for protection of environment by the State relate indirectly to the enhancement of the rights of the elderly in India. Article 21 has been interpreted to include right to shelter, right to clean drinking water, right to health, right to livelihood, right to unpolluted environment, right to social security and protection of family, right to legal aid, right to education and right to know all of which are of paramount importance to the peace and security of life and wellbeing of the elderly.

Indian Elder Law

The first legislation in India specifically tailored to the needs of elders, The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 envisages not only protection of aged by the family but through its expansive approach places the responsibility for creating the appropriate physical infrastructure and social systems on the Governments to ensure their welfare. It is noted that not only the children but also grandchildren are imposed of the legal obligation to take care of the elderly parents and if the senior citizens are issueless then their legal heirs to the proportion of the

⁹Article 47 - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health

¹⁰Article 39 - The State shall, in particular, direct its policy towards securing - (a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (d) that there is equal pay for equal work for both men and women (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

¹¹Article 39A - The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities

¹²Article 42 - The State shall make provision for securing just and humane conditions of work and for maternity relief

¹³Article 43 - The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

¹⁴Article 43 A - The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry

¹⁵Article 46 - The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

¹⁶Article 48A - The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country



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assets they inherit are obligated to maintain the senior citizen. The definition of maintenance under this Act encompasses not only the basic needs of food, clothing and shelter but also includes medical treatment and attendance which assume paramount importance considering the advanced age and needs of the senior citizens especially women. The Maintenance Tribunal constituted under the Act follows the summary procedure in deciding and awarding maintenance to render quick and timely justice. Another distinguishing feature of this legislation is that it provides a process of conciliation among the litigant family members. This is a novel provision that has been included to enhance the unity and integrity of the family while also assuring that the rights of the elderly to maintenance is upheld.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 contains a penal provision to punish the children or relative who fail in their duty to take care of the elders. The Act also contains a novel provision by which the transfer of property of the senior citizen induced fraudulently may be set aside.

Conclusion

Good health, economic security and social inclusiveness are the three requisites for ageing with dignity. That the polity world over and in India has acknowledged the need to address the situation of women is a positive sign of the recognition of the problem. Gender bias structures the life of women and women face discrimination as regards education and employment opportunities, income, access to economic resources and the division of labour in the household, all of which add up to reduced well-being in later life. The rights enshrined in the Constitution of India and the Elder Law reflect the existence of laws to protect the interest of elderly women. But the lacunae lies in its implementation. For the laws to be effective, the two prerequisites are awareness of the rights and the absence of social apathy. It is time that society as a whole recognises and realises the capacities of women especially elderly women and the crucial role they play in their families and in their communities. Elderly women need to be integrated in the society as valuable resources and the stereo type casting of elderly women as a burden must be done away with forever.



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UNIFORM CIVIL CODE AND WOMEN: WITH SPECIAL REFERENCE TO INTERNATIONAL HUMAN RIGHTS LAW

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INTRODUCTION

India is the largest democracy with a federal structure. It is multi-ethnic, multi-lingual and multi-religious country. We are proud of our diversity and it is one of the core strength of our nation. According to the census 2011, India's population was 1.21 billion, with women constituting 48.5% of the population. While diversity is strength, at the same time diverse socio-economic and cultural backgrounds continue to pose challenges to the law makers. This paper tries to explain the meaning of Uniform civil code. This paper examines in detail the reason behind delay in adopting the uniform civil code in India despite various efforts. It also tries to explain the various international instruments that deal with gender equality. It tries to make a comparison between the Uniform Civil Code and International Human rights law.

PERSONAL LAWS AND UNIFORM CIVIL CODE:

The laws relating to family and marriage, called the personal laws in India are derived from religion. As a result India has separate laws for Muslims, Christians, Parsis and Hindus. These separate laws undermined women's status.

The term civil code is used to cover the entire body of laws governing rights relating to property and otherwise in personal matters like marriage, divorce, maintenance, adoption and inheritance. The uniform civil code essentially means unifying all these personal laws to have one set of secular laws dealing with these aspects that will apply to all citizens of India irrespective of the community they belong to. The expression "Uniform Civil Code" literally means "Common Code" for all citizens irrespective of their religion". In other words it means unifying all personal laws to have one set of secular laws. Uniform Civil Code¹⁷ was incorporated in Article 44 of the Indian constitution under part- IV: Directive Principles of State Policy. Article 44 of the Indian Constitution provides that "the state shall endeavour to secure for the citizens, a uniform civil code throughout the territory of the India". The term "state" has been defined and it includes the central government, the state government, union and state legislatures and local bodies also¹⁸. Hence under this article the constitution imposes responsibility on the state to implement UCC. As the UCC is enumerated in directive principles of state policy and not in the fundamental rights it is not enforceable like fundamental rights. Therefore an individual cannot approach the court (High Court or Supreme Court) for enforcement of Art. 44.

Under International law, a state that ratifies an international instrument becomes legally bound to implement its provisions. Accordingly India having ratified the International Covenant on Civil and Political Rights, 1966, and International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979, is bound to enforce the relevant provisions and ensure gender equality under its national laws. It is the constitutional obligation of the government to enable women to obtain justice. However, women in India under Hindu, Muslim and Christian laws

¹⁷. Hereinafter referred as UCC

¹⁸M.S. Rathnaparkhi, "Uniform civil code, an ignored constitutional imperative,(1997)



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continue to suffer discrimination and inequalities in the matter of marriage, succession, divorce and inheritance.

Thus as a step towards a gender just code, the personal laws of various communities in India need to be codified into a single document not only in compliance with the Indian Constitution but also as per the provisions of the International law.

INTERNATIONAL HUMAN RIGHTS LAW:

Human rights are commonly understood as being those rights which are inherent to the human being. The concept of human rights acknowledges that every single human being is entitled to enjoy his or her human rights without distinction as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Human rights are universal, inalienable, indivisible, interrelated and interdependent.

International human rights law is a part of international law aimed to support and protect human rights at international, regional and domestic levels.¹⁹ It is set of international rules, established by treaty or custom, on the basis of which individuals and groups can claim certain benefits from government. They are expressed in treaties, customary international law and body of principles. Human rights law places an obligation on states to act in particular way and prohibits states from engaging in specific activities.

A treaty is an agreement by States to be bound by particular rules. International treaties have different designations such as covenants, charters, protocols, conventions, accords and agreements. A treaty is legally binding on those states which have consented to be bound by the provisions of the treaty. Customary international law is the term used to describe a general and consistent practice followed by States deriving from a sense of legal obligation.

Three of the most important international instrument pertaining to Human rights are collectively known as International bill of human rights. They are Universal declaration of Human Rights (UDHR), International covenant on civil and political rights (ICCPR), and International covenant on economic social and cultural rights (ICESCR). In addition to International bill of human rights, there are other human rights treaties and universal instruments, including regional treaties. Convention on Elimination of all forms of discrimination against women (CEDAW) is United Nations treaty pertaining to women rights.

CONVENTION ON ELEMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW):

The convention on elimination of discrimination against women was adopted by General Assembly in 1979 and entered into force in 1981. As of 2010, 186 countries have ratified CEDAW. By ratification we mean the governments have agreed to do everything possible to guarantee the rights in CEDAW, including making them a part of their own laws. It is the most comprehensive treaty of women's human rights. It is the principle international document to address the rights of women to be free from discrimination. CEDAW has 30 articles. These articles explain what girls and women's rights are and what governments should do to end discrimination against them.²⁰ The preamble to this convention recognises that discrimination against women violates the principle of equality of rights and respect for human dignity. Such discrimination affects equal participation of women in political, social and economic lives in their respective countries. The CEDAW convention not only prohibits overtly discriminatory action by states but also requires them to take affirmative steps to eradicate discriminatory treatment of women by both state and private sector in all social, cultural and political areas of life.²¹

¹⁹Human rights a basic handbook for UN staff, UN staff college project.

²⁰ CEDAW, Policy and Practice, UNICEF, (June 2011)

²¹Report of state level consultation on CEDAW the reservation and optional protocol, NAWO, West Bengal.



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INDIA AND CEDAW:

India ratifies CEDAW convention on 9th July 1993. When a state becomes party to a treaty it has the right to make reservation regarding particular provisions. India has also issued reservations upon ratification of CEDAW. The text of declaration and reservation are as follows:

Declaration 1: With regards to Art 5(a)²² and 16(1)²³ of the convention, the government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in personal affairs of any community without its initiative and customs.

Declaration 2: With regard to the Article 16(2) of the convention, the government of Republic of India declares that though it fully supports the principle of compulsory registration of marriage, it is not practicable in a vast country like India with its variety of customs, religion and level of liberty.

RESERVATION:

With regard to Article 29 of the convention, the Government of Republic of India declares that it does not consider itself bound by paragraph 1 of this article.

Article 29 of CEDAW convention states that "1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation."

CHALLENGES FACED IN IMPLEMENTING CEDAW:

- Existence of regional disparities is an impediment to the effective implementation of the convention.
- India has a very large rural population living in absolute poverty which affects the education of the people. As a result people are ignorant of wellness of common civil code.
- Political parties' intervention in adopting uniform civil code.

CONCLUSION:

India is no doubt is a secular country with people of different religion enjoys different personal laws. These personal laws were rooted in tradition and religion and reflect gender inequalities and discrimination. Although attempts have been made from time to time for enacting a UCC the ideal of UCC is yet to be achieved. After Independence the SC of India in various cases has been given direction to the government for implementation of Article 44, but the state has shown reluctance to interference.

The attempt should be made to enact a UCC embodying what is best in personal laws. The solution to the problem lies in spreading education among the ignorant people. It is the duty of the government to raise the social and economic standard of the ignorant masses. The state should take initiative to explain UCC to the ordinary citizens.

²² "States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women"

²³ "States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women"



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DOUBLY RAPED: BY MEN AND THEIR LAWS

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Introduction:

Human rights should within their ambit crucially include the rights of women since these rights are an unfailing, fundamental and distinct component of universal human rights.¹ It is important to note that across the world there is present a stark gulfbetween the existence of these rights. A major illustration of this reality is the revelation that women across the nation of US who are pregnant with/ or that have borne children that are the result of a sexual assault have to in many instances battle with their assaulters their right to abort these children or for full custody rights should they wish to give birth to them. It is in the light of this exposé that the following paper aims to discern what are the legislative failures and loopholes that have more than 10,000 women (out of the 30000 women who conceive of out of rape)² across the world's richest nation by nominal GDP fighting this very real nightmare.³ This shall be followed by appropriate statutory modifications for uplifting and protecting the rights of women who have suffered or who potentially might suffer from the needless consequences that prior legislation with regards to their sensitive situations had them deal with. To elucidate this issue, the background of general attitudes and policies regarding abortion shall be discussed in detail with important mentions of certain people and bodies who have shaped the same. Then, the ideal position with regards to how the matter should have panned out with respect to already existing constitutional amendments and human rights shall be described and finally bills and legislation with respect to the amelioration of the situation at hand shall be discussed followed by the conclusion.

Background of Anti- Abortion sentiments:

While there exists a litany of issues that have snowballed to create the current problem at hand, none is more germane than the over-all progression of laws that have been enacted with reference to woman's rights (especially with respect to their reproductive rights) throughout US history. There has always prevailed a deep divide between internationally accepted standards of human rights and nationally ratified legislation of which the latter often times fails to meet the ideals of the former due to a liturgy of problems.

The most glaring issue that has led to this sad state of affairs is the fact that there has been an overwhelmingly majority of men (almost all of whom were misogynistic and patriarchal in their thinking), rather than women themselves who have been vested with the powers to legislate over these issues which are so crucial for women. It is quite obvious that if men could become pregnant, that similar to the widespread and open use of Viagra, the availability of the morning after-pill would be similarly prevalent with popular flavours including mint and taco and that akin to Starbucks, there would be one abortion clinics lining every block in every street and 4 in every airport.⁴

When the attitudes that have shaped public policy concerning abortion in the US are taken into consideration, it would be apt to make comparisons of the state of affairs of the abortion situation that plagued the nation with another country (Sweden) that faced the same problem when both countries were going through a similar period of development- The US (1840-1880) and Sweden (1910-1940). Before the legalization of the procedure and before the standardization of procedures to ensure the same was conducted in a safe manner, both nations had a very negative attitude towards the procedure, which they felt was outright murder and a "great crime." When scrutinized, it is apparent that the attitudes towards abortion during the aforementioned periods are shaped by a number of similar, important elements like medical campaigns, class-specific hereditary apprehensions and doubt about women's evolving social and economic duties. Despite these similarities, efforts to



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ameliorate this situation led to the formulation of 2 completely different strategic resolutions for the problems at hand. In Sweden, where a previous strict law regarding abortion was struck down and attitudes liberalized, the changemakers who arrived at this solution were the parliamentarians and other important social policy creators who engaged in proper debates regarding the issues women faced resorting to illegal abortion. These policy makers took into consideration the population crisis that was concurrent with this issue during the period when the law was being debated upon and also other factors like the main sufferers of the harsh laws towards unsafe abortion i.e. (the working-class women) and the health problems and high mortality rate associated with the same and hence they chose the path of liberalization and proper standardization of the procedure to prevent and solve this problem. In the US, the case regarding the legalization / criminalization was fully dominated by medical practitioners who took to prominent medical journals to instead focus on the main class of women whom they felt, though the same was false, misused the unregulated abortion rule and sought the help of quacks and backroom practitioners to supposedly relieve themselves of their motherly responsibilities and in the process, maimed themselves severely due to the unsanitary procedures these practitioners offered. They also chose to demonize them and said that they had innocent blood in their hand. They amplified the scarce use of safe procedures that they felt were being done for legal reasons to highlight their point that most women who got abortions were just enabling the quick death of their unborn children. Hence their biased findings led to the complete ban enforced upon abortion procedures.⁵

Almost 2 centuries later, in the US, attitudes towards both women's rights and abortion have undergone several changes. In a 2011 interview with California Lawyer⁶, the late SCOTUS judge, Antonin Scalia saw fit to proclaim that the 14th Amendment of the US Constitution which affirms equal rights to life, liberty and property and equal protections of law for all citizens certainly does not apply to matters of both gender discrimination and discrimination of persons on basis of their sexual orientation etc.⁷ He elucidated that while the constitution assuredly did not prohibit ratifications introduced by lawmakers elected by the people that ameliorated such discrimination, it doesn't by itself ban such discrimination. He went on to state that the people who were bound to obey such ratifications i.e. everybody, weren't prohibited by the constitution from practicing such discriminatory practices regardless of any newly introduced ratifications. By stating such, it can be argued that he was for all intents and purposes expounding that people had no judicial remedy from governmental sanctioned discrimination. It comes off as no surprise that Scalia was one among the many judges nominated and elected by the Republican Party⁸, a party famous for its anti-women and homophobic stance (more on which shall be clarified in the later sections of this paper). He served as the perfect enabler of their discriminatory legislation and always voted in their favour during instances when their biased legislation came under judicial review. It was only the other enlightened judges who could see quite clearly see the perils of outright banning abortion that hence chose to state in their majority opinion in (Planned Parenthood v Casey)⁹ that restrictions could be placed on abortion without completely negating Roe v Wade¹⁰ - a case that formally legalized abortion (decided by a surprising majority of "conservative" Republican judges some 20 years earlier in 1973). Subsequent judgements by the court, with the exception of Stenberg v Carhart¹¹, revealed how divided the various justices of the US SC were divided on their views of abortion and the presence of a conservative majority, assisted by the devil in question has ensured the passage of new laws and directives that have made it harder for women to get access to abortion. In another unrelated case, Scalia in line with his misogynistic views had been the sole judge to cast a vote to allow the Virginia Military Institute to continue opposing admission for women.¹²

Hannah Goff put it best when she stated that men and women alike basically have the right to bodily autonomy and akin to having the right to not be forced to donate tissue, organs or put up with abuse of any form, women should and must be afforded the right to terminate their pregnancies. This is



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because the foetus is utilizing her body parts and hence under the concept of bodily autonomy, it is present via consent and not by right. It requires her continuous consent to remain in her system. Should she at any point wish to withdraw this consent, akin to the other circumstances described earlier, she should have the right to terminate her pregnancy from that moment of withdrawal. A foetus is identical in this regard given that should one require another's body parts for their survival, the other person had the legal right to deny the former of use of the same. By disagreeing to this adage, and stating that the foetus has all the rights of usage of the woman's body until its birth, it is essentially implied that more rights are now being accorded to it than any actual living person and that pregnant people have less rights to their bodies than corpses.¹³ Article 4 of the Universal Declaration of Human Rights which states "No one shall be held in slavery or servitude, slavery and the slave trade shall be prohibited in all their forms" ¹⁶ basically reaffirms Goff's statement as it clearly implies that every form of slavery and servitude is illegal hence reiterating her point that when the state via its laws sanctions a women to carry a foetus to full term even when she doesn't want to do so , and hence compromises her rights over that of the unborn foetus , it is forcing her into a period of servitude and violating her Human Right to be free from slavery and servitude under Article 4 of the aforementioned doctrine.¹The above rights against slavery and servitude are also asserted under the 13th Amendment of the US Constitution⁷while outlaws slavery and this is cemented by the definition of "involuntary servitude" (as laid down in United Sates v Kozminksi)¹⁴that was basically referred to as situations where a "master" subjects the "servant" to (threat / actual physical force, threat/actual imposed state coercion and finally fraud or deceit where the servant is a minor, an immigrant of mentally incompetent) as laid down by Scalia himself along with O'Connor , Rehnquist, White and Kennedy.

The Republican Party, in the US, save for a few of its enlightened members, and a few of the more conservative members of their rivals, the Democratic Party, have for a long time worked in conjunction to restrict women's rights to both equality and their own bodies with their Puritan views. The current US President, Donald Trump and his VP, Mike Pence, have been staunch anti-abortionists, with the former being a noted misogynist.¹⁵ They have collectively proposed penalizing women who undergo abortion procedures , condemned and proposed defunding Planned Parenthood (a pro-choice organization that has consistently advocated for safe abortions) and vociferously criticized the Supreme Court's ruling in Whole Woman's Health v Hellerstedt¹⁶ when the court acknowledged rules in the state of Texas that made it obligatory for abortion clinics to have right of access at a nearby hospital and for them to observe standards parallel to those enforced upon ambulatory surgical centres were unconstitutional as they placed an unjustifiable burden on women seeking abortions. Consequently, they chose to nominate the strict anti-abortionist conservative judge Neil Gorsuch¹⁷ to fill the seat vacated in the Supreme Court upon Scalia's judge to reverse the same. Also, in line with their other anti-women measures, many republican legislators have constantly voted against equal-pay laws both at the federal and state level.¹⁸

The Main Issue:

The above background helps provide a firm foundation for the existence of the repugnant laws that allow rapists to have joint consent rights should their victims wish to terminate the unborn child they force upon their victims and laws that allow them free access to parental rights of said children should they actually be born. These laws or rather the lack of them to address this unimaginable situation which some 10,000 or more of the 32,000 women of the women who conceive out of rape and go on to have said child have to face are the product of a misogynistic system that has consistently turned its back on the very demographic it is supposed to protect and empower.⁵It is maddening that the general rape laws that exist are biased towards the very victims it is to protect and the legislators. Official statistics collated by the DOJ, National Crime Victimization Survey and other bodies show that only 6 of every 1000 perpetrators of Rape are ever convicted of a crime and it



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is crucial to note that this horrendous statistic takes into consideration only reported rape cases and the same set of data revealed that only 1 out of 3 rape cases are ever reported.¹⁹ Even more dismaying is the general attitude of the prosecutors and judiciary who resort to victim blaming and award pathetically light sentences to perpetrators of these crimes that humiliate the dignity of the victims and those that don't pay heed to the long term trauma inflicted upon them. A stellar example of the aforementioned is the *People v Turner*²⁰ case, where the defendant in question was convicted of sexually assaulting an unconscious woman was let off with just 6 months behind the slammer because he was apparently too valuable to his University's swim team and his future was more important than the victims herself. Furthermore, there exists the provision of Contributory Negligence as a defence for rapists against their victims (*Rockview rape victim case*), which just a valid legal term for the phrase "victim blaming"²¹

The US Representative from Florida's 23rd Congressional District, Debbie Wasserman was the first to propose a federal bill to nationally address this problem (H.R 1257- Rape Survivor Child Custody Act)²². Cosponsored by several Democrats Republican colleague Thomas Marino, the bill aims to direct the Attorney General of the US to provide grants and incentives to states that have in place laws that terminate the parental rights of men who father children through rape. While the bill had bi-partisan support from both pro-life and pro-choice organizations and other rape advocacy organizations, the bill was unable to get a single hearing in Congress due to the existence of a small provision within it that allocates some money (\$ 25M over a 5 -year period) to secure its successful implementation. In real terms, the entire amount quoted is equivalent to the amount spent by the federal government promoting fruits and vegetables on social media, a fact which reveals the pure apathy of the majority of legislators towards the long-suffering demographics they are supposed to serve.²³ While Wasserman's bill was commendable, her usage of the proverbial carrot to get the states in the Union to comply with and formulate legislation to protect vulnerable rape victims was far too lenient as it would have been more apt to direct the AG to penalize the states that had no appropriate laws regarding the elephant in the room. Later this bill was included as an amendment in the comprehensive Justice for Victims of Trafficking Act, 2015, sponsored by Republican Senator J. Cornyn and co-sponsored by Sens. Brown and Ayotte, after much pressing by RAINN. ²⁴At the time of the introduction of the bill, 17 odd states including Hawaii, Maryland, Georgia, District of Columbia among others had no formal law to address this crucial issue while Florida's exiting state bill was most comprehensive (SB 964)²⁵. Since then, as of September 2016, 30 bills were introduced in these states to ameliorate this situation. While Hawaiian governor David Ige signed a promising law following the directives of the aforementioned (Rape Survivor Child Custody Act) which aimed to deprive rapists of their parental rights , and in some cases, even persons accused of sexual assault (with there being strong and resounding evidence to prove the same) after he deemed that having to bear the child of a rapist is even worse than being assaulted itself²⁶, in Maryland, a similar bill entitled Rape Survivor Family Protection Act by Kathleen Dumais was vetoed by an all-male conference committee who claimed that they had run out of time to decide on the vote.²⁷ Other bad news emanated from Arkansas, when the Arkansas State passed into law HB 1566 ²⁸(To Amend the provisions of Law concerning the disposition of foetal remains), introduced by State House Rep. Kim Hammer, which basically mandated that rapists are required to provide consent for their rape victims to abort the unborn children forced upon them. To counteract this slew of anti-women legislation introduced which essentially restricts a woman's freedom to her own body, a bill was introduced in the Texas House of Reps. on 10/3/17 which would fine men for masturbating, allow doctors to refuse to prescribe Viagra and require men to undergo medically unnecessary rectal exams before any elective vasectomy procedures to chiefly highlight the damaging and dangerous effects of anti-gender legislations.²⁹

Conclusion:



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When we consider the way forward, we must ensure that we elect officials who are firmly pro-choice with regards to abortion and must eventually go on to ensure that women have a constitutional right to the same. As with regards to Wasserman's bill, the same should be amended to penalize states that don't have any laws in place to protect rape victims from the aforementioned legislative nightmares. Prosecutors and judges must also be sensitized to deal with rape victims and the term rape should preferably be replaced with that of sexual assault as the latter does not provide any room for victim blaming and instead ensures that the focus of the crime lies solely on the perpetrator for his entirely warranted assault on the victim.

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HE FOR SHE AND GENDER JUSTICE

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"In my nervousness for this speech and my moments of doubt, I've told myself firmly, 'If not me, who? If not now, when?' "Emma Watson

Introduction:

As distinct from sex, which is a personal biological factor based on nature, the image of gender surpasses mere distinction between women and men and represents socio-economic, cultural and psychological factors that make one class strong over the other.¹ The concept of gender justice implies a comprehensive goal and scheme of protecting the class of subordinate gender from the exploitations and denials inflicted by the dominant gender.²

The discrimination based on gender is so entrenched in our society that in many ways it has become a way of life. It has been accepted as a norm and the voices raised against this evil, are either suppressed or ridiculed. However, every great idea when first proposed must have been laughed at, but what is worrisome here is what is evident human right is being belittled. In this sphere also a slow awakening is happening with spread of education and technology which makes information and deep discussions part of life. It must be noted that patriarchy supported by religion has been a tool for the present malice to a large extent, more rightly the misinterpretation of religion, in many a case. The causes for the present malice are many but so are the remedies. We would look at one particular movement and the idea behind it to counter this sorry state. First, before that, we should realize that justice/ideal, is what is being tried to be achieved by gender justice campaign, it is not some extravagant demand. It is a concept of human right which has found its place in every vital document of development and peace.

Charter of the united nations states in its preamble "...to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small and.....to promote social progress and better standards of life in larger freedom". The Indian Constitution right from its preamble to its various provisions envisages equality between men and women, further affirmative action on the part of the state when there is patent imbalance.

HeForShe (often referred to as He For She) is a solidarity campaign for the advancement of women initiated by UN Women. Its goal is to achieve equality by encouraging men and boys as agents of change and take action against negative inequalities faced by women and girls. Grounded in the idea that gender equality is an issue that affects all people—socially, economically and politically—it seeks to actively involve men and boys in a movement that was originally conceived as "a struggle for women by women"³

All persons are naturally inclined to feel threatened when their privilege is under challenge, one will try to justify it and protect it. Similarly the concept of gender justice threatens the insecure men who thereby are inclined to oppose it. However every man who is sensitive and believes that women are equal and contribute to human race would be able to empathize and accept the reality and

¹ P.Ishwara Bhat, Law and social transformation, EBC First edition, 2009 pg.515

² Ibid

³ <https://en.wikipedia.org/wiki/HeForShe> ; Last visited 1/11/2018 10.12 PM



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justice behind the argument. He would indeed be willing to take the lead step in their struggle against oppression and suppression.

There are both kinds of persons as mentioned, but the feminist movement should not become, what actress Emma Watson in her address at the HeForShe campaign had said : "I have realized that fighting for women's rights has too often become synonymous with man-hating. If there is one thing I know for certain, it is that this has to stop." Men are probably at wrong when they deny the women their rightful share, but there are also many who acknowledge this and are willing to right this. By terming all as 'the enemy' the real purpose is lost. In fact many men have stood by their women firmly, even at odds with society at times. However one must realize that man being a social creature is many times made to conform though he believes otherwise. The right kind of education and awareness would rectify this instead of mindless hate or slander, in most instances. That there are right ways to achieve the rights is what HeForSHE campaign envisages, and they believe that every voice matters.

Another valid point made by actress Emma Watson at her address was that, "It is time that we all see gender as a spectrum instead of two sets of opposing ideals." Men and Women complete the human race and are special in their own ways. Discussion is futile as to who is superior as neither is and each completes the other. The movement HeForShe tries to galvanize as many men and boys as possible to be advocates for change. To put an end to this futile discussion of superiority and set right the inequality created by the perceived superiority over the ages.

UN Women launched the HeForShe IMPACT 10x10x10 initiative to gain further momentum in advancing gender equality and women's empowerment at the 2015 World Economic Forum in Davos on January 23, 2015. The initiative was launched as a one-year pilot effort to engage governments, corporations and universities as instruments of change. IMPACT 10x10x10 targets some of the communities that most need to address women's empowerment and gender equality concerns – and those that have the greatest capacity to make and influence those changes.⁴

The mission of HeForShe is, "The world is at a turning point. People everywhere understand and support the idea of gender equality. They know it's not just a women's issue, it's a human rights issue. And when these powerful voices are heard, they will change the world. The time for that change is now."⁵

Women face discrimination in all civil spheres and sometimes this takes a worse form in crimes; violence against women is regarded as a necessary concomitant of generally oppressed position to which women are subdued in the social structure. Patriarchal bias, powerlessness and dependence have put them into a vulnerable position and made men unjustifiably superior, owing to which crimes against women galore.⁶

Sexual harassment also have consequence, this in way families and young women view their option, places they can travel to, and spaces they can occupy. This has more to do with perceptions of safety rather than experience of violence. Eve-teasing is not harmless as it leads to restrictions on women's mobility and shuts them out of public places. ⁷ The women face many problems, many created by men or by inaction of men, either way it can be rectified possibly by education and mutual respect towards the others, beginning right from home. HeForShe tries to address this by involvement of all.

⁴<https://en.wikipedia.org/wiki/HeForShe>, last visited 1/11/2018 at 11.20 PM

⁵<http://www.heforshe.org/en/our-mission> last visited 1/11/2018 at 11.22 PM

⁶ MDA Freeman, "Violence against women: Does the legal system provide solutions or itself constitute the problem?" (1981) *Journal of legal studies* 215 at pp.216-217

⁷Reclaiming public spaces, Sonalde Desai, <http://www.thehindu.com/opinion/op-ed/reclaiming-public-spaces/article17682447.ece> last visited 1/11/2018 at 11.36 PM



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Conclusion

The UN campaign HeForShe could not have selected a better ambassador than Emma Watson for their noble effort. Her speech at the conference was excellent and highlighted all the issues and importance of participation of all. The star value attracted audience and her earnestness and dedication to the cause convinced them. The campaign should be considered a overall success and is most likely to attract all youngsters to this movement. The prime idea as highlighted by the actress is "How can we effect change in the world when only half of it is invited or feel welcome to participate in the conversation?" Gender sensitivity is their issue as well. Thus HeforShe campaign is a movement which seeks out all of humanity for betterment of humanity.



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IS ABORTION A WOMAN'S HUMAN RIGHT?

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Introduction:

Does a woman have right to abort? Women as a gender usually considered as weak, illiterate, subordinate and inferior. Women are always considered next to men, though they equally perform in all field. Women is always considered beautiful, charismatic but denied with decision making power. A woman decision making power is denied not only within the family but also outside the family. Abortion is one area where woman are totally not considered regarding her pregnancy termination, instead the decision is taken by her family member or other persons, but whereas finally all the consequences are faced by the woman, either physical or mental.

Abortion:

Some eighty million women face unwanted or unplanned pregnancy each year.¹ Unsafe abortion kills 68,000 women every year nearly forth percent of all unsafe abortions are performed on young women aged between 15 to 24 years. This kind of unsafe abortion changes woman's health physically, mentally and emotionally. Abortion is a multifact confined comprehensive combination of conflict on many issues primarily concerned with right to life and privacy. Abortion is also a social and individual issue with or without liberty to a woman to take a decision. This equilibrium consent and choice of selection regarding termination of pregnancy still a debate on both legal and social aspect. The traditional view of gender discrimination on right to choice of termination of pregnancy still continues in many parts of the world including India.

Abortion as Right:

Always it is said that a child in the mother's womb is part of a woman. In most of the cases the woman are less considered regarding the termination of pregnancy avoiding her wish and will. As a part of right to privacy including right to life² guaranteed under the Indian Constitution. Right to privacy is also guaranteed by judiciary in many cases. The Supreme Court of India recognizing privacy as an inalienable right and held privacy to cover personal autonomy relating to the body, mind and to make choice³ and bodily integrity.⁴ Once it is considered that pregnancy is part of woman than woman must be guaranteed with the right of privacy. Under Right to privacy the woman must be permitted to select one out of the alternative regarding termination of pregnancy. This privacy decision making is to be totally concerned with the pregnant woman, where she should be permitted and guaranteed to mobilize the path of gender discrimination and retain social justice.

Countries around the world had introduced legal grounds for abortions with restrictions. The abortion policy is not liberalized but instead restricted more in developing countries. In 2013, only 48 out of 148 countries in the developing region permitted abortion, only on five grounds.⁵ According to World Health Organisation nearly forty five percent of all abortion(twenty five

¹Abou Zahr C, Maternal Morality in 2000: Estimates developed by WHO, UNICET, 2003

²Article 21 of Constitution of India

³Justice K S Puttaswamy v. Union of India

⁴Suchta Srivastave v. Chandigarh Administration, 2009

⁵Abortion Policy and Reproductive Health around the World, UN report of Eco and Social Affairs, Population Division, p.7



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millions) are unsafe, fifty five percent of abortions were successful and conducted safely, it implies that the abortion would have been carried by trained health worker and performed according to World Health Organisation's recommended method.

An international challenge on abortion is in search of legitimate and remedial solution. The unpredictable solution on abortion, surprisingly, internationally been approved and provided abortion is a Human Right. Universal Declaration of Human Rights describes that provides that the people must be affirmed with their fundamental human rights in the light of equal rights to both men and women. Right to life is distinctively declared as one of the foremost and primary right to every individual Universal Declaration of Human Rights. The same right is also documented to enforce by the international convention on Civil and Political Rights. In the light of Universal Declaration of Human Rights, woman's choice of opportunity to consider on selection of abortion must be oriented. United Nations International Conference on Population and Development provides and recognizes reproductive rights including safe abortion.

United States judiciary, dating way back in the end of nineteenth century strongly echoed in *Meyers v. Nebraska* case in 1923, held that privacy was a liberty claim and families decisions regarding raising of children against the interference of state. In a landmark judgement, *Roe v. Wade*, the Supreme Court held that providing a woman's reproductive choice with strict scrutiny. The decision of selection of abortion was restricted only on the health concern and at the same time right to privacy to select for abortion was permitted in life's most personal decisions. In view to give more importance on this issue the Supreme Court of US in *Webster v. Reproductive Health Service* case the judiciary invited the state to pass law criminalizing virtually all abortions.

In India regarding abortion Medical Termination of Pregnancy Act (MTP) was introduced in the year 1971, with an object of termination of pregnancy only under the guidance of medical practitioner and only within the specified period. According to section 3 of Medical Termination of Pregnancy act, a woman can terminate her pregnancy only under the condition that the pregnancy would involve a risk to the woman's life or gravely injure to woman's physical and mental health. The legislature has clearly observed and conveyed through MTP that a woman cannot terminate her pregnancy at her will. The MTP Act, restricting a woman to act for legal termination especially for two grounds namely, health of the pregnant woman and to prevent sex selection. Even the Judiciary in India considering the importance of life, does not permit a pregnant woman to terminate her pregnancy after the specified period. But the same Judiciary recently has permitted a rape victim for termination of pregnancy against the legal provision⁶ under Medical Termination Act, 1971 and observed reproductive choice is recognized as a constitutional right as part of Article 21 of Constitution. Further, the Supreme Court in *Suchita Srivastava v. Chandigarh Administration* (2009), held that a woman has a right to decide to entitlement to carry a pregnancy. Furthermore, The Supreme Court has also observed that if the child is born, what will be the consequence of the child, and who to take care of the child.

And further the negative aspect of abortion is where a pregnant woman, who involves herself to go for termination of her pregnancy after the specified period results either in death of the woman or the woman face physical or mental health problems. Considering the negative view, the abortion is carried on to prevent unintended pregnancy. The unintended pregnancy could be terminated only with the consent of medical experts. This medical opinion is consulted to protect and prevent the health issues of pregnant woman. The Supreme Court in the issue of unintended pregnancy came forward and urged the union government to set up permanent medical board in all the provisional state especially for child rape victims, where the victims could access medical facilities immediately and expediently. The Supreme Court on July, 17, 2017 directed the Bihar Government to pay rupees

⁶Section 3(2)(b) of Medical Termination of Pregnancy



ten lakh as compensation to a destitute woman who was not allowed to abort her 26 week pregnancy after a medical board opinion.

According to Protection of children from sexual offences Act, 2012, if a minor girl carries a child, she is not permitted to give her view regarding the termination of her pregnancy. It is only on the consent of the parents the termination of pregnancy is carried on, which may totally affect the girl both physically and mentally. Similarly, further due to unsafe sex by a woman involving herself into flesh trade results in pregnancy. These kinds of women also face abortion problems. The sex worker in almost all cases opt for termination of pregnancy resulting in health and other connected issues. A woman must be provided a chance of her own opinion and willingness for reproduction. Justice Ruth Bader Ginsburg states that the decision whether or not to bear a child is control to a woman's life, that also includes her own health and dignity.

Conclusion:

To prevent unintended pregnancy and unsafe abortion, the state must amend Medical Termination of Pregnancy Act, to guarantee right to privacy, recognized by Constitution and judiciary, regarding selection of abortion and reproductive rights. Further, pregnant women before opting for termination must be examined and then must be educated with the consequence in all nature, within and outside the family and also physical and mental problem. Before termination the woman must be further educated the comprehensive contraceptive methods especially during the emergency period to adopt a safe and legal abortion.

As per the Supreme Court's suggestion, a permanent Medical Board must be constituted. The Board must provide consultation to the victims regarding abortion and further suggest the consequence regarding the abortion. The present health position of the pregnant woman and child also must be examined and conveyed. The board must also suggest the policies and legal outcome of the same must be outlined. Further, and finally, her reproductive and individual rights must be explained and allow her solely, to decide either to abort or not to abort. Social Justice regarding women can be upheld only if her views and dignity to life is accepted, protected and maintained at her interest. Therefore, Right to make decision with regard to her fertility and reproduction is part of social justice must be permitted.



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**CRITICAL ANALYSIS OF THE LACUNAE IN THE CRIMINAL LAW OF
INDIA: A BRIEF STUDY OF SECTION 375 AND SECTION 497 OF THE
INDIAN PENAL CODE, 1860**

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Absence of Marital Rape as under the Criminal Law of India

Sir Mathew Hale stated: "The husband cannot be guilty of rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife has given herself up in this kind unto her husband which she cannot retract."¹

Introduction:

Post 2013 (after the Nirbhaya Amendment Act, 2013), as passed by Verma Committee (headed by Justice Verma), broadened the scope of the meaning of 'rape'. In India, there is a clear absence of marital rape law as under the criminal law of India. Rape in itself means a sexual intercourse without the consent of the woman. But in case of a sexual activity between a husband and a wife, without the consent of the wife, the same is absolutely legal as there is no law prohibiting the said offence.

Types of Marital Rape

1. Battering Rape: When both physical and sexual violence is involved.
2. Force-only rape: In such cases, husbands use only the amount of force necessary to coerce their wives.
3. Obsessive rape: These assaults involve torture and/or "perverse" sexual acts and are often physically violent.²

Violative of Article 14

The absence or rather this lacunae in the criminal law of India is clearly unconstitutional and rather is against the basic touchstone of the human rights as making a law for a normal woman but clearly excluding another woman on the ground of her marital status against her own husband is clearly violative of Article 14 and is against the basic fabric of equality. It is to be stated that the same exclusion is not based on an intelligible differentia wherein, a difference of law is made based on the person committing the same.

Violative of Article 21

In the case of *BodhisattwaGautam v. SubhraChakraborty*³, it was held that Article 21 envisages in itself the dignity of a woman. A rape is clearly violative of the basic object of right to life. Thus, it is the basic duty of the State to safeguard the 'basic humanitarian rights' of the women. The non-inclusion of marital rape as under Section 375 is clearly violative of Article 21 as this non-

¹ SIR MATTHEW HALE. HISTORY OF THE PLEAS OF THE CROWN, 1 HALE PC (1736).

² Marital Rape- Myth, Reality and Need for Criminalization, by Saurabh Mishra and Sarvesh Singh, 2003 PL WebJour 12.

³ *BodhisattwaGautam v. SubhraChakraborty*, (1996) 1 SCC 490; 1996 SCC (Cri) 133; (1996) 1 AndhLT (Cri) 252: AIR 1996 SC 922.



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inclusion does not preserve the basic rights of the women. Further, Hon'ble Supreme Court has clearly stated that right to life includes right to live with dignity.⁴

Critical Analysis

In the case of *R v. J.A.*⁵, it was stated that the relationship between the rapist and the victim was completely immaterial with respect to rape. Thus, the same clearly meant that clearly because the rapist was the husband, on such grounds marital rape or rape of the wife in any manner can be justified. Thus, it is humbly contended that rather than an offender based approach a victim based test shall be taken into consideration wherein, irrespective of the fact that who the offender is, the main focus shall be based on the victim of a particular act. Further, it is to be seen that in other jurisdictions there is a clear inclusion of marital rape in the criminal law, such as in:

Canada:

In Canada, Marital Rape was made a proper law as in 1983. There was a clear advancement of the rape laws in Canada and the status of a woman was clearly improved as a victim based approach was taken into consideration.

United States of America:

Until 1970's the entire concept of marital rape was not present in USA. It was slowly after a proper representation of the women in the legislation that the concept of marital rape as an offence started coming into the picture. Finally, in the year 1993 marital rape was made an offence in all the fifty states. In the landmark judgement of *People v. Liberta* the fact marital rape and non-marital rape do not have a difference was pronounced. The Court clearly stated that marriage was not a license to commit rape upon the wife.

United Kingdom:

"the husband cannot be guilty of rape for by their mutual matrimonial consent and contract, the wife has given up herself in this kind unto her husband, which she cannot retract."⁶

In England wife was viewed as a property and further the entire concept of justice and equality had not prevailed in its proper sense. Though, with the change in time, the law was settled by the House of Lords through Section 147 of the Criminal Justice and Public Order Act, 1994.

New Zealand:

New Zealand clearly does not have a distinction between the rape in a marriage or rape committed outside marriage. In 1985, through the introduction of Section 128 of the Crimes Act, 1961, Marital Rape was clearly made an offence. Therefore, as with respect to the offence and further with respect to the sentence there was no distinction which was made.

Reasons for non-criminalization of Marital Rape in India

There are many reasons why marital rape has not been criminalized in India. Few of the following are:

1. Treating the woman as an object:

Under the Indian Criminal Law system, women is treated as an object of the man. In this pseudo-patriarchal society there is a clear bias towards the rights and liberties of a man but the same is clearly absent or is semi-present in case of women's rights and liberties.

Women are considered to be an object of the man, thus, even in adultery law the man's consent is important. Thus, a husband feels or rather has a sense of ownership upon the wife.

2. Identity of a woman:

In this society, after marriage a woman's identity is always known through the identity of her husband and thus, in such a case the entire concept of marital rape in this pseudo patriarchal society become infructuous.

⁴OlgaTellis v. Bombay Municipal Corporation, AIR 1986 SC 180.

⁵ R. J.A., through Chief Justice McLachlin, R.S.C. 1985, C. C-46.

⁶ As articulated by English Jurist Mathew Hale.



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3. Court's interference

Hon'ble Courts more often than not have always tried to ignore this important question and have rather tried to only put this entire matter as a private matter. Courts more often than not have questioned their own jurisdiction with respect to entertaining such matters.

4. Deemed implied consent:

In India the scenario is such that a man clearly thinks that there is an implied consent given by the women for all sexual intercourse at the time of the marriage itself, thus, no further consent is required and rather the man starts treating the wife as his property. Thus, in such a society even thinking about introducing, let alone introduction of a marital rape law is impossible and is a very far-fetched thought.

Criminalizing marital rape is the need of the hour:

Under the current criminal law, it is the need of the hour to criminalize marital rape as the same is clearly against the basic and the core fragment of the human rights. As the same is not based on intelligible differentia of why a particular sect of woman and given this right and protection under criminal law and why the other sect of women are not given the same right. Further, treatment of a woman as an object of a man is clearly against the basic essence of Article 21 of the Constitution and further against the basic essential human rights principle. Further, the recommendation of the introduction of marital rape law as suggested by the Verma Committee Report.

Though one of the major pitfalls or the shortcoming of the same would be the aspect of evidence of such rape being committed.

Analysis of Section 375

Introduction

In Biblical Law (Jewish Law), adultery is defined as an act of sexual intercourse between a man (marital status irrelevant) and a married woman and clearly not between a woman and a married man.⁷ The same concept also has been seen in the Manu Laws of Ancient India and Zina (Arabic Law). Marriage is considered as a contract as under the Quran and it is believed that any person disrupting this contract is clearly condemned by Allah in the Qur'an.⁸ As early as in the early 1700's the then English Chief Justice, Justice John Holt stated that a man having illicit sexual relation with another man's wife was indeed the highest invasion/intrusion of the property.

Adultery Law in India

Section 497 of the Indian Penal Code, 1860 states: 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.

There are 3 main elements for the said section are:

1. Taking or enticing away or concealing or detaining the wife of another man from that man or from any person having the care of her of her on behalf of that man.
2. Such taking, enticing, concealing or detaining, must be with intent that she may have illicit intercourse with any person.

⁷ "And the man that committetd adultery with another man's wife, even he that committed adultery with his neighbour's wife, the adulterer and the adulteress shall surely be put to death." (Lev. 20:10).

⁸ "Do not go near to adultery. Surely it is a shameful deed and evil, opening roads (to other evils)." [Quran 17:32] "Say, 'Verily, my Lord has prohibited the shameful deeds, be it open or secret, sins and trespasses against the truth and reason.'" [Quran 7:33].



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3. Knowledge or reason to believe that the woman is the wife of another man.⁹ "Taking" does not mean forcefully taking the woman, but there shall be consent given by the woman with respect to the sexual/illicit intercourse.¹⁰ Taking a woman with the consent of the person who has the care of her is not "taking" under this section.¹¹ Thus, it clearly states under this section that the aspect of whether a particular act is an adulterous act or not, depends upon the consent of the man. The said law has a clear two fold lacunae. The first is that the said law is violative of Article 14 as the same is violative of the principle of equality because of the clear fact that upon the consent not given by a man an act can be an offence and can be termed as an adultery. Secondly, the said law treats women as an object of the man as the said law clearly states, "without the consent or connivance of that man".

Thus, we shall first analyse the aspect of equality as envisaged under Article 14 and further, the concept of intelligible differentia in it. Rule of Law is the 'Basic Structure' of the Doctrine¹² which excludes arbitrariness and unreasonableness.¹³ Further, Article 14 strikes at arbitrariness.¹⁴ It is a well settled principle that likes shall be treated likely and alikesalikelily.¹⁵

Thus, it is humbly contended that the fact that a man can commit adultery by not taking consent of another man (husband of the woman) or rather another man (husband) can always subject the man involved in an illicit sexual relation with his wife but on the other hand a married man being in an illicit sexual relation with another woman, other than his wife, the wife in such a case can take no legal action as against the lady involved in an illicit sexual relation with her husband. The same is explained herewith a diagram:

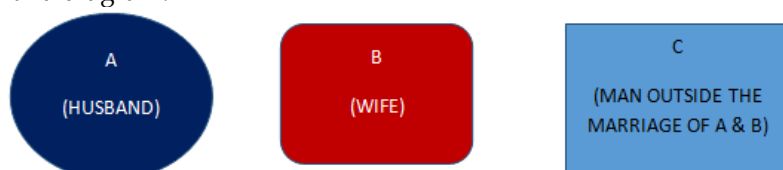


Figure 1.1

Here in this example above if C has an illicit sexual relation with B, without obtaining the consent of B, in such a case C can be charged of adultery.

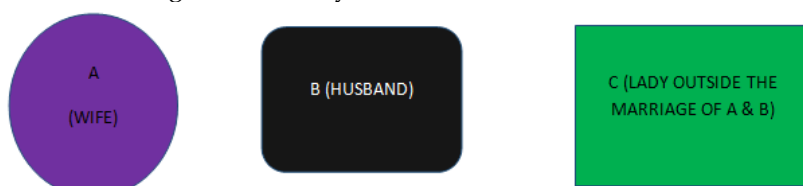


Figure 1.2

But in the above example, if B and C have an illicit sexual relationship, in such a case A cannot raise the claim of adultery. Though, C's husband in such a case can always go against B. Thus, this is termed to be irrational and unconstitutional as the same is arbitrary, providing a different set of law for two different genders. Thus, it is humbly submitted that the same law is clearly violative of Article 14 and Article 15 as the same is irrational, arbitrary and unreasonable.

⁹ The Indian Penal Code, 34th Edition, Justice K T Thomas and M A Rashid, Ratanlal and Dhirajlal.

¹⁰ Jnanendra Nath Day v. Khitish Chandra Dev, (1935) 39 CWN 1280.

¹¹ Abdul Rahman, (1935) 39 CWN 1055.

¹² Keshvananda Bharati v. State of Kerala, (1973) 4 SCC 225.

¹³ Bachan Singh v. State of Punjab, (1980) 2 SCC 684, 1983 1 SCR 145, AIR 1980 SC 898.

¹⁴ Maneka Gandhi v. Union of India, 1978 AIR 597, 1978 SCR (2) 621.

¹⁵ In re Special Courts Bill, 1978, (1979) 1 SCC 380.



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Previous Rulings of Supreme Court of India

This particular question of the Constitutionality of the law of Adultery as under Indian Penal Code, being violative of Article 14, 15 and 21 has arose before the Honourable Supreme Court at various occasions, wherein, it has been ruled in negative. Supreme Court has stated that the function of broadening a definition is within the ambit of the Parliament/Legislature. Court can only interpret a law and cannot make a law.¹⁶ It was stated by the Hon'ble Supreme Court that in such a law, the purpose is to punish the offender who goes on to commit the heinous crime of disrupting a marriage. And stated that it is upon the legislature to broaden the scope of the definition and on the same rationale stated that the same is not violative of Article 14 and 15.¹⁷ But it never analysed the instances as under figure 1.2.

The same judgement was delivered almost three decades ago and the same is required to be looked upon by the Hon'ble Supreme Court as there has been a great transformation in the law related to the same under the international era and also in other jurisdictions, where the same has been an offence for both the genders and also where a divorce can be sought for with respect to the said act.

Critical Analysis

It is to be noted that the United Nations Working Group on Discrimination against Women in Law and in Practice issued a call to various State Governments to strike down the law criminalizing adultery.¹⁸ This concept of adultery being discriminatory as against the woman have been perceived and a concept right from the medieval time period. In 2009, Division of Advancement of Women of the United Nations recommended that the drafters of various States shall strike down/ repeal any criminal offense related to adultery or extramarital sex between consenting adults, stating that more often than not, the adultery laws are de jure discriminatory against women whether in theory or in practice.¹⁹ There have been many countries which have ipso facto abolished/ read down the law criminalizing adultery as it is de jure against the basic fabric of the human right of equality and it clearly gives a particular sect of people, belonging from a particular gender an undue advantage over the other gender. In England, this law of adultery was struck down in 1857 and one of the last countries in the Europe was Republic of Ireland which decriminalized this law in 1976.²⁰

Further, it is clear that criminalizing a sexual relation between two consenting adults is a clear violation of right to privacy and is ultra vires of the touchstone of the human rights. Thus, under the Constitution of India, it is also a violation of Article 21. Further, it is also a clear violation of the provisions of International Covenant of Civil and Political Rights (ICCPR) and CEDAW's prohibition of discrimination.

Conclusion

Such a law clearly points out, by not making the same either illegal or by not holding the same act as an illegal act, that only a man can have exclusive right and access to a woman's sexuality, once the woman is his wife. But a woman, does not have any such right and does not have an

¹⁶ Lord Radcliffe, The Lawyer and his Times, quoted by Justice Talwar in Manohar Nathusao Samarth v. Marotrao, AIR 1979 SC 1084, p. 24, Principles of Statutory Interpretation, Justice G P Singh, 14th Edition, 2016.

¹⁷ Sowmithri Vishnu v. Union of India, (1985) SCC (CRI) 325.

¹⁸ "Joint Statement by the United Nations Working Group on Discrimination against Women in Law and in Practice" of 18th October 2012, see:

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12672&LangID=E>.

¹⁹ See: Good Practices in Legislation on "Harmful Practices" against Women, May 26-29, 2009, p. 19.

²⁰ In common-law countries, adultery was also known as "criminal conversation". This became the name of the civil tort arising from adultery, being based upon compensation for the other spouse's injury. Criminal conversation was usually referred to by lawyers as "crim. con."



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'exclusive' right to her husband's sexuality as the husband committing adultery with another woman, the wife has no legal recourse under the said Section. Thus, it is humbly contended and submitted that the same law, as under Section 497 of the Indian Penal Code, is absolutely barbarious and shall, either be read down by the judiciary or its scope shall be extended by the legislature.



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FOOD SECURITY AND GENDER JUSTICE

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"Women represent 50% of the world population, 30% of the world labour force, perform 60% of all working hours, receive 10% of the world's income and own less than 1% of the World's property" – The International Labour Organization.

Introduction:

Women and girls constitute almost half of the population of India, in fact almost all over the globe. Yet they are deprived of access to resources, opportunities and also subjected to violence due to their gender when compared to their male counterparts. Women and girls are discriminated or subjected to unequal treatment since historical times and in almost all civilizations. They are discriminated in all stages of their life right from womb till tomb. Women and girls are discriminated or oppressed or subjected to violence by the family, community, at work place and also by the State.

Gender Justice:

Gender Justice is inevitable for economic as well as human development. It is necessary for stability and sustainability particularly in developing democratic nations like India. In spite of tremendous changes in the society both technologically and ideologically still women and girls are subjected to violence, oppression and discrimination worldwide. Gender Justice denotes two aspects that is absence of violence and extension of protection of rights. The term "Gender Justice" is often used to represent the projects that advance women's rights through legal chance or promote women's interests in economic and social policy on one hand and on the other entails ending the inequalities between women and men that are produced and reproduced in the family, community, market and the State. It is a situation where both men and women share equal resources, choice, power and status. It is a human right of every person particularly women and girls.

Food Security:

The concept of Food Security had its origin in the mid-1970's at a time of global food crisis in the international discussions on food problems. The term Food Security has been defined by several agencies both national and international in several forms. The World Food Summit in 1996 defined the term "Food Security" as "when all people at all times have access to sufficient, safe, nutritious food to maintain a healthy and active life". The World Bank defined the term "Food Security" as "Access by all people at all times to enough food for an active, healthy life". The Food and Agriculture Organization of the United Nations defines the term "Food Security" as "a situation that exists when all people, at all times, have physical, social and economic access to sufficient, safe and nutritious food that meets their dietary needs and food preferences for an active and healthy life". This definition of Food Security has been universally accepted. Similarly the Planning Commission of India also defined it as "a situation where everyone has access, at all times, to food needed for an active and healthy life".

The concept of Food Security involves the following essential dimensions :-

(1) Food Availability:

Food Availability is ensured if adequate amounts of food are produced from natural resources either by production of food by cultivating land, animal husbandry, fishing, hunting or gathering of food, imports of food items from foreign nations and receiving of food aid.

(2) Food Accessibility:



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Food Accessibility is ensured when all households and all individuals within those households have sufficient resources to obtain appropriate foods according to their age, gender, health condition, etc. It includes both physical and economic accessibility. Physical accessibility means that food should be accessible to all persons i.e. children, sick, disabled, old, poor, pregnant and lactating mothers etc. Economic accessibility means that individuals should be able to afford food i.e. at cheaper and affordable prices and protected from shocks of food inflation.

(3) Food Adequacy:

Food Adequacy means that the food which is received must satisfy dietary needs, taking into consideration the age, living conditions, health, occupation, gender, etc. of an individual. It should contain essential nutrients, proteins, vitamins, etc. suitable for dietary needs of an individual.

(4) Food Sustainability:

Food Sustainability refers to the ability to obtain food over a period of time. Some times food may be unavailable during certain periods of time like cyclone, drought, famine, failure of crops, etc. At times households may not be able to have adequate food due to high food prices, poverty, loss of livelihood, etc. resulting in inaccessibility. Individuals may not have adequate quantity and quality of food necessary for sustaining their life due to poverty, lack of income or reduced income, high food price, inflation, increase in expenses on other heads like education, health, priorities and choices, etc. Thus the above three dimensions should be stable over time and not be affected negatively by natural, social, economic or political factors.

Gender Injustice and Food Insecurity of Woman In India:

Even after 70 years of independence women in India still suffer gender injustice in many areas. Politically they are underrepresented. Economically they are still far behind men in terms of payment of salaries, wages, income resources, sharing and owning properties, etc. Socially women are discriminated and are considered only next to men and not equal to men in terms of education, employment, choice in marriage, respect, allotment of food, etc.

Food insecurity is more among women and girls in India. They constantly suffer from starvation or micro nutrient deficiencies like Vitamin A, iodine, anaemia, iron deficiencies generally leading to many complications and poor quality of life. Several social, cultural and gender barriers like lack of ownership rights on land, infrastructure, education, training, credit, transport, information and communication technologies, climate change, migration, etc. impede women from attaining food security. The non access to certain foods and preferential food choices and distribution in household at times of emergencies by women and girls often lead to food insecurity. Consequently gender injustice leads to and is a result of food insecurity and vice versa.

Need for Food Security of Women and Girls:

Women as a distinctive gender have specific dietary needs at times like childhood, adolescence, pregnancy, lactation, old age, etc. Hunger and malnutrition at childhood results in stunting, low weight, low height, less body mass index, lack of immunity, strength, vulnerable to diseases, etc. At adolescence food insecurity affects her reproductive health and the full prospective development of her physical and mental health. When a pregnant or lactating woman is denied access to nutritious food her baby can be malnourished. When a girl child is suffering from disease it cannot enjoy access to food due to inadequate nutrition thus affecting the right to health. When woman is unable to feed herself or her children with adequate or nutritious food it may result in denial of her several other rights to life like education, employability, right to work, proper wages, reproductive health, decision making, etc. Thus food security plays a significant role among women throughout their life. Hence ensuring food security to women often requires special protection and support measures not only for women but also for their children who will be the future of the country.

Gender Justice and Food Security under Constitution of India:



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The framers of the Constitution of India recognized the vulnerable position of women and girls and incorporated several provisions under the Constitution of India guaranteeing many fundamental rights which are equally applicable to women and girls along with men ensuring gender justice and eliminating gender discrimination and inequality.

The Constitution of India in Part III i.e. Fundamental Rights Chapter guarantees the Right to Equality under Article 14 i.e. equality before laws and equal protection of laws to both men and women. Similarly under Article 15 it provides for Right against Discrimination on grounds of religion, race, caste, sex, place of birth or any of them. Under Article 15(3) the State is empowered to make special provision for women and children. Article 39(d) provides for equal pay for equal work for both men and women. These Articles assure gender justice placing women and girls on a platform where both men and women are equal.

Similarly the Article 21 of the Indian Constitution guarantees the most significant and vital right i.e. the Right to Life and Liberty. In Part IV i.e. Directive Principles of State Policy Chapter under Article 39(a) provides for equal rights of men and women to an adequate means to livelihood. Article 41 provides for securing the right to work, education and to public assistance in cases of unemployment, old age, sickness and disablement and in other cases of undesired want. Article 47 provides for raising of the level of nutrition and standard of living and improvement of public health. Right to Food and Gender Justice:

The right to food in narrow sense refers to freedom from hunger or starvation and in broader sense refers to freedom from under-nutrition or mal nutrition. Hunger refers to an empty stomach and the right to have two square meals a day throughout the year can be treated as attainment of right to food. In its broader view the right to food mean a right to a minimum ration of calories, proteins and other specific nutrients necessary to live a healthy and active life. The right to food does not mean the right to be fed by government but to meet one's own needs through their own efforts using their own resources without compromising dignity.

The right to life guaranteed under Article 21 of the Constitution was initially interpreted in a very narrow and restrictive sense of merely providing for protection against arbitrary deprivation of life was given liberal interpretation by the Supreme Court in *Maneka Gandhi Vs Union of India* (AIR 1981 SC 746) and held that the right to life includes right to live with human dignity. In *Francis Coralie Mullin Vs Union Territory of Delhi* (1981 I SCC 608) the apex court emphasized that the right to life includes 'everyone has a right to basic necessities of life'. In *Chameli Singh Vs State of U.P.* (AIR 1996 Sc 1051) the Supreme Court while dealing with Article 21 held that the need for a decent and civilized life includes the right to food. Later the Supreme Court of India in *People's Union for Civil Liberties Vs Union of India* (2013 2 SCC 688) included the right to food within the ambit of Article 21 ensuring food security to its citizens as part of "right to life".

The National Food Security Act, 2013:

To ensure right to food as laid down by the judiciary the UPA government has passed The National Food Security Act in 2013. It came into force on July 5, 2013 extending to whole of India. The main aim of the Act is to provide for food and nutritional security in human life cycle approach, by ensuring access to adequate quantity of quality food at affordable prices to people to live a life with dignity and for allied matters. The Act aims to provide subsidized food grains to approximately two thirds of India's 1.2 billion people covering 75% of rural population and 50% of the urban population. According to the Act people belonging to priority households are entitled to 5 kilograms of food grains per month at subsidized rates of ₹3, ₹2, ₹1 per kg for rice, wheat and coarse grains (millets) respectively and Antyodaya Anna Yojana households are entitled to 35 kgs of food grains per month at the subsidized prices. The Act also aims to provide food security to women who are a vulnerable section of society as well as tries to ensure gender justice through right to food.



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The Act specifically provides for nutritious take home ration of 600 calories free of charge to pregnant women and lactating mothers up to 6 months. They are also entitled to a maternity benefit of at least Rs 6,000 for 6 months. Children in age group of 6 months to 6 years are entitled to free appropriate meal through local anganwadi. Children up to class 8 or within age of 6 to 14 years are to receive one free mid day hot meals or take home rations. The Act lays duty on the State government to identify malnutrition children. The eldest woman in the household of 18 years or above is the Head of the household for issuing ration card.

Conclusion:

To conclude the concept of Gender justice and Food security are inter related. The Constitution of India nonetheless assures gender justice to women and girls in its Articles 14, 15, 15(3) and 39(d). The Indian judiciary through its decisions has declared that the right to food is part of right to life and liberty under Article 21. The Government of India has enacted the National Food Security Act, 2013 assuring food as a right to its people, particularly women and girls. Though it seems that a lot is done still a lot needs to be done to ensure gender justice as well as the right to food of women and girls in India. At the household level women and girls still suffer hunger and malnutrition and gender injustice in social, economic and political arena. It is suggested that the Government of India as well as the State governments have to create awareness among woman regarding their right to food and gender justice. To secure food security the governments have to implement the Act and schemes more strictly, reduce corruption, reform public distribution system, etc. On the other to ensure gender justice the education system has to be reformed to gender sensitize, more economic and job opportunities are to be unwrap for women. Unless food security is assured gender justice cannot be achieved and achievement of food security leads to gender justice of women and girls in India.

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GENDER JUSTICE AND UNIFORM CIVIL CODE

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Introduction:

The implementation of a uniform civil code and the issue of gender justice, these two are closely connected to each other in Indian socio legal perspective. Notwithstanding its need and importance, the state's politico-legal standpoint about its implementation attracts in-depth legal inquiry. Uniform Civil Code and the Constitution of India.

The Indian Constitution, in its part IV, Article 44 directs the State to provide a Uniform Civil Code throughout the territory of India. However, it is only a directive principle of state policy; therefore it cannot be enforced in a court of law. It is the prerogative of the state to introduce Uniform Civil Code. The Constituent Assembly Debates clearly shows that there was a wide spread opposition to the incorporation of Article 44 (Article 35 in the Draft Constitution), particularly from the Muslim members of the Assembly. Naziruddin Ahamed, Mohd. Ismile Sahib, Pocker Sahib Bahadur etc., made a scathing attack on the idea of having a Uniform Civil Code in India on the grounds that the right to follow personal law is part of the way of life of those people who are following such laws, that it is part of their religion and part of their culture, that it would lead to a considerable amount of misunderstanding and resentment amongst the various sections of the country and that in a country so diverse it is not possible to have uniformity of civil law. However, one of the most illustrious members of the Assembly, K.M. Munshi strongly felt that if the personal law of inheritance, succession etc is considered as a part of the religion, the equality of women can never be achieved.

The Chairman of the Drafting Committee Dr. B.R. Ambedkar stated that in our country there is practically a Civil Code, uniform it's content and applicable to the whole of the country. He cited many instances like Uniform Criminal Law, Transfer of Property and Negotiable Instruments Act which are applicable to one and all. However he conceded that the only province, the civil law has not been able to invade so far is marriage and succession. He also dispelled the arguments of certain Muslim members that the Muslim law is immutable and uniform throughout India. He cited the example of the North-West Frontier Province which was not subject to the Shariat law prior to 1935 and until then followed the Hindu Law in the matter of succession etc. Similarly, in the North Malabar region of Kerala, the Murumakkutayan law applied to all, not only to Hindus but also to Muslims. Until 1937, in the rest of India, the various parts, such as the United Provinces, the Central Provinces and Bombay, the Muslims to a large extent were governed by the Hindu law of Succession.

Some of the learned members however predicted that a stage would come when the Civil Code would be Uniform and stated that power given to the state to make the Civil Code uniform is in advance of the time. Dr. Ambedkar also opined that it is perfectly possible that the future parliament may make a provision by way of making a beginning that the code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage, the application of the code may be purely voluntary.

A uniform code has been wrongly posited as an assault on the religion and the religious identities. What it essentially aims at is secular reform of property relations in respect of which all religious traditions have grossly discriminated against women. A uniform civil code is, therefore, foremost a matter of gender justice.



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A uniform civil code will focus on rights, leaving the rituals embodied in personal law intact within the bounds of constitutional propriety. Being optional, it will provide free choice and facilitate harmonization of social relationships across the country in keeping with the changing contours of emerging societal realities. A uniform civil code should not be constructed, as sometimes suggested, by putting together the best elements from various existing personal codes. This will invite contention. It is far better that a uniform code is framed *de novo* by somebody like the Law Commission, in consultation with relevant experts and interests, as a citizens' charter governing family relations.

A liberal, forward-looking uniform civil code may be expected to win many adherents, especially from those with cross-cultural backgrounds. This induce custodians of faith to look inwards and seek to codify and reform age-old personal laws.

Uniform Civil Code is a proposal to replace the personal laws which govern the different religious communities in India with a common set of rules governing marriage, divorce, inheritance, adoption and maintenance. A personal law in India is based on religion, tradition, scripture and culture. Personal laws contain some provisions which are unjust to women e.g. a Muslim husband can marry four wives, he can divorce his wife unilaterally by the word 'Talaq' thrice, her right to receive adequate maintenance from the husband after divorce is not recognized. Many provisions of Muslim personal law are discriminatory towards women and based on patriarchal ideology. Personal laws relating to Hindu was also discriminatory, however, with the codification of Hindu Personal law many reforms has taken place in order to provide equal right to Hindu women. But it cannot be said that the Hindu Personal law has completely been reformed because in different parts of India some customary law prevails.

The desirability of Uniform Civil code was declared by the Supreme Court of India in 1985 in the case of *Md. Ahmed Khan Vs Shah Bano Begum*.⁹ In this case the Supreme Court of India held that a Muslim divorcee was entitled to get maintenance from the former husband beyond the period of Iddat under Section 125 of the code of criminal procedure, if she had not married and could not maintain herself from the dower received at the time of divorce. Where this decision gave Muslim women great relief but on the other it irked Muslim fundamentalist which led to the enactment of Muslim women (protection of Rights on divorce) Act, 1986 which excluded divorced women from the purview of Sec.125 of Cr.P.C. This Act was severely criticized and it was a glaring example of injustice and gender inequality. The Muslim fundamentalist criticized the supreme court of India as the court had unnecessarily interfered with their personal laws. But in *Danial Latif's*¹⁰ case, the supreme court liberally interpreted S.3 of the Act, 1986 and has ruled that a Muslim husband is liable to make provision for the future of the divorced wife even after the Iddat period.

In the absence of such a code or a general matrimonial law, some individuals are taking advantages and in order to escape liability under Hindu personal law, they get converted into Islam to solemnize second marriage.¹³ In such Cases, the question was whether second marriage without the first marriage has been dissolved, would be a valid marriage qua the first wife who continued to be a Hindu. The Court was of the opinion that such marriage will be void in terms of Sec.494 of Indian Penal Code. But the court refused to declare polygamy and certain aspect of Muslim personal law as void under Art. 14 and 15 of the Constitution of India. The court, however, pleaded for a Uniform civil code for the protection of oppressed and for the promotion of national unity and solidarity.¹⁴ In *Sarla* court emphasized that there is no relation between personal law and religion in a civilized society. Marriage, succession and like matters are of secular character and cannot be brought within the guarantee enshrined in Art.25, 26 and 27. The court pointed out that the Hindu personal law has been reformed to make it secular but Muslim personal law is yet to reform to divest it from religion. The court urged the govt. to have a fresh look at the issue of Uniform Civil court. But the court in a subsequent case clarified that it has not issued any direction to the govt. for enactment



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of Uniform civil code.¹⁶ The Supreme Court of India, though, considered it as a serious inaction on the part of the Government but the court is yet to interpret the meaning of the provision contained in Art.44. From the above judicial decisions, it can be stated that the court is reluctant to interfere with the matters fall within the realms of religion. The best example in this regard is the case of Shah Bano Begum. In this case what was recognized by the Supreme Court of India through judicial interpretation that was sought to be nullified by the Govt. by enacting Muslim Women's Rights Act, 1986. The successive governments in India have neglected the issue and take no steps to reform Muslim law as a result of which women are being often victimized. The successive governments in India are compromising the issue of Uniform civil code in order to remain in power and they do not like to hurt the religious sentiments of communities by making a uniform civil code. While the system of dowry has spread its tentacles across castes and communities, its roots in upper-caste Hindu cultural tradition cannot be overlooked. Muslim law started with the notion of mehr, an amount that must be stipulated in the marriage contract (nikahnama) as a future security to the bride. Gradually, under the dominant Hindu influence, the community has accepted the anti-women custom of dowry. So, while the mehr amounts have been reduced to a mere token, huge amounts are demanded as dowry.

While all religions are patriarchal and exert strict control over a woman's sexuality, the hold of Brahminical patriarchy reaches a high pitch when we examine the phenomenon referred to as "honour killings". While the Hindu law provided for marriages across all Hindu denominations, rigid caste boundaries prevail. A girl can be killed by her own parents for transgressing caste boundaries and marrying someone from a lower caste – a reality captured in the recent popular Marathi movie, Sairat. At times, young couples are also killed for entering into sagotra and sapinda marriages, concepts unique to Hindus that have been incorporated in the codified Hindu law, while in parts of South India marriages between first cousins and uncle and niece are the norm.

While Muslim polygamy is projected as a major bane affecting Muslim women, outlawing polygamy does not appear to be an effective solution when we examine the prevalence of bigamy among Hindus. Official reports reveal that despite the statutory restraint, incidents of bigamy are more frequent among Hindus than Muslims. Ironically, the worst sufferers of this have been Hindu women, who are denied their basic right of maintenance and sustenance when the husband pleads that the woman is his second wife. In comparison, the Muslim woman in a bigamous marriage fares better since she is entitled to rights of maintenance, shelter, dignity and equal status. A Hindu second wife is not only stripped of her rights, but also divested from her status as "wife" and humiliated as mistress or concubine in judicial discourse. An example is the adverse comments made by Justice Markandey Katju in 2011 in the D. Velusamy vs D. Patchaiammal case. A Hindu husband enjoys the privilege of denying maintenance to a woman with whom he has cohabited, and may even have fathered children, merely by pleading during court proceedings that he has violated the mandate of monogamy without any criminal consequences visiting him.

In 2005, in the Rameshchandra Daga vs Rameshwari Daga case, the Supreme Court conceded that despite codification and introduction of monogamy, the ground reality had not changed much and that Hindu marriages, like Muslim marriages, continued to be bigamous. The apex court was trying to award maintenance to a woman whose husband had challenged the validity of their marriage because of his previous marriage. The court also commented that though such marriages are illegal as per the provisions of the codified Hindu law, they are not "immoral" and hence a financially-dependent woman cannot be denied maintenance. If Hindu women, like Muslim women, are given rights, the destitution and humiliation that they suffer will be greatly reduced. Against such convincing evidence of anti-women practices, can we assume that the codified Hindu law has been instrumental in bringing social transformation? It has not provided the foundation upon which a uniform and gender-just family code for Indians across religious communities can be mounted.



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If it is accepted that all personal laws, customs and practices are patriarchal, where does the process of change to bring in gender-just laws begin? Here, we must accept two premises: First, our laws are not uniformly gender-unjust. They contain specific forms of gender injustice and each must be addressed within its own specificity. Second, the law is dynamic and gets formulated within the contested terrain of litigation.

Judicial Opinion and Uniform Civil Code

The judiciary in India has taken note of the injustice done to the women in the matters of many personal laws. It has been voicing its concern through a number of judgments indicating the necessity to have uniformity in personal matters of all the citizens. In the case of Mohd. Ahamed Khan vs. Shah Bano Begum AIR 1985 SC 945 pertaining to the liability of a Muslim husband to maintain his divorced wife beyond iddat period, who is not able to maintain herself, the Supreme Court held that Section 125 Cr. P. C which imposes such obligation on all the husbands is secular in character and is applicable to all religions.

The observations of Chandrachud, C.J. in Shah Bano's case and observed as under: "The present case is yet another event which focuses on the immediate and compulsive need for a uniform civil code. The totally unsatisfactory state of affairs consequent on the lack of uniform civil code is exposed by the facts of the present case.

Again in Sarala Mudgal vs Union of India AIR, 1995 1531, a division bench of the Supreme Court consisting of Kuldip Singh and R.M. Sahai, JJ strongly advocated the introduction of a Uniform Civil Code in India. In this case the Supreme Court held that conversion of a Hindu male to Islam only for the purpose of contracting bigamous circumvents Section 494 of Indian Penal Code. Such marriages have been declared as bigamous and void by the court. The court after referring to various precedents on the point, categorically held that till uniform civil code is achieved for all the Indian Citizens, there would be an inducement to a Hindu husband who wants to enter in to second marriage while the first marriage is subsisting to become a Muslim. Here the Court was pointing out the injustice done to the first wife, legally wedded.

The Bench noted the failure of successive governments till date, to implement the constitutional mandate under Article 44 of the constitution of India. It was suggested that the personal laws of the minorities should be rationalized to develop religious and cultural amity preferably by entrusting the responsibility to the Law Commission and Minorities Commission. The Bench further directed the Government of India to file an affidavit indicating the steps taken and efforts made to have a fresh look at Article 44 in August, 1996. However, the latter direction was treated as "obiter dicta" by the court subsequently.

Conclusion

Thus it is clear that, Article 44 states that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. This provision was made to promote unity and integrity which is the cherished goal enshrined in the preamble to our constitution. Hindu laws of marriage, succession, etc., have been drastically changed in the first decade of the commencement of the constitution but there has been resistance from Muslim community in this respect and for avoiding any resentment on their part political parties in power remained reluctant to enforce a Uniform Civil Code. The present situation is open to misuse and is inhuman and unjust for it permits inhuman and undignified treatment to women by providing legal cover to polygamy. Marriage, succession and the like matters of a secular character cannot be brought within the guarantee of religious freedom in articles 25-28. Practice of polygamy has been treated as injurious to public morals in USA and many Islamic countries have also abolished polygamy. The Court, therefore, requested the Government of India to secure Uniform Civil Code for all citizens of India. No gender justice could be rendered in its comprehensive sense, unless we have a uniform civil code containing best provisions taken from all the religions, with the sole aim of doing gender justice. Unless the women,



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irrespective of their religious affiliation have been conferred equal rights on par with men in personal matters, the constitutional mandate of right to equality of status and opportunity cannot be implemented. However, adequate care should be taken to see that only the rights are made uniform and not the rituals which are inherent part of the culture and religion as otherwise it would violate the basic structure of the constitution viz. secularis law from religion and certain practices which are considered to be religious practices falling in the domain of family affairs and derogatory towards women should be washed away.

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GENDER DISCRIMINATION AND WOMEN'S DEVELOPMENT IN INDIA

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Introduction

Gender is a common term where as gender discrimination is meant only for women, because females are the only victims of gender discrimination. Gender discrimination is not biologically determined but it is determined by socially and the discrimination can be changed by the proper and perpetuate efforts. Denial of equality, rights and opportunity and suppression in any form on the basis of gender is gender discrimination.

Half of the world's population is females. They are doing two-third of work of the total work in the world but received only one-tenth of the world's total income. Nearly two-third of the women is illiterates and they have possessed only one percent of the total world's assets. In the world only one-fourth of the families are headed by female. India is a male dominant society and gender discrimination is customised habitually.

Discriminations

From web to death females are facing lots of discrimination against them. Some of them are

- Abortion of female gravida with the help of scanning.
- Feotocide (By giving liquid extract from cactus / opuntia, giving raw paddy to new born female baby, by pressing the face by pillow or by breaking the female baby's neck)
- Not giving enough and nutritious food
- Not allowing to go to school (Denial of education)
- Not giving needy health care while in ill health
- Early marriage
- Eve teasing, Rape and Sexual harassment
- Dowry
- Divorce, Destitution even for silly or without any reason.

Causes of Gender Discrimination

The Causes of Gender Discrimination are:

™ Educational backwardness, Caste, Religious beliefs, Culture, On the name of family history, Customs and beliefs, Races, Low income, Unemployment, Society, Family situation and Attitudes. Like male or even above them female plays important role in the family and national development. But her contribution is not recognized by the male dominant society.

Reasons for Gender Discrimination

Lorber states that gender inequality has been historic worldwide phenomena, a human invention and based on gender assumptions. It is linked to kinship rules rooted in cultures and gender norms that organizes human social life, human relations, as well as promotes subordination of women in a form of social strata. Amartya Sen highlighted the need to consider the socio-cultural influences that promote gender inequalities. In India, cultural influences favour the preference for sons for reasons related to kinship, lineage, inheritance, identity, status, and economic security. This preference cuts across class and caste lines, and it discriminates against girls. In extreme cases, the discrimination takes the form of honour killings where families kill daughters or daughters-in-law who fail to conform to gender expectations about marriage and sexuality. When a woman does not conform to expected gender norms she is shamed and humiliated because it impacts both her and



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her family's honor, and perhaps her ability to marry. The causes of gender inequalities are complex, but a number of cultural factors in India can explain how son preference, a key driver of daughter neglect, is so prevalent.

Patriarchal Society

Patriarchy is a social system of privilege in which men are the primary authority figures, occupying roles of political leadership, moral authority, control of property, and authority over women and children. Most of India, with some exceptions, has strong patriarchal and patrilineal customs, where men hold authority over female family members and inherit family property and title. Examples of patriarchy in India include prevailing customs where inheritance passes from father to son, women move in with the husband and his family upon marriage, and marriages include a bride price or dowry. This 'inter-generational contract' provides strong social and economic incentives for raising sons and disincentives for raising daughters. The parents of the woman essentially lose all they have invested in their daughter to her husband's family, which is a disincentive for investing in their girls during youth. Furthermore, sons are expected to support their parents in old age and women have very limited ability to assist their own parents.

Son Preference

A key factor driving gender inequality is the preference for sons, as they are deemed more useful than girls. Boys are given the exclusive rights to inherit the family name and properties and they are viewed as additional status for their family. In a survey-based study of 1990s data, scholars found that sons are believed to have a higher economic utility as they can provide additional labour in agriculture. Another factor is that of religious practices, which can only be performed by males for their parents' afterlife. All these factors make sons more desirable. Moreover, the prospect of parents 'losing' daughters to the husband's family and expensive dowry of daughters further discourages parents from having daughters. Additionally, sons are often the only person entitled to performing funeral rights for their parents. Thus, a combination of factors has shaped the imbalanced view of sexes in India. A 2005 study in Madurai, India, found that old age security, economic motivation, and to a lesser extent, religious obligations, continuation of the family name, and help in business or farm, were key reasons for son preference. In turn, emotional support and old age security were main reasons for daughter preference. The study underscored a strong belief that a daughter is a liability.

Discrimination against Girls

While women express a strong preference for having at least one son, the evidence of discrimination against girls after they are born is mixed. A study of 1990s survey data by scholars^[84] found less evidence of systematic discrimination in feeding practices between young boys and girls, or gender based nutritional discrimination in India. In impoverished families, these scholars found that daughters face discrimination in the medical treatment of illnesses and in the administration of vaccinations against serious childhood diseases. These practices were a cause of health and survival inequality for girls. While gender discrimination is a universal phenomena in poor nations, a 2005 UN study found that social norms-based gender discrimination leads to gender inequality in India.

Dowry

In India, dowry is the payment in cash or some kind of gifts given to bridegroom's family along with the bride. The practice is widespread across geographic region, class and religions.^[88] The dowry system in India contributes to gender inequalities by influencing the perception that girls are a burden on families. Such beliefs limit the resources invested by parents in their girls and limits her bargaining power within the family. The payment of a dowry has been prohibited under The 1961 Dowry Prohibition Act in Indian civil law and subsequently by Sections 304B and 498a of the Indian



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Penal Code (IPC). Several studies show that while attitudes of people are changing about dowry, the institution has changed very little, and even continues to prevail.

Marriage Laws

Men and women have equal rights within marriage under Indian law, with the exception of Muslim men who are allowed to unilaterally divorce their wife. The legal minimum age for marriage is 18 for women and 21 for men, except for those Indians whose religion is Islam for whom child marriage remains legal under India's Mohammedan personal laws. Child marriage is one of the detriments to empowerment of women.

Importance of Women in Development

Females are nearly 50 per cent of the total population but their representation in public life is very low. Woman continues to bear the major load of the household work. Her primary role is often viewed by the society as housewife.

In cardinal goals of democracy "of the people, by the people and for the people" cannot be optimised accomplished if the female population remains out of political empowerment. Subordination of women in society acts a structural constraint to their participation in political activities. This constraint operates more or less for all classes and communities of women. Prevalent culture which is very complicated and often decisions are taken behind the scene may be regarded as another constraint in this regard.

Recognising women's rights and believing their ability are essential for women's empowerment and development. Females should realize their own capabilities and potentials which will strengthen their self image and foster them with confidence to take action in life. Political empowerment does not imply just a right to role silently but to discuss, share and empower politics by knowing its pros and cons and thereby to influence policies and decision making.

Empowering women is the basic to the basics of human rights where she wants neither to beg for power nor search for power hierarchy to exercise power against others. On the contrary she demands to be accepted as human first of all. She as a person in command of herself and for that necessarily all the resources physical, social, economical, political, cultural and spiritual to be equally accessible to her, are prerequisites for considering the whole question of empowerment.

Indian society is inherited with male chauvinism but now the society has started to realize women's importance and has being accepted women's empowerment, women as an active agent for development, participation in and guiding their own development.

Legislation for Women

In India, several laws, legislations, policies and institutional reforms have been enacted to carry out the gender action plan for the development of women. Legislation is an important instrument for bringing about a change in the unequal economic and social status in India. In pre-independent India, few laws were passed in response to social demands and on the basis of humanitarian consideration. They are Bengal Sati Regulation Act of 1829 and similar Anti-Sati laws in Madras and Bombay, Hindu Widow Remarriage Act 1856, the Hindu Women's Right to Property Act in 1937, (The Muslim Personal Law) the Shariat Act 1937 and the Dissolution of Muslim Marriages Act 1939.

After Independence, there have been important changes in legislation and litigation which have facilitated the increased participation of women in political activities as well as in the socio-economic development activities and the increase appear to be more likely at the lower level than at the highest centres of decision making.

Article 14 of Indian Constitution says that the state shall not deny to any person equality before or equal protection of the law, Article 15 says that no women can be discriminated against on the ground of sex, Article 15 (3) emphasis that the state shall make special provisions for women and



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children and Article 16 provides equality of opportunity in matters relating to employment by the state.

In Article 39(a) emphasis that the citizens men and women equally, have the right to an adequate means of livelihood, in Article 39(d) it says that the state should secure equal pay for equal work for both men and women and in Article 34 it provides that the state shall make provision for securing just and humane for work and for maternity relief. The 73rd and 74th Amendments of Indian Constitution in 1993 are the milestone in the history of India, which provides lot of powers for the local bodies. It paves the way for decentralisation, empowers the poor people as well as women.

According to these amendments not less than one third of the seats, meant for direct election of members at each tier of Panchayats are to be reserved for women and not less than one-third of the seats of chairperson at any level reserved for women.

Solution for Gender Discrimination

Various movements, programmes are being carried out by the Government, voluntary organizations and by lot of social activities for women's development and against the gender discrimination. To solve the gender discrimination problem the E⁴ and SD factors would be very useful. They E⁴SD factors are :

1. Education

Education develops the skills, imparts knowledge, changes the attitude and improves the self confidence. It provides employment opportunity and increases income. Hence educating women is the prime factor to combat gender discriminate and for the upliftment of women. Not only the female, the society must be educated to give equal right for female.

2. Employment

Employment gives the income and improves the economic position of the women. Employed women are given importance by the family members. Employment gives the economic independence for the women.

3. Economic Independence

In India, mostly, women in the young age - depends her father, in the middle age- she depends on her husband and in the older age - depends on her son. Woman always depends on somebody for her livelihoods hence, independent in economical aspects are imperative for women's development. Economic independence will free the women from the slavery position and boost the self confidence. Economic independence of women also helps in the national economic development.

4. Empowerment

Empowering women with the help of laws, education and employment will make the society to accept the women as an equal gender like male. Female also has all the potential and empowering women will help to use her full capability and mitigate the economic dependency of women.

5. Self-Confidence

Due to prolonged suppression, Indian women, an especially uneducated and unemployed woman hasn't had the self-confidence. Women need self confidence to fight against all the atrocities against her and to live self esteemed life. Hence, boosting the morale and self confidence of the women, is the key to eliminate the inferior complex of her.

6. Decision Making

Even in the family as well as in the society the decision making power of women is denied. Mostly males make the importance decision in the family and in the society. This makes women as voice less and destroys herself confidence and she feels less important in the family as well as in the society. So, to end gender discrimination women must empower with decision making power.

Political and Legal Reforms



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Since its independence, India has made significant strides in addressing gender inequalities, especially in the areas of political participation, education, and legal rights. Policies and legal reforms to address gender inequalities have been pursued by the government of India. For instance, the Constitution of India contains a clause guaranteeing the right of equality and freedom from sexual discrimination. India is also signatory to the Convention for the Elimination of All Forms of Discrimination against Women; however, the government maintains some reservations about interfering in the personal affairs of any community without the community's initiative and consent. A listing of specific reforms is presented below.

State Initiatives to Reduce Gender Discrimination

Different states and union territories of India, in cooperation with the central government, have initiated a number of region-specific programs targeted at women to help reduce gender inequality over the 1989-2013 period. Some of these programs include Swarnajayanti Gram Swarozgar Yojana, Sampoorna Gramin Rozgar Yojana, Awareness Generation Projects for Rural and Poor women, Condensed Course of Education for Adult Women, Kishori Shakti Yojana, Swayamsidha Mahila Mandal Programme, Rashtriya Mahila Kosh, Support to Training and Employment Programme for Women, Swawalamban Programme, Swashakti Project, Swayamsidha Scheme, Mahila Samakhyas Programme, Integrated Child Development Services, Balika Samriddhi Yojana, National Programme of Nutritional Support to Primary Education (to encourage rural girls to attend primary school daily), National Programme for Education of Girls at Elementary Level, Sarva Shiksha Abhiyan, Ladli Laxmi Yojana, Delhi Ladli Scheme and others.

Bombay High Court, recently in March 2016 has ruled out a judgement that "Married daughters are also obligated to take care of their parents". This is a very bold step towards breaking the traditional norms of the defined roles in the society. Also this shall also motivate women to be more independent not only for themselves but also for their parents.

Conclusion

A nation or society, without the participation of women cannot achieve development. If we eliminate gender discrimination, women will deliver all the potentials, skills, knowledge to develop the family, the nation and the whole world. If we don't respect women, things are going to get ugly. Hence it is required 'public awareness, mass education, financial and social independence to the women and the will to safeguard and fight for their rights' among the Indian women. But above all, Indian women need to remove a deep-rooted malady that has sapped the very roots of our so-called civilized society - disparity between a male and female child.

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PROTECTION OF HUMAN RIGHTS OF OLDER PERSONS: AN ANALYSIS

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“we owe it to older persons and societies at large to fight ageism and enhance the dignity & human rights of older persons everywhere in the world” – Ban Ki-Moon, former UN Secretary General.

Introduction

Human rights is a basic right to a Human being who born in this world. It is an automatic and implied right of a human being who is born and growing in this world. Globally the violations of human rights are against Women, Child, Prisoners and War Criminals. Basically everyone forgets that whoever wishes to live in this world will have to face the older age. The old age is natural process and it is compulsory to all human being if he/she hasn't at younger age. The forty years is old age of youth and fifty years of age is youth of older person. There are 901 million older persons are living in this world as per United Nations Report. The same will grow nearing of 1.4 billion in 2030. As per the Report the older person's numbers will increase upto 2.1 billion.¹ Emotional, Social, Financial, Medical and Legal Security Structure is getting diluted and it leads to continuous denial of their human rights. Older men and women have the same rights as anyone else. Our human rights do not change as we grow older. However, there are no visible human rights for older persons under International Law today. In absence of family support and care, sense of security is missing among older persons, which is making their life painful and insecure day by day. In highly industrialized as well as commercialized areas of the country, most of the older persons find themselves isolated and marginalized as their old age related needs remain unattended at all levels. Despite growing share in population they are not getting due attention in the society. Generally, in India because of illiteracy and lack of awareness older persons are not conscious of their human rights. Due to sentimental and affections, comparatively high physical as well as psychological vulnerability their cries for help remain within four-walls. Ever increasing numbers of distress calls from older person clearly indicate disturbing condition of Human rights of older persons in India.

INTERNATIONAL LAW, HUMAN RIGHTS LAW & OLDER PERSONS

International Law is that contracted by states with other states and as such, it primarily governs their behavior towards one another. It stems from two sources: Positive International Law which is encoded in treaties, conventions and the like; and customary law, which comprises norms so widely accepted that they are considered binding on all states. Human rights Law forms a special subset of international law in that it governs not just state to state but also state to citizen behavior. Through their adoption of various human rights instruments, states undertake a threefold commitment: to respect, to protect and to fulfill the rights enshrined in the relevant text. The Obligation to respect demands that states refrain from interfering with or curtailing the enjoyment of human rights; the obligation to protect requires states to protect individuals and groups against human rights abuses; and the obligation to fulfill compels states to take positive action to facilitate the enjoyment of basic human rights. There is an extensive network of bodies at an international level which scrutinize the observance of human rights law and comment more broadly on its development.

¹World Population of Ageing 2015, Report of United Nations Economic and Social Affairs, United Nations Publication, 2015



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Human rights have been encoded in a multitude of instruments at the international level, but a natural starting point for investigation is the three General texts: The Universal Declaration of Human Rights, 1948 (UDHR), The International Covenant on Civil and Political Rights, 1966 (ICCPR), and the International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR). Non-Discrimination is a core tenet that underpins the whole human rights canon. The UDHR states "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or status".² The same was observed in ICCPR and ICESCR also. Discrimination on the basis of age is, however, squarely recognized as a reality in various soft law instruments, most obviously the UN principles for Older Persons (1991) and the Madrid International Plan of Action on Ageing (2002). Human rights law encodes a number of what could be termed livelihood rights which have clear relevance for older people. "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment".³ About dignified life stated that "Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity".⁴ The provision of articles 6 and 7 of ICESCR again considers the application of these rights for older persons. It recognizes that older people often encounter problems finding and keeping jobs and "Stresses the need for measures to prevent discrimination on grounds of age in employment and occupation". It also emphasizes the special importance of safe conditions for older people, and the need to harness their skills and experience effectively. The said provisions capture, to some extent, the concerns of those in both developed and developing countries. In developed states, the key policy question for older persons with respect to work is whether mandatory retirement at certain age is discriminatory when it effectively excludes many who wish to work beyond that point. For those in developing countries however, especially older people who work in rural areas or in the informal sector, work remains a necessity far into old age in the absence of other forms of income. For these older people, while conditions of work and fair remuneration are germane, other concerns such as lack of access to credit and training are also pertinent.

Finally, consideration of livelihood rights perhaps needs to be tempered by the sentiment expressed in Principle 18 of the United Nations principle for older persons. The same was adopted by General Assembly resolution 46/91 on 16th December, 1991. The world sovereign governments have encouraged adopting the following policies in their national program wherever possible. The main principle is Independence to get the Human rights. The Older persons should have access to adequate food, water, shelter, clothing and health care through the provision of income, family and community support and self-help. Older persons should have the opportunity to work or to have access to other income-generating opportunities. Older persons should be able to participate in determining when and at what pace withdrawal from the labour force takes place. Older persons should have access to appropriate educational and training programmes. Older persons should be able to live in environments that are safe and adaptable to personal preferences and changing capacities. Older persons should be able to reside at home for as long as possible. The second principle is participation in the all aspects of the social environment. Older persons should remain integrated in society, participate actively in the formulation and implementation of policies that directly affect their well-being and share their knowledge and skills with younger generations. Older persons should be able to seek and develop opportunities for service to the community and to serve as volunteers in positions appropriate to their interests and capabilities. Older persons should be able to form movements or

²Article 2 of Universal Declaration of Human rights, 1948

³Article 23(1) Universal Declaration of Human rights, 1948

⁴Article 23(4) Universal Declaration of Human rights, 1948



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associations of older persons. The third principle is Care ie., health care, personal care etc., Older persons should benefit from family and community care and protection in accordance with each society's system of cultural values. Older persons should have access to health care to help them to maintain or regain the optimum level of physical, mental and emotional well-being and to prevent or delay the onset of illness. Older persons should have access to social and legal services to enhance their autonomy, protection and care. Older persons should be able to utilize appropriate levels of institutional care providing protection, rehabilitation and social and mental stimulation in a humane and secure environment. Older persons should be able to enjoy human rights and fundamental freedoms when residing in any shelter, care or treatment facility, including full respect for their dignity, beliefs, needs and privacy and for the right to make decisions about their care and the quality of their lives. The fourth principle is Self-fulfilment to their needs. Older persons should be able to pursue opportunities for the full development of their potential. The final one is dignified life. Older persons should be able to live in dignity and security and be free of exploitation and physical or mental abuse. Older persons should be treated fairly regardless of age, gender, racial or ethnic background, disability or other status, and be valued independently of their economic contribution.⁵ The key shortcoming of human rights law in protecting older persons from violence and interference, however, is that it first and foremost governs the behaviour of the state entities. Thus, what it fails to capture are the actions of both private sector bodies and private individuals. However, there is some place for manoeuvre. It is widely accepted that implicit in a state's duty to protect the rights to which it signs up is a commitment to enact domestic laws that impede private sectors from denying the rights of others. Finally, there is a burgeoning norm in the human rights world that the actions of the private sector do fall within its purview. There is no single procedure for the elaboration of new human rights standards at an international level; new norms emerge in international law for numerous reasons and through various channels. They are the result of a complex interplay of political, legal and moral debates; involve numerous state and non-state actors; and can be initiated, and indeed blocked, by various bodies. The present scenario provided an overview of how the experiences of older persons potentially articulate with international law. Given its audience, it has erred on the side of providing more background information from the human rights world than an in-depth analysis of issues faced by older persons.

International Efforts for the Older Persons

In the year 1948, the first debate regarding older persons was initiated by the Argentina in United Nations. The Malta the second country raised the same issue in the year 1969. In the year 1971, General Assembly asked the United Nations General Secretary to draft the guidelines for the older persons in National and International plans. The world conference on older persons was held in Vienna, between July 26 to August 6, 1982. In that conference the International Action Plan was enacted to achieve the goal of intensify the capacity and enforceability of each State to deal effectively with the elderly in their respective country. Further, the United Nations announced the year 1999 as year of the Older Persons. The UN General Assembly announced 1st day of October as Day of International older persons.

Constitutional Protection

The Indian Constitution apart from the Fundamental Rights, Art 41 provides that "The state shall within its economic capacity make effective provisions for securing the right and public assistance in case of Old age, sickness and disablement, and in other cases of undeserved want." Even though the protection and welfare of older citizens is in Directive principles of State Policy the effectives were taken by various schemes by the Central and State Governments.

⁵<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OlderPersons.aspx>, Last visited on 14/09/2017



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Under Personal Laws in India

It is not after the Constitution of India began to operate, but the personal laws of India also expounds about the elderly person and the responsibility to take care. The obligation of protecting old age people is also deeply embedded in the various religions prevailing in India.

Hindu Law: As per the Hindus, the obligation of sons to maintain their aged parents, who were not able to maintain themselves out of their own earning and property. The statutory provision for Maintenance of parents under Hindu Personal law is contained in Sec 20 of the Hindu Adoption and Maintenance Act 1956. This is the first statute in India, which imposes an obligation on the Children to maintain their parents.

Muslim Law: The children are bound to maintain their poor parents, although the later may be able to earn something for themselves. A son in strained circumstances is bound to maintain his mother is compulsory. The *Hanafi* provides, the obligation to maintenance not only rests on children but also on grandchildren who have the ability to earn and earnings can only fulfil the basic needs for their livelihood. As like the sons, daughters have the obligation to maintain their parents.

Criminal Procedure Code:

It is one of the successful legislation, that creates obligations to a person in giving protection by the way of paying maintenance of parents. In 1973, the Criminal Procedure code was enacted. As per the Sec.125 of Cr.P.C the parent can seek remedy from their children who neglected them.

The Maintenance and Welfare of Parents and Senior Citizens Act, 2007

Growing old being a work of nature happens to all human being. It leads to decline in the functional capacity due to physiological transformation. As there is a shattering of joint family system has influenced the Indian society, the old and elderly populace face shunning situation in the current civilized society. It's a remarkable initiative that Government of India enacted the 2007 Act to safeguard and protect the rights of parents and senior citizens. Section 4 of the Act defines a senior citizen which includes parents who is unable to maintain himself from his own earning or property owned by him can claim maintenance. This legislation proves to be an operative and effectual in nature.

CONCLUSION:

The recent legislative measures and initiatives like various schemes, policies and concessions made by the government to protect and uplift the older persons are appreciable. Ironically, crimes against the weaker populace in the society is increasing. The old age people who are homeless, alone at home are attacked, where the government exclusively have to address this additional challenge. The maltreatment of elders prevails almost all the world nations. Maltreatment of elders is a pervasive problem that effects the society. As stated in the WHO recent report between 4-6% of elderly people have experienced some form of maltreatment. It can lead to serious physical injuries and long-term psychological consequences. It also observed that older people may be vulnerable to elder maltreatment in the home. Additionally, if these elders are in ill health and suffer from psychological issues they have to face abuse both at home and society. The experience and knowledge earned by old age people in their life are valuable. The society uses this knowledge for its development. For a mere factor of their old age and inability to perform they are being isolated. It is undeniable fact that the so called civilized society's imprudent attitude is the reason for the devastating situation of old age people.

The state and central government should take necessary initiatives to safeguard and protect the Human rights of the Parents and Senior Citizens. Still in this 21st century nearly 20% of Senior Citizens and Parents are known about their legal rights regarding their Human rights. But the other 80% of the Senior Citizens and Parents are not known about their rights. So the State and Central Governments will take necessary steps to educate those people who don't know their human rights.



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GENDER BASED VIOLENCE AND DISCRIMINATION SPASMOTIC ACTIVITY OF MALE GENDER IN THE SELECT NOVELS OF ALICE WALKER

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Introduction

John W. Blassingame's *The Slave Community* supports Michael Wallace's argument that:

"He observes that the sexual mores of traditional African societies were quite different from those of Europe and antebellum America. He notes that although some African societies required premarital virginity, many accepted and others institutionalized premarital sex as part of the courtship process. In fact, some African societies include the defloration of young girls as part of their puberty rites."¹

This Article deals with the spasmodic problems of men over the women and also discusses treatments of familial cold heartedness effect by racism, sexism, and economic deprivation in the male dominated society. The novel delves into a 60-year period of male circular violence which establishes a form of traumatic and quavering condition in family members. The men in the family are so dispirited and unable to control their emotions and frustrations and that they turn on family members. Alice Walker in her novels *The Third Life of Grange Copeland*, *Meridian* and *The Colour Purple* deals with the difficulty of pain, hurting; predominate, in the male characters. Through this article, I explore the behaviour of men in the society which cause discouragement, angry, vexation whereas the men in the select novels of Alice Walker behaved cruelly, tormenting women, damaged souls, and oppressed women in almost all the field.²

In her Interview with Sharon Wilson, Walker says:

"Well, I think so. In Native American culture, when someone is hurt very deeply, either physically or, the way you tell they are recovering is this: if it's a woman and she makes baskets, she will start making a basket even more beautiful, more intricate than before, because out of her suffering, she has managed to instil more into it. By the time she finishes the basket, she is well"

The men in the select novels of Walker behaved in a cruel way which makes women worried for a long period of time. The men are crushed and burdened by the power and authority of whites. They have long been oppressed by a pitiless dictator which results in the condemned attempts made by the women in their family. The women are the victims under the hands of men. They are the objects of plundering.

Walker in "Afterword" shares the condition of her family: "In my immediate family too there was violence. Its roots seemed always to be embedded in my father's to dominate my mother and their children and in her resistance (and ours), verbal and physical, to any such domination." (p.251) She continues with the domination of black people and their actual acts of violence:

Beatings, castrations, lynching, arrests or imprisonments were daily events, as they are now in a similarly doomed racist society in South Africa. It is almost bitterly comic today, as we see our exploited, poisoned, depleted planet wobbling underneath our collective weight, to think that white supremacists have actually thought, and in places still think, that they can acquire peace and security for themselves in the world by dispossessing people of colour. (p.251)

¹ Venetria.K.Patton *Women in Chains- The Legacy of slavery in black women's fiction* , p.21.

²Alice Walker: "*Critical Perspectives - past and present*",p.319.



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The men in Africa feel powerless and deceived and they cannot escape from their slavery they undergo under whites. They are forced to labour for their existence and quests for profits. This article focuses spasmodic activities of men who have corrosive and abusive behaviour. The male characters Grange and his son Brownfield are stacked in their firmness and motive to maltreat their respective wives Margaret and Mem. Alphonso and Albert behaved unkindly towards their family ladies. Alphonso though a stepfather of Celie and Nettie his sexual harassment towards them is hard to digest. He is pestering her shows no compassion on her. Albert, a husband of Celie treated her as a slave and has no concern for her emotions. Trauman neither satisfies his lover Meridian nor his wife Lynne. Thus the women in Walker's novels are oppressed by men and become the victims of suffering and pain.

The Copeland men The Third Life of Grange Copeland implore on the complete submissive of their wives because white men dominate them, they have no release of untold emotions. If the wives dare to resist the men's domination or oppose them, they finally become the victims of physical, mental, verbal and emotional abuse. The Copeland men believe that their identity as men roots from how much they threaten and torture their wives, demanding that their wives should be silent when husbands talk and they should obey when men orders. In Walker's Celebration of Self Thadious M.Davis remarks: "Walker creates a multiplicity of permanently maimed and damaged souls within the family structure who feel no pressure for responsible living or assume exemption from the demands of responsibility." The Copeland men feel that they can dominate their wives as they were under the slavery of white men, because the white men treat them as slaves and laboured them much. In the white men presence, they respond to his queries with "yassur", and they feel helpless and entrapped.

Robert Coles observes that:

"I suppose it can be said that, "The Third Life of Grange Copeland" is concerned with the directions a suffering people can take. His first life ends in flight, and his wandering son takes flight, too becoming in time a ruined and thus ruinous man, bent on undermining everyone who feels worthwhile and has a sense of pride and dignity. For a while, the lives of father and son converge on the establishment run by Josie, a sensual, canny, generous, possessive madam whose cafe and "rooms" full of women feed off the frustrations men like Grange and Brownfield try subdue."³

The patriarch in this novel, Grange Copeland, travels three roads that represent three lives of three lifetimes: the road of economic suffering as a sharecropper in the South, the road of urban degradation in the North, and the road of self-respect and improved personal development in his return to the South.⁴

The Study focuses on the monotony of Grange's sharecropping life and his indulgences of alcohol and brutality. Grange's violent behaviour toward his wife Margaret, her child, and their son Brownfield becomes the structure of Copeland life. Brownfield rightly inherited Grange's methods and manners, as he becomes both sharecropper and wife abuser. Thus Grange's absolute impotence is conveyed through his physical appearance:

"He was a tall, thin, brooding man, slightly stooped from ploughing, with skin the deep glossy brown of pecans. He was thirty-five but seemed much older. His face and eyes had a dispassionate vacancy and sadness, as if a great fire had been extinguished within him and was just recently missed. He seemed devoid of any emotion, while Brownfield watched him, except that of bewilderment. A bewilderment so complete he did into really appear to know what he saw, although

³ Alice Walker, "Critical perspectives - past and present", p.7.

⁴ Alice Walker, "A Critical companion", Gerri Bates, p.53.



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his hand continued to gesture, more or less aimlessly, and his lips moved, shaping unintelligible words.”⁵

The description of Grange Copeland makes up the broad picture of exploitation and dehumanize made them to torment their wives. They also experience rage at the conditions under which they live. Grange and Brownfield blasted whites for the false in their lives, refusing to be responsible for their actions. They are hopeful, passionate, painful and idyllic in their activities.

Grange is uncomfortable with his masculinity, feeling that he is less than a man. This kind of unmanliness fails to deal maturely with the situation in which he finds himself, seeks solace in alcohol. Drinking and beating become household task of Copemen. Hunger and helplessness leads him to criminal behaviour for survival of self. Grange has the most redemptive qualities of the men in the novel. He is the main victim of the white race domination. He is dehumanized by the social surroundings.

Brownfield, a shadow of his father takes effort to fit into a social environment. Though not met with a complete emotional attachment, he falls in love with Mem whom he marries subsequently. He wins the heart of Josie's affection and confidence only to take advantage of her. Brownfield offers Mem hope and escape from the South. He suffers deeply into the agony of depression, searching for the meaning of life and manhood. His feelings are identical to those of his father. “Once the man touched him on the hand of his cane, not hard, and said, with a smell of mint on his breath, “You're Grange Copeland's boy, ain't you?” And Brownfield had answered, “Uh huh,” chewing on his lip and recoiling from the enormous pile of gray-black hair that lay matted on the man's upper chest and throat.” Brownfield scanned his father's face and follows his attitude. He expresses his emotion by showing dissatisfaction with his wife and often beats her like his father.

The narrator brings up the same strategy of physical description to address Brownfield's plight:

“He had once been a handsome man, slender and tall with narrow beautiful hands. From trying to see in kerosene lamplight his once clear eyes were now red-veined and yellow with a permanent squint. From running after white folks' cows, he never tended much to his own, when he had any; he'd developed severe athlete's foot that caused him to limp when the weather was hot or wet. From working in fields and with cows in all kinds of weather he developed a serious bronchitis aggravated by rashes and allergies.”⁶

Robert Coles in The New Yorker rightly comments that:

“In The Third Life of Grange Copeland, the centuries of black life in America are virtually engraved on one's consciousness. Equally vivid is Grange Copeland, who is more than a representative of Georgia's black field hands, more than someone scared by what has been called the man of oppression.”⁷

Truman in the Meridian is expressed in his fixation on the women in his life. Meridian and Lynne represent two extremes, and Truman is unable to commit to either. He has never felt that he exceedingly hurt Meridian. His interest in the movement and he struggles his relationship to Black Culture. Truman, after Camara died: “He could not stop himself from thinking she looked very much like a pig. Her eyes seemed tinier than he'd ever seen them and her white ears needed only to grow longer and flop over a bit.” Truman's inner conflicts kill him. His mind is wavering between past and the present. He fails to satisfy neither Meridian nor Lynne. Trauman struggles with his relationship to black culture. He conflicts with the female gender and dumped Meridian because “he had been raised to expect and demand a virgin” (p.23).

⁵Alice Walker “The Third Life of Grange Copeland”, p.13.

⁶Alice Walker “The Third Life of Grange Copeland”, p.83.

⁷Alice Walker, “Critical perspectives - past and present”, p.7.



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Alphonso in *The Color Purple* rapes and abuses her daughter Celie and he remains an abuser until his death. He starts misusing Nettie too. Though he is a stepfather to both girls, his torture to Celie is unbearable. He regards women as sex objects and is incapable of feeling remorse for the way in which he treats his stepdaughters or his wives. It is difficult to find such a cruel character where no mercy on his heart.

He never had a kind word to say to me. Just say You gonna do what your mammy wouldn't. First he put his thing up against my hip and sort of wiggles it around. Then he grab hold my titties. Then he push his thing inside my pussy. When that hurt, I cry. He start to choke me, saying You better shut up and git used to it.

But I don't never git used to it. And now I feels sick every time I be the one to cook. My mama she fuss at me an look at me. She happy, cause he good to her now. But too sick to last long.⁸

Albert is self-centred, illogical and brutal. He hides the letters of Nettie writes to Celie to harm both Nettie and Celie. His sexual approach with Celie is callous and insensitive. He cares her only for her physical pleasure. He maintains two wives at a time, Shug and Celie. He treats Celie in very barbarous way sometimes beats her. His constant beatings use women as sexual objects and labourers, criticising the physical appearance of Celie shows his dominance.

He beat me when you not here, I say.

Who do, she say, Albert?

Mr _____, I say.

I can't believe it, she says. She sits down on the bench next to me real hard, like her drop.

What he beat you for? She sat.

For being me and not you.

Oh, Miss Celie, she say, and put her arms around me.

Us sit like that for maybe half an hour. Then she kiss me on the fleshy part of my shoulder and stand up.

I won't leave, she say, until I know Albert won't even think about beating you.⁹

Conclusion

The Men struggle to establish their identities. They have false representation of masculine gender. They cannot show authority over the community, women or wives rather they show their frustration and disappointment. The Copeland men are victims of the racism and they have restricted freedom. Their violent behaviour neglects and abandons them.

Thus the men in the Walker's novels become temper, frustrated, oppressed in their activities and exasperate their wives. The reflection of their problems on their wives becomes continuous process. In general, men deliberately inflict physical or psychological pain towards women.

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⁸Alice Walker "The Color purple", p.3.

⁹Alice Walker "The Color purple", pp.71-72.



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JUDICIARY AND THE PROTECTION OF WOMEN LABOUR IN INDIA

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Introduction

Working women form an integral part of the labour force in our country. Among labourers, the conditions of working women are particularly vulnerable. To protect this vulnerable group, many legislative provisions have been provided in almost all labour statutes which address problems of women labourers in their employment situation. Early measures for their protection were simple in character and were designed only to regulate the hours of work and employment. Consequently, such laws were passed which not only regulated the hours of work but also contained provisions of health, safety and welfare of women workers and guarantees equality before law and equal treatment to women workers. Most of these laws have been inspired by the Conventions and Recommendations adopted by the International Labour Organisation.

Besides, measures adopted by the Government for the implementation of these ILO Conventions, various other provisions have been made in the labour legislations for the protection and welfare of women workers. Similarly Judiciary plays a proactive role in the implementation and enforcement of these hard won rights of the women workers. Our Indian Judiciary through various landmark judgments has upheld the spirit of gender justice and gender equality of women especially the women labourers. This paper is an attempt to analyse the role played by our judiciary in protecting and safeguarding the rights of women labourers.

Constitutional Safeguards for Women Labour

Indian constitution provides for equality of opportunity to all, which includes, inter alia, equality of opportunity for both men and women. Article 16 specifically provides for equality of opportunity in matters of public employment irrespective of religion, race, caste, creed, sex, place of birth. The broader objective was to bring about democratization of employment where everybody contributes and is benefited by the economic development of the nation. In India, various legal measures have been taken to promote and protect women employment

Constitution under Article 14 provides for equality before law and equal protection of laws. However, Article 14, which per se, prohibits discrimination between and among equals, permits class legislation through classification to give differential treatment. Classification must pass the test of intelligible differentia and nexus with the objective to be achieved. In that sense, men and women can be reasonably classified and classed separately and separate and different provisions can be made for each class.

To give more strength to equality clause, constitution specifically forbids state under Article 15(1) from discriminating in all state actions, on the grounds only of religion, race, caste, sex or place of birth. There is prohibition against discrimination but not against preferential treatment. Constitution of India specifically permits the state to make special provisions for women and children under Article 15(3). The purpose is to improve and strengthen the status of women by affording them the opportunities to participate in the socio-economic activities of the state.¹ Besides Article 14 and 15(1), 38, 39 and 40 lay down the public policy and constitutional philosophy to accord social and economic democracy to women as assured in the preamble of the constitution.

Judiciary and the Protection of Women Labour

¹Government of A.P. v. P.B. Vijayakumar, (1995) SCC 520.



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Sexual Harassment at Work Place

A Three judge bench of the Supreme Court in *Vishaka v. Union of India*² made a significant contribution in evolving the code against sexual harassment. While emphasizing the need to have guidelines the Supreme Court observed: "The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum."

The aforesaid guidelines and norms must be strictly observed at all work places for the preservation and enforcement of the right to gender equality of the working women. These directions according to the court would be binding and enforceable in law until suitable legislation is enacted to occupy the field.

Right to Equality

In the context of equality between men and women workers the Supreme Court in the case of *Air India v. Nargesh Mirza*³ observed that Article 14 of the Constitution of India forbids hostile discrimination and not reasonable classification and the Article 14 of the Constitution would be involved where equals are treated differently without reasonable basis. In case the class or categories of service are different in purpose and spirit, Article 14 would be attracted. Article 15 of the Constitution of India provides that the State would not discriminate on the basis of sex but if the welfare state frames any special scheme which might be aimed at ensuring welfare the women the same would be valid and in accordance with Article 15 of the Constitution of India.

In this context in the case of *Smt. Anjili Rai v. State of West Bengal*⁴, it was observed by the Calcutta High Court that the discrimination is forbidden Article 15 of the Constitution would be only that which might be solely on the ground of a person belonging to a particular race or caste or a particular religion or place of birth or that of a sex of a person but it would be possible to hold reasonable discrimination to be valid one under clause (3) of Article as it would be obviously be an exception to clauses (1) and (2) of Article 15.

The Purpose of clause (3) of Article 15 was to authorize what was otherwise forbidden so its meaning could be presumed that notwithstanding clauses (1) and (2) of Article 15 which prohibited discrimination on the ground of sex, the State might discriminate against male by making reasonable provisions in favour of female. Therefore the meaning of Article 15(3) of the Constitution would be that a special provision in favour of women would be valid even if it implied discrimination against women. In furtherance of the object of preventing discrimination against women and the children it has been provided in Article 15(1) that equal opportunity shall be provided to all citizens and Article 16(2) provides that the women shall not be discriminated against or declared to be ineligible for any employment or on the ground of sex by the State.

Equal Pay for Equal Work

Judiciary has played an active role in enforcing and strengthening the constitutional goal of 'equal pay for equal work' to both men and women. A milestone in the area of implementation of equal pay was reached with the pronouncement of the Supreme Court in *People's Union for Democratic Rights v. Union of India*⁵. The Supreme Court ruled that equal pay for equal work is based on principle of equality embodied in article 14 of the Constitution which finds expression in the provision of the Equal Remuneration Act, 1976. In other words non observance of the Act would be

²AIR 1997 SC 3011.

³1982 SCR (1) 438.

⁴AIR 1952 Cal 822.

⁵1983 SCR (1) 456.



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violative of the principles of equality before the law enshrined in Article 14. In *Randhir Singh v. Union of India*⁶, construing articles 14 and 16 in the light of the preamble and Article 39(d), the Supreme Court ruled that the principle of 'equal pay for equal work' is deducible from Articles 14 and 16 and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification.

Minimum Wages

The Minimum Wages Act, 1948 empowers the appropriate government to fix minimum rates of wages in certain employments. The Act also imposes an obligation on the employer to pay not less than the statutory wages. Further sections 3 and 27 confer extensive power of choosing employments for the implementation of the Act. But these objectives cannot override the express provisions of the Constitution. The Supreme Court, in a series of decisions, has examined the provisions of the Act in the light of the constitutional provisions.

The earliest case in this regard was *Bejay Cotton Mills Ltd. v. State of Ajmer*⁷. The principal issue before the Supreme Court in this case was whether the provisions of the Minimum Wages Act, 1948, providing for fixation of minimum rates and imposing penalty for nonpayment, violates the rights of the employer and the employed under Article 19(1)(g) of the Constitution. It was observed by the Supreme Court: "It can scarce be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to general interest of the public." This is one of the Directive Principles of State Policy, embodied in Article 43 of our Constitution. It is well known that in 1928 there was Minimum Wage Fixation Machinery Convention held at Geneva and the resolutions passed in that convention were embodied under International Labour Code.

The Minimum Wages Act is said to have been passed with a view to giving effect to these resolutions vide *South India Estate Labour Relations Organisation v. State of Madras*⁸. If labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable.

Maternity Benefit

The Maternity Benefit Act, 1961 was enacted to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits. The Maternity Benefit Act is intended to achieve the object of doing social justice to women workers. Therefore in interpreting the provisions of this Act beneficent rule of construction, which would enable the woman worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output, has to be adopted by the Court. In *B. Shah v. Labour Court, Coimbatore*⁹, the question was whether Sunday is to be counted in calculating the amount of maternity benefit. It was held that in the context of sub-sections (1) and (3) of Section 5, the term week has to be taken to signify a cycle of seven days including Sundays. The Legislature intended that computations of maternity benefit are to be made for the entire period of the woman workers' actual absence i.e. for all the days, including Sundays. Again the word 'period' in Section 5(1) seems to emphasize the continuous running of time and reoccurrence of the cycle of seven days. This computation ensures that the woman worker gets for the said period not only the amount equaling 100 per cent of the wages which she was previously earning in terms of section 3(n) of the Act but also the benefit of the wages for all the Sundays falling within the aforesaid periods.

⁶(1978) 1 SCC 248.

⁷1955 SCR (1) 752.

⁸AIR 1955 Mad 45.

⁹1977 (4) SCC 384.



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Protection of Women in Factories

The Factories Act, 1948 is a welfare legislation enacted with an intention to regulate working conditions in the factories and to provide health, safety and welfare measures. Besides, the Act envisages to regulate the working hours leave holidays, overtimes, employment of children, women and young persons etc.¹⁰ The Act was drastically amended in 1987 whereby safeguards against use and handling of hazardous Substances and procedures for setting up hazardous industries were laid down. It also prohibits the employment of women in dangerous occupations.

Further the Factories Act, 1948 prohibit the employment of women during night hours. It is under special circumstances and in certain industries that this restriction may be relaxed. According to Section 66(1)(b) of the Factories Act 1948, no woman shall be required or allowed to work in any factory between the hours of 6 a.m. and 7 p.m. However, the State Government may by notification in the official gazette, in respect of any factory or group or class or description of factories, vary the limits pertaining to night duties but no such variation shall authorise the employment of any woman between the hours of 10 p.m. and 5 p.m.¹¹ Section 66(2) further empowers the State Government to make rules providing for exemption from the restriction set out in Sub-Section (1) of the Section 66 concerning restrictions on employment of women to such an extent and Subject to such conditions as it may prescribe of women working in fish curing or fish canning factories, where the employment of women beyond the hours specified in the said restrictions is necessary to prevent damage to or deterioration in any raw material. However, such rules made by the Government shall remain in force for not more than three years at a time.

In *Triveni K.S. and Others v. Union of India and others*,¹² the Constitutionality of Section 66 (1) (b) was challenged being discriminatory on the basis of sex. The High Court held that women should not be employed during night for their own safety and welfare was a philosophy of a bygone age out of tune with modern claims of equality, especially between sexes. With regard to exception given to fish currying and canning industry, it was observed that it looked an absurd argument that women would be safe in such industries but not safe in the textile industry. Consequently Section 66(1)(b) of the Act was struck down as unconstitutional by the High Court and declared that the same safeguard as provided women in fish industry should be given to women workers in others industries during night time.

However, the Division Bench of Kerala High Court in *Leela v. State of Kerala*¹³ took a contrary view and held that the contention of the petitioners that the said Section violates Articles 14, 15 and 16 of Constitution as it discriminates against them on grounds only of sex as not tenable and as such said Section providing special protection to women did not suffer from the vice of discrimination. However, the Union Government has decided to amend the provision to provide for women working in late night shift in I.T. industries, call centres etc. But flexible work timings for women should not be allowed unless adequate safeguards in factory as regards to occupational safety and health, equal opportunity for women workers, adequate protection for dignity, honour, and safety and their transportation from the factory premises to the nearest point of their residence are made.

Conclusion

From the foregoing discussion, it is clear that to provide security against various risks, peculiar to their nature, women workers have been given various rights, benefits, concessions, protection and safeguard under different labour legislations. The main objective for enactment of labour laws was to prohibit the violation of rights of women workers and to provide them security

¹⁰Garg, Ajay "Labour Laws one should know", (2007), Nabhi Publication 22ndEdn., New Delhi, p. 120.

¹¹ Proviso to Section 66(1)(b) of the Factories Act, 1948.

¹²2002 Lab IC 1714 (AP).

¹³2004 Lab LR 664.



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and protection. But despite this all, much remains to be achieved. Women workers are still made to suffer discrimination in social and economic spheres and continue to be the most exploited lot. Most of the labour legislations apply to the organised sector only, leaving unorganised sector, where a majority of the women work, unattended.

Even in organised sector, where these legislations apply, the statutory provisions are not strictly complied with. In many cases it has been found that protective measures such as crèches, maternity benefits, separate toilet and washing facilities etc. are neither provided nor properly maintained. The Penal provisions of these enactments are not deterrent enough to prevent the employer from violating them. The machinery for inspection and enforcement is inadequate and ineffective. It is true that laws are made for the welfare and benefit of people but laws and Constitution do not by themselves solve all the problems. It is the sincere and strict implementation which matters.

In this backdrop an analysis of the various cases reveal that the judiciary has done a commendable job for the protection of the rights of women labour. These judicial pronouncements reiterate the constitutional promise to prevent the discrimination on the ground of sex, against women in the matter of employment and for the matters connected therewith and incidental thereto.

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GENDER JUSTICE AND BACKWARD CASTE - TRIBAL WOMEN RIGHTS

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INTRODUCTION:

The concept of human rights aims at protection of rights like right to life, liberty and property. These rights are attributed to human being irrespective of class, caste, gender, color and religion. The universal declaration of human rights was unanimously adopted by the UN General Assembly on Dec. 10th, 1948. The preamble of Indian constitution adequately empowers the central and state government to eliminate human rights violation in the country. Human rights of tribal women are violated extremely and in peculiar form. So, it is important to discuss the status of tribal women and various articles made for their upliftment.

In the last decade or so the empowerment of women has been recognized as a central issue in determining the situational reality of their status. The Government of India declared the year 2001 as 'Women's Empowerment Year' and a lot has been and is being done at national and international levels since then. Yet the question whether women in India have been empowered or not, remains unanswered. In spite of all the efforts, why do women, particularly the tribal women, continue to remain much more backward in comparison with their sisters in other classes? Tribes, widely known as Adivasis, are confined to economic and social backwardness and it is one of the important problems in the country. Adivasis in this country can be described as the poorest among the poor. They might have had a wonderful past but their present status is miserable. People living in forests and depending on forests for livelihood, are being uprooted along with jungles. On the one side, they are losing the basic support of life and on the other side they are not being brought into the mainstream of modern Indian development process. Poverty, lack of knowledge, sickness (ill health) and exploitation are a few of the complex problems that occupy the lives of tribal. They have little access to education, health and nutrition, opportunity to acquire skill and training, employment opportunities, easy credit, market technology and information. Though the status of Adivasis varies significantly according to their social ethnic backgrounds, but within this social group also, women face discrimination in many areas of life. Adivasi women are doubly excluded from the mainstream development process \pm as Adivasis and also as women. Hence, there is a need to empower tribal women and some efforts from outside are needed for that. Unless and until empowerment or assertive changes take place in tribal women, balanced development is not possible. We cannot achieve higher levels of development by excluding women, particularly tribal women, from the developmental policies and processes. In the present study the focus has been given on SHGs of tribal women in Tapi and their role in making them empowered.

A tribe should have the customary laws and its members might have to suffer in a law court because of these laws. A community to be a tribe must have all these attributes. Naik argues that for a community to be a tribe it should possess all the above mentioned characteristics, and a very high level of acculturation with outside society debars it from being a tribe. Thus the term usually denotes a social group bound together by kin and duty within every Indian tribe kinship operates as an associative, regulative and integrating principle. Members of an Indian tribe speak one common language, their own or/and that of their neighbors. Politically, Indian tribes are under the control of the state government, but within a tribe there may be a number of panchayats corresponding to the heterogeneity, racial and cultural, of the constituent population in a village or adjacent villages. There



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are other distinguishing features of Indian tribes. Thus there are their dormitory institutions; the absence of institutional schooling for boys and girls; distinctive customs regarding birth, marriage, and death; a moral code different from that of Hindus and Muslims; peculiarities of religious beliefs and rituals which distinguish tribesmen even from the low caste Hindus. The criteria followed by the Government for specification of a community as a Schedule Tribe are: a) Indication of primitive traits, b) Distinctive Culture, c) Geographical Isolation, d) Shyness of contact with the community at large and e) Backwardness.

The landmark judgment was handed out by the Himachal Pradesh High Court on June 23 this year that tribal women are entitled to inherit property in accordance with Hindu Succession Act, 1956.

Tribals or adivasis, as they are popularly known as a symbol of self-assertion, comprise of around 8.2 per cent of the national population. The tribals are concentrated mostly in the central belt of India and parts of the North-East. The status of women in the tribal societies is comparatively better than that of the women in general society apparently so. The sex ratio of the tribes in India during 1991 showed 971 females per 1000 males while it was 927 females among the general population. Mitra and Singh (Internet) write that discrimination against women, occupational differentiation, and emphasis on status and hierarchical social ordering that characterise the predominant Hindu culture are generally absent among the tribal groups. Bhasin also writes that though tribes too have son preference, they do not discriminate against girls by female infanticide or sex determination tests.

The status of tribal women can be judged mainly by the roles they play in society. Their roles are determined to a large extent through the system of descent. The families try to pass their property by the line of descent. The family surnames too are traced on the basis of the system of descent. In an unilineal system the descent is traced either through the male or female line. When the descent is traced through the mother's line, it is called a matrilinear system and when it is traced through the father's line, it is called a patrilinear system. Most of the tribes in India follow a patrilinear system. There are exceptional cases like the Khasi, Jaintia, Garo and Lalung of Meghalaya in the North-East who follow the matrilinear system. The Mappilas of Kerala too are a matrilineal community. There are very rare cases of bilineal descent.

The status of a person quite often depends on the system of authority he/she enjoys in the community. When the authority is held through the male line, it is called 'patriarchy' and when it is held through the female line, it is called 'matriarchy'. Quite frequently one mixes up 'descent' with 'authority'. Not surprisingly, the Khasis are often believed to follow matriarchy. But in reality though the property is inherited through the mother's line, the final authority of the household vests with the mother's brother.

POSITION OF WOMEN

The position of a woman to a large extent depends on the kind of family one is placed in. In a joint family system the eldest woman usually enjoys a prerogative in the decision-making process. The type of family differs to a large extent with the type of marriage prevalent in the community. The nuclear family formed through monogamy is the most common type of family prevalent in the tribal communities in India. The extended type of family is also quite a common norm wherein the daughters leave the natal home after marriage to distant places. The older sons too leave the parents after marriage to set up new homes in the near vicinity. It is common to find the youngest son residing with the parents even after marriage.

Some of the tribes in India enter into polygamy. When one man marries more than one wife, it is called polygamy. Polygamy can be of two types. When the wives are sisters, it is called sororal polygyny and when the wives are unrelated, it is called non-sororal polygyny. When one woman marries more than one husband, it is called polyandry. When the husbands are own brothers, the



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type of marriage is called fraternal polyandry. When the husbands are unrelated, the type of marriage is called non-fraternal polyandry. The Todas of Nilgiri or the Bhutias of Ladakh and Sikkim are polyandrous. It is quite often found that two or three wives marrying four or five brothers. This system is called polygamandry. This system is quite common among the Jaunsaris of Jaunsar Bawar in Uttarakhand. In such marriages the eldest woman usually wields greater respect and command. Among the Jaunsaris each family is usually found to have dwellings at different elevations along the hill ranges. The dwellings at the central village are called 'sadar'. The eldest wife usually resides there. While the younger wives have to toil hard between the farm houses located close to the valley or the ones at the higher reaches, divorce is quite common among the Jaunsaris and it is usually the younger wives who desert their husbands.

Since women in the tribal communities toil hard, they are considered to be assets. Not surprisingly, the practice of bride price during marriages is quite common among them. This is in sharp contrast to the general caste-Hindu population. Sometimes when the prospective groom is not in a position to pay the bride price, he has to render physical labour and service at the wife's house. At times he even stays back at the wife's house throughout his life to reside as a 'ghar jowai'. In recent years as the capitalist economy is setting in and women are being deprived of their traditional role, their economic value is decreasing and the practice of 'bride-price' is giving way to the system of dowry as witnessed in the general society.

Among the Jaunsaris, the new husbands have to pay the suit money or the amount paid as bride-price by the former husband to the girl during earlier marriage. This amount becomes quite large as interest is also added to it. In order to repay the 'suit' money, the wife is often sent away seasonally to the cities like Dehradun, Meerut, Sahranpur, Moradabad, Lucknow and Delhi to work as prostitutes. They virtually turn into 'bonded' labourers.

The status of the tribal women usually depends on the economic roles they play. The tribals in the past were usually forest dwellers and their livelihood to a great extent depended on the food-gathering economy. More than the men, the women walked long distances to fetch wood and fodder. Besides, they also collected fruits, roots and tubers, lac, gums and leaves for self-consumption and sale. The men also complemented them by collecting timber and logs. They climbed the trees to shake down the fruits that were gathered on the ground by women. As there has been large scale deforestation, women have to slog harder to retain the gathering economy. Chaudhary observes that in the tribal areas of Betul in Madhya Pradesh, collection and marketing of firewood is generally the domain of tribal women. They sell it at Sahpur and whatever income they have, they immediately spend it on meeting the basic requirements such as rice, pulse, edible oil, soap, detergent powder, tobacco, bidi and so on.

In many parts of the country, swidden cultivation or slash and burn cultivation or jhum cultivation, as it is called in the North-East, was in vogue. Boserup calls swidden cultivation as a women's enterprise since it is they who almost entirely managed the show. While the men mainly felled the trees and spread them around on the ground to dry before collectively kindling fire, it is the women who were engaged in broadcasting the seeds, weeding and harvesting. It is the women who preserved the seeds at home and took the decisions about the crops to be cultivated every season. The men mostly guarded the crops from wild animals and trapped wild-life games, big and small.

In recent years, due to the population explosion and in-migration, the jhum cultivation is gradually losing its viability. Besides, due to the capitalist policies of the state jhum cultivation is giving way to permanent terraced wet-rice cultivation. Multi-cropping practices too are getting lost and the emphasis on mono-cropping is being laid. Cash crops and horticulture are also being preferred. In the process women are losing their labour work and in many places of the North-East like Nagaland and Arunachal Pradesh, migrant male labourers are being employed. Apart from the hill areas, tribals have also in present days opted for settled cultivation in place of the



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forest-based economy. They are also preferring to raise cash crops and exotic high-breed crops. In the process the women are getting displaced from their work. In West Bengal, the Santhal women in groups migrate down or go for 'namal' down to the southern districts for weeding and transplanting after completing the cultivation work in their own dry areas.

For quite some time the tribes have been exposed to industries in central India. There have come many big and small dams and many development projects as well. The forests being depleted and very little poor quality land to cultivate on, the tribes are compelled to serve in the industrial sector to work as coolies. In many parts of Maharashtra, Madhya Pradesh, Gujarat and Rajasthan also the tribes are being forced to work in brick kilns and the building sector in cities. When visiting these places seasonally, tribal men and women are both exploited by the contractors and middlemen. The women suffer all the more as they get sexually abused. Besides, they are paid much less as compared to the men.

The tribal women in the North-East were famous for their weaving skills. Almost every tribal girl used to learn weaving at home. They usually used to weave in their leisure time and for self-consumption. Each textile used to portray a certain history of the respective tribes. But now with commercialization of the products, the women have lost control over the designs as the market has come to be the decisive factor. Besides, in many cases Marwari traders have taken over the business and are getting the textiles woven by migrant non-tribal persons.

Tribal women as such enjoy very little control over immovable property. They hardly ever inherit land, particularly in the patrilineal societies. Among the Khasis as well, it is mainly the youngest daughter or 'khadduh', as she is locally known, who inherits the house and property. The tribal women generally inherit the ornaments from the mother. The customary laws do not permit them to own land. It is mainly due to this reason that often the Santal widows are declared as witch and murdered by close relatives. (Kelkar and Devnathan: 1993) Lalhriatpuii (2010) writes about the Mizo women in Mizoram that they were extremely discriminated against with regard to the inheritance of property as they were never given rights over the landed property. If there is no son in the family, the family property including ancestral home should go to the nephew of the father. It is, however, seen that the kitchen garden is controlled by the wife.

The pigs, goats and chicken too are owned by her. The sale proceeds of the domesticated animals are retained by the housewife and she makes purchases of her own liking when visiting her parental home. Women are also adept at selling fruits and forest products in the weekly markets. Vegetables and horti-cultural products are usually sold by them in the markets.

Women among some of the tribes of the North-East are very proficient in doing business. It is mainly the Khasi women who run shops in the markets of Shillong and Nongpoh in Meghalaya. Many women in Mizoram too manage big shops and large business. Lalhriatpuii observes that the women workforce in the State of Mizoram is concentrated more in the primary sector and many of them are turning to become agricultural labourers. She further observes: "Many women run small family businesses, called micro enterprises, which require very little initial capital and often involve the marketing of food articles and handicrafts produced under the domestic system. No doubt women's limited access to capital leads to higher rates of return on their tiny investments. But the unbelievably low capital-labour ratios confine women to low productivity undertakings."

The tribal women in India have virtually no role to play in the social and political spheres. Even in the past though for many tribes in central India and in the North-East there were bachelor's dormitories, there was hardly anything for the girls. The girls used to fag around for the boys residing in the dormitories. The tribal women had no place in the village councils. The women were never represented in the traditional panchayats. It is only now, due to the mandatory provisions of the state, that some women are getting elected in the panchayats. But even in such cases, usually the women are dictated by husbands or relatives who already wielded enough power in the locality. Even then



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there is hardly any tribal woman MLA or MP in the country. In the case of Agatha Sangma, the Union Minister of Social Welfare, she is an exception; her father Purno Sangma happened to be a prominent politician of the country and also served as the Speaker of the Lok Sabha in Parliament for one term.

CONCLUSION:

The above discussion clarifies the women in the tribal society in India enjoy a greater freedom to mix and move around, their social organizations and institutions are still discriminatory particularly with regard to the customary laws that guide the ownership of property and inheritance or also with regard to exercising authority both in the domestic and public spheres. It is clear that gender equality among tribal groups is a complex phenomenon that needs to be addressed in the context of various issues such as family structure, fertility, child mortality, literacy, sex-ratio, labor force participation, economic worth generated within the household, religion, culture, and exposure to the mainstream population. It is tempting to conclude that general development programs are sufficient for the reduction of levels of gender inequality; this study does not necessarily show this to be the case inequality. With regard to policy formulation, the present study shows that for the scheduled tribe groups in India, gender equality should be conceptualized as an integral part of the development process.

The role of tribal women is important but their socio-economic development is poor. More needs to be done. The problems of tribal women and tribes are largely common. Lastly we would suggest some recommendations to strengthen and empower tribes as well as tribal women are: For Social justice, it is needed to be elimination of all types of discrimination against the socially disadvantaged groups with the strength of Constitutional Commitments, legislative support, affirmative action, awareness generation, conscientiousness of target groups and change in the mind set of the people. The government should focus empowerment of schedule tribe women and allocate separate Funds throughout the five years plan. Health, education and nourishment should be selected Key focus areas, besides; women should be provided ample opportunities for economic development, based upon the traditional skills, women should also be provided additional skills for value additions to the produces. the government should protect their labor rights. And the government should make special allocation for implementation of labor laws for the schedule area to prevent the exploitation of the workers.



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ECONOMIC REFORMS AND ITS IMPACT ON GENDER JUSTICE AND EQUALITY

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Introduction

The Sovereign, Democratic and Republic India occupy a small proportion in India's long history-a little more than a half century since 1950. Within this short time span however, its economic regime has experienced two radical transformations. First, with the establishment of the Planning Commission in March 1950, India launched upon a unique experiment in state-led 'growth with social justice' within the constitutional framework of parliamentary democracy. However, this policy matrix came under significant pressure in the 1980s, culminating in the unprecedented balance of payments crisis in 1990-91. The Indian government responded to this crisis with an equally forthright policy regime grounded in a reform trinity popularly referred to as 'Liberalization, Privatization, and Globalisation' (LPG). These three economic concepts have necessitated a series of (ongoing) policy reforms by the Union and State governments.

The politico-legal, social and economic changes that have taken place during the past decades have definitely brought about perceptible changes in the status of women in the country. Many of these changes have been strongly in a positive direction, such as rapid increase in female literacy rate, participation in political and social activities, and increasing awareness about rights and access to productive resources. Some developments have been retrograde in nature, such as declining trend in sex ratio and increasing violence against women, while many other changes, mainly the role of women in the household and in economy, has not been adequately captured in the statistical system of the country. Most of these changes have also not been uniformly dispersed in the country. Wide ranging variations are existing between and within states which cannot be explained simply by any single factor like economic standards or better governance or delivery of services.

Globalisation and Indian Approach towards Globalisation:

The term 'Globalisation' means integration of economies and societies through cross country flows of information, ideas, technologies, goods, services, capital, finance and people. The essence of globalization is connectivity and it is possible through several dimensions - social, culture, political and economic. The economic aspect of globalization of capital and financial markets has far reaching implications for economic growth and policy making in less developed and developing countries. Opening up of economies for globalization may prove helpful to solve the problems of poverty, inequalities and unemployment. Globalisation affects the employment situation through trade liberalization, encouraging exports and imports and through increasing incentives for investments and innovations. It also encourages FDI which increase domestic investment and also leads to higher growth of the economy. No wonder the advocates of globalization have always been of the firm view that globalization would result in significant increase in labour intensive exports there by promoting employment and income generation in developing countries. Simultaneously larger flows of FDI would result in increased investment in green field areas and would lead to accelerated direct and indirect employment and income growth in developing countries. The above proposition is also supported by the economic theorem given by Heckscher and Ohlin (H-O). The theorem states that each country exports the commodity which uses its abundant factors intensively. Hence, increased trade leads to increase in income and employment opportunities for abundant labour in the labour surplus developing economies.



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Globalisation is a complex process that is having a massive impact on living standards across both the developed and developing world. In general, the balance of evidence suggests that globalization is helping to reduce poverty and raise living standards by providing more employment opportunities. There is also, however, evidence that globalization has deleterious consequences as well. For example, in India, inter-regional inequality appears to have widened during the globalization era. The challenge before India is in many ways unique. It is a country rich in knowledge and in production of technology. Historically, it has not, however, seen this knowledge as a commodity. In recent decades this has changed somewhat, and India has rapidly increased its integration with the globalised economies. Indeed the World Bank also judged India to be one of the world's 'fast globalizes'.

Employment Scenario of India:

As per 2001 census, India's total population was 1027,015,247 comprising 531,277,078 males and 495,738,169 females. Of them 72.2 per cent reside in rural areas and 27.78 per cent in the urban areas (Census Report 2001). Based on Usual Principal Status criterion, 61st NSSO Round (2004-05) has recorded 42.0 per cent Work Participation Rate (WPR). In rural India the WPR is 43.9 per cent comprising 54.6 per cent male and 32.6 per cent female. Whereas in urban India, the work participation rate is 36.5 per cent comprising of 54.9 per cent male and 16.6 per cent female work participation rate. In most of the countries, work participation rate is lower among females than males. The activity rates of females differ from country to country and also between different regions of large countries. The distribution of female workers among different occupations also differ country to country, depending upon the structure of the economy, various social factors, educational levels and attitude of women towards jobs of different kinds.

Changes in Female Employment Structure in India:

The distribution of the labour force by the major economic sectors, namely primary, secondary and tertiary is an important indicator of the level and pattern of economic development. It broadly indicates whether the type and pattern of the national economy is agrarian, semi-industrial or industrial. The distribution of the labour force in the Asian countries, by the major sectors of economic activity, suggests the predominantly agricultural character of the labour force ; relatively high proportion of the persons engaged in the service sector compared to industry and the lack of sufficient diversification in the economic structure of the country. With economic development taking place as a result of planning and resulting in intensification and diversification of economic activities, the pattern of distribution of labour or the occupational structures likely to shift in favor of secondary and tertiary sectors. Shifting in occupations however extends over a fairly long period.

The role of women in and outside the home has become an important feature of the social and economic life of the country. Women in our country share too many responsibilities and perform a wide variety of duties in running the family, maintaining the household, attending to labour and domestic animals and extending a helping hand in artisanship and handicrafts. But most of the times her participation in works is considered as unpaid. Her role has never been evaluated as such in real economic terms. An important reason for neglecting female employment as a specific category either in research or policy is the 'invisibility' of their economic contribution, especially in the rural areas, and traditional interpretations of such concepts as 'work', 'economic activities', productivities, and work place. At different points of time the data collecting agencies have introduced changes in concepts related with female work participation. Thus now a number of jobs, which were earlier unnoticeable and unpaid, are now considered as paid jobs. Women in large numbers have joined the labour force and taken up paid employment. Though the trend was first visible in western industrialized nations, many of the developing nations have also witnessed significant growth in female labour force participation. Participation of women in the labour force has increased world-wide during the past few decades. In



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developed countries it increased from around 38 percent in 1970's to around 45 percent in 1990's and in developing countries it increased from around 20 percent to around 30 percent.

Women face major challenges as a result of changes in the world economy arising from rapid globalization, fast-paced technological progress and a growing informalisation of work. As a result, women's labour market status has greatly altered. Although women's representation in the labour force is increasing all over the world still it is much lower to that of men's, and they are disproportionately represented in nonstandard and lower-paid forms of work, such as temporary and casual employment, part time jobs, home-based work, self-employment and work in micro enterprises. They are characterized by lack of security, lack of benefits and low income. The informal sector is a larger source of employment for women than to men. More women than before are in the labour force throughout their reproductive years, though obstacles to combining family responsibilities with employment persist. Women, especially younger women, experience more unemployment and for a longer period of time than men. Women remain at the lower end of a segregated labour market and continue to be concentrated in a few occupations, to hold positions of little or no authority and to receive less pay than men. Available statistics are still far from providing a strong basis for assessing both quantitative and qualitative changes in women's employment.

Role of Government and Legislation:

Government should formulate a comprehensive employment strategy aiming at sectoral and regional diversification; Identify appropriate female labour intensive technologies. Encourage faster growth in the primary sector. The growth strategy must also focus on creating employment opportunities in the non-farm and household industry sectors which are highly labour intensive and require less skilled female workers. Globalisation often gives importance to skills-requiring high levels of education, often out of the reach of the unorganized sector workers especially out of the reach of females. There is a large chunk of the educated unemployed female without any technical skill, who needs to be provided training for productive employment. The government must devise a policy aimed at absorbing such segments of the female labour force through appropriate training.

Government should concentrate to counter and reverse the process of marginalization of female labour through self-employment and regular employment. The thrust should be on to manage rural out-migration with a suitable region specific employment policy to create more sustainable job opportunities in rural areas. Promote non-farm income generating activities to generate more productive employment opportunities in the non-farm sector. The special employment programmers' can make a more additive contribution to female employment generation if the emphasis is shifted to the creation of high quality infrastructure. This infrastructure will enhance agricultural productivity and thereby increase employment in agriculture on a more sustainable basis. But agriculture will not be able to absorb the educated youth. Enhanced self employment opportunities in both the rural and urban areas can solve the problem of unemployment of educated youth up to some extent. There is a big need to make women more aware about SHGs. For that government should organize ; Special cells at rural level to generate awareness and provide essential information and help to women. Increase the fund proportion in budgets to provide more micro credits. For that government should first find out the actual needy females of that credits. Before starting the self employed work, government should first provide a small training regarding that work to enhance the ratio of success of that work. Try to appoint female staff in such organizations to feel free the women to come to such cells/organizations to get information. The ongoing efforts of the government in setting up female self-help groups like "Stree Shakti" have to be intensified.



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There is a strong need for proper implementation of employment generating programmes, schemes, plans and labour laws. It should also be confirmed that the help should reach to the actual needy person.

Reforms Regarding Education System: Still a large proportion of females especially in the rural areas, are getting non professional education. This may be due to lack of awareness, expensive professional education, parents and societal negative attitude for females regarding professional education, lack of such colleges/institutions/universities to women's reach, etc. Government should invest liberally, rather than withdrawing in government educational institutions, providing technical/professional training; more specifically, training to females. Not only in universities but even at college and school levels, there should be employment exchanges, which provide information regarding availability of jobs. The focus should be to strengthen policies to empower women to emerge from the poverty syndrome and to increase access to better economic resources by encouraging them to participate in skill-based productive economic activities. Social security still eludes most workers in the informal sector. The problem is more acute for women workers.

The lack of capital assets, low and irregular income, sickness and other contingencies, poor working and living conditions and lack of outside linkages and opportunities for skill up gradation—all these interlinked factors drag these women into deprivation, trapping them in the vicious circle of poverty. The success of labour welfare can be achieved through the combined effort of the government, the judiciary, the people, media, NGOs and last but not the least, the laborers themselves, who should be aware of their rights, and of course, their duties also.

Conclusion / Suggestions:

In the end it is suggested that rather than killing the public sector, its efficiency and performance should be improved. Because quality of employment in formal/organized work is for better than the quality of work/employment informal/unorganized sector. So educational infrastructure should be strengthened. Hence role of government is very crucial to improve quality education which leads to human capital formation, to be used in labour market. Private sector needs to be regulated to generate quality employment opportunities especially for the females. In most of the countries, work participation rate is lower among females than males. The activity rates of females differ from country to country and also between different regions of large countries. The distribution of female workers among different occupations also differ country to country, depending upon the structure of the economy, various social factors, educational levels and attitude of women towards jobs of different kinds. The distribution of the labour force by the major economic sectors, namely primary, secondary and tertiary is an important indicator of the level and pattern of economic development. It broadly indicates whether the type and pattern of the national economy is agrarian, semi-industrial or industrial. With economic development taking place as a result of planning and resulting in intensification and diversification of economic activities, the pattern of distribution of labour or the occupational structures likely to shift in favor of secondary and tertiary sectors. Shifting in occupations however extends over a fairly long period.



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INCLUSION OF THIRD GENDER AND THEIR RIGHTS

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INTRODUCTION

Transgender encompasses anyone whose identity or behaviour falls outside of stereotypical gender norms. In India, a common term used to describe transgender people, transsexuals, cross-dressers, eunuchs and transvestites is hijra. Hijras a term used in South Asia. In India they are referred as trans women (male-to-female transsexual or transgender individuals). In Pakistan, the hijras are officially recognized as third gender by the government, being neither completely male nor female. Hijras have a recorded history in the Indian subcontinent from antiquity onwards as suggested by the Kama Sutra period. This history features a number of well-known roles within sub continental cultures, part gender-liminal, part spiritual and part survival. According to an estimate, India has about two million transgender people. Some Hijras do not define themselves by specific sexual orientation, but rather by renouncing sexuality altogether. Sexual energy is transformed into sacred powers. However, these notions can come in conflict with the contemporary scenario, which is that hijras are often employed as prostitutes. These transgender people in India face a variety of issues. So far, these communities perceive that they have been excluded from effectively participating in social and cultural life; economy; politics and decision-making processes.

"Recognition of trans genders as a third gender is not a social or medical issue but a human rights issue", says Justice KS Radhakrishnan¹, Supreme Court. But still they face many problems. Regarding voting rights in 2009, India's Election Commission took a first step by allowing transgender to choose their gender as "other" on ballot forms. But India is not the first country to recognise a third gender. Nepal recognised a third gender as early as in 2007 when the Supreme Court ordered the government to scrap all laws that discriminated on the basis of sexual orientation or gender identity. The term "Gender identity" refers to a person's internal, deeply felt sense of being either male or female, or something other or in between. Because gender identity is internal and personally defined it is not visible to others. In contrast, a person's "gender expression" is external and socially perceived. Gender expression refers to all of the external characteristics and behaviours that are socially defined as masculine or feminine, such address, mannerisms, speech patterns and social interactions. For a transgender the "gender identity" and the "gender expression" vary.

AN OVERVIEW OF THE ISSUES FACED BY TRANSGENDER

The following deals about the issues they face²:

Personal issues:

Transgender face shame, fear, and internalized trans phobia and homophobia. They refuse to disclose their identity as they find it hard to adapt to social pressure. They always have a fear of relationships such as loss of relationships Since they have self-imposed limitations in expressing their views, their aspirations are buried.

Policy Issues

Like many other minority groups, transgender are often unable to engage in everyday activities, such as renting an apartment or buying groceries, without confronting bias and

¹National Legal service authority V. Union of India

²Transgender Equality A HANDBOOK FOR ACTIVISTS AND POLICYMAKERS by Paisley Currah and Shannon Minter, 2006



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discrimination or being targeted by violence or threats of violence. In contrast to most other minorities, however, trans people rarely have recourse to any legal protection against discrimination in employment, public accommodations or other areas.

A few social issues include access to social services such as homeless shelters, rape crisis centres, medical clinics, access to education, fear of repercussion or reprisal in retaliation for exerting one's ordinary rights, such as speaking out in public, public humiliation, derision, ridicule, denial of employment, denial of housing, etc are very serious issues faced by them.

Legal Issues

Legal issues can be complex for people who change sex, as well as for those who are gender variant. Legal issues include legal status as a man or a woman, marriage, divorce, adoption and child custody, inheritance, wills and trusts, immigration status, employment discrimination, access to public and private health benefits, identity papers and records (name change, driver's license, birth certificate, identity papers and records (name change, driver's license, birth certificate, passport, school transcripts, work history).

Medical Issues

Medical issues faced by these people are denial of medical treatment, ridicule and mistreatment by providers, inability to obtain ongoing, routine medical care, Inability to obtain or pay for hormone therapy and sex reassignment surgeries and also exclusion of transition-related services under Medicaid, Medicare, and private health insurance plans.

CONSTITUTIONAL RIGHT VIOLATIONS

Apart from their basic rights they are being deprived of their fundamental rights namely Article 14, 15, 19 and 21.

ARTICLE 14: Under Constitution Of India Article 14 states the following:

"Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth".

According to Indian Constitution Article 14 it provides equality before law. All the people being male, female or transgender should be treated equally before law. In *Stephen's College v. University of Delhi*³, The court held that the expression "Equal protection of the laws is now being read as a positive Obligation on the state to ensure equal protection of laws by bringing in necessary social and economic changes so that everyone may enjoy equal protection of the laws and nobody is denied such protection. If the state leaves the existing inequalities untouched laws by its laws, it fails in its duty of providing equal protection of its laws to all persons. The concept of equality does not mean absolute equality among human beings which physically not possible to achieve. It is the concept implying absence of any special privilege by reason of birth, creed or the like of any individual, and also the equal subjection of all individuals and classes to the ordinary law of the land. This provision clearly states that no person can be discriminated under the eyes of law but when we take the position of transgender they face extreme discrimination in all spheres of society, especially in the field of employment, education, healthcare etc. They do not get houses for rent, they are not accepted by the society like another human being. Schools and colleges refuses to give admission for these people and not much Trans people get employment opportunity. Access to public toilets is also a serious problem they face quite often. They do not have a separate toilet for them. Thus Article 14 is being violated for the transgender.

ARTICLE 15 & 16:

Articles 15 and 16 sought to prohibit discrimination on the basis of sex, recognizing that sex discrimination is a historical fact and needs to be addressed. Both gender and biological attributes

³1992 AIR 1630



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constitute distinct components of sex. Biological characteristics, of course, include genitals, chromosomes and secondary sexual features, but gender attributes include one's self image, the deep psychological or emotional sense of sexual identity and character. The discrimination on the ground of 'sex' under Articles 15 and 16, therefore, includes discrimination on the ground of gender identity. The expression 'sex' used in Articles 15 and 16 is not just limited to biological sex of male or female, but intended to include people who consider themselves to be neither male nor female. Article 15's non-discrimination guarantee is to prevent differential treatment of persons "for the reason of not being in conformity with stereotypical generalizations of binary genders... therefore, the discrimination on the ground of sex under Articles 15 and 16 includes discrimination on the ground of gender identity."⁴

Transgender are extremely poor and shunned from the society and hence are legally entitled and eligible to get the benefits of SEBC (Socially and Educationally Backward Classes). The court drew the analogy that since they are a socially and educationally backward class, they must be given reservation in the matters of appointment under article 16 (4). Thus Article 15 is being violated for the transgender and provides relief under article 16(4).

ARTICLE 19:

The court said that Article 19(1)(a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one's right to expression of his self-identified gender. Justice Radhakrishnan's analysis of Article 19(1)(a). He held that "Article 19(1)(a) of the Constitution states that all citizens shall have the right to freedom of speech and expression, which includes one's right to expression of his self-identified gender." After citing a few American cases on point, we come to the heart of the judgment, that is, Paragraph 66:

"Gender identity... lies at the core of one's personal identity, gender expression and presentation and therefore, it will have to be protected under Article 19(1)(a) of the Constitution. A transgender's personality could be expressed by the transgender's behaviour and presentation. State cannot prohibit, restrict or interfere with a transgender's expression of such personality, which reflects that inherent personality." This Article does not provide classification based on gender identity.

The court quoted following excerpts from some foreign judgments to explain its thoughts on this issue.

1. "The notion that the State can regulate one's personal appearance, unconfined by any constitutional strictures whatsoever, is fundamentally inconsistent with "values of privacy, self-identity, autonomy and personal integrity that the Constitution was designed to protect." The Supreme Court of the State of Illinois in the City of Chicago v. Wilson et al.,⁵

2. "by dressing in clothing and accessories traditionally associated with the female gender, she is expressing her identification with the gender. In addition, plaintiff's ability to express herself and her gender identity through dress is important for her health and well-being. Therefore, plaintiff's expression is not merely a personal preference but a necessary symbol of her identity". The Superior Court of Massachusetts in Doe v. Yunits et al⁶

Self-identified gender can be expressed through dress, words, action or behaviour or any other form. No restriction can be placed on one's personal appearance or choice of dressing and their behaviour.

ARTICLE 21 & TRANSGENDER RIGHTS:

Article 21: Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁴NALSA V UOI (Paragraph 59)

⁵ 75 Ill.2d 525(1978).

⁶2000 WL33162199 (Mass. Super.)



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Article 21 discusses about a person not only get the right to live but a right to a dignified living. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*⁷, the Supreme Court held that the right to dignity forms an essential part of our constitutional culture which seeks to ensure the full development and evolution of persons and includes “expressing oneself in diverse forms, freely moving about and mixing and comingling with fellow human beings”

Article 21 is the heart and soul of the Indian Constitution, which speaks of the rights to life and personal liberty. Right to life is one of the basic fundamental rights and not even the State has the authority to violate or take away that right. Article 21 takes all those aspects of life which go to make a person's life meaningful. Article 21 protects the dignity of human life, one's personal autonomy, one's right to privacy, etc. Gender, as already indicated, constitutes the core of one's sense of being as well as an integral part of a person's identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution. In *Anuj Garg v. Hotel Association of India*⁸ this Court held that personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in self-discrimination of gender is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India.

Transgender Bill:

A private member's Bill was passed in Rajya Sabha for the first time in over three decades, with MPs cutting across party lines on Friday to unanimously endorse by voice vote a proposed legislation that aims to promote the rights of transgenders, including reservations and financial aid. The bill guaranteed a wide range of rights to transgenders, including the right to be free from discrimination, the right to life and personal liberty, the right to protection from abuse, violence and exploitation, as well as equality in educational opportunities, employment, social security and healthcare.

To become law, it now must be passed by the lower house of parliament, where the ruling Bharatiya Janata Party (BJP) has a majority. The Minister for Social Justice and Empowerment, belonging to the BJP, has thus far said that the government supports the issue but wants to bring its own comprehensive bill in this regard. The Rights of Transgender Persons Bill, if passed, will allow for legal gender recognition, removing a fundamental barrier for transgender people toward realizing their basic human rights, including protection from violence and discrimination.

INTERNATIONAL PERSPECTIVE OF TRANSGENDER:

Principle 3 of the Yogyakarta Principles states that “each person's self defined gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom” and “no one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity”.⁹ United Nations has been instrumental in advocating the protection and promotion of rights of sexual minorities, including transgender persons. Article 6 of the Universal Declaration of Human Rights, 1948 and Article 16 of the International Covenant on Civil and Political Rights, 1966 (ICCPR) recognize that every human being has the inherent right to live and this right shall be protected by law and that no one shall be arbitrarily denied of that right. Everyone shall have a right to recognition, everywhere as a person before the law. Article 17 of the ICCPR states that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation and that everyone has the right to protection of law against such interference or attacks.

⁷(1981) 1 SCC 608 (paras 7 and 8)

⁸(2008) 3 SCC 1

⁹International commission of jurist (2007) pp. 11-12



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It is India's obligations to follow international human rights law – and, in the absence of Indian legislation, engages in a kind of incorporation by reference, to argue that the international conventions ought to be read into Articles 14, 15, 19 and 21.

CONTENTIONS OF NATIONAL LEGAL SERVICES AUTHORITY (NALSA):

One of the most important judgments regarding the transgender community is National Legal Services Authority (NALSA) v. Union of India. The Supreme Court of India, declared transgender people to be a 'third gender', affirmed that the fundamental rights granted under the Constitution of India will be equally applicable to transgender people, and gave them the right to self-identification of their gender as male, female or third-gender¹⁰. Further it was propounded that the right to equality (Article 14), non-discrimination (Article 15), expression (Article 19(1)(a)) and autonomy (Article 21) are also the transgender rights. The judgment involves a wide-ranging discussion of international law and domestic legislation in other countries, engages reams of evidence of actual discrimination against transsexuals in Indian society, and discusses the idea of human rights. This case has been constituted with the primary objective of providing free legal aid services to the disadvantaged sections of Indian society. National Legal Service Authority's reasoning rests on two broad strands of human rights: freedom and equality.

MEASURES:

ADMINISTRATIVE REFORMS:

- Every person must have the right to express their gender identity freely. They must have the right to decide their gender expression and identity, including transsexuals, transgender.
- A comprehensive sexual assault law should be enacted applying to all persons irrespective of their sexual orientation and marital status.
- Civil rights under law such as the right to get a passport, ration card, make a will, inherit property and adopt children. Must be available to all regardless of change in gender/sex identities.
- There must be a transparency while taking any administrative action.
- The Immoral Trafficking in Persons Act, 1956 should be repealed. Sex work should be decriminalized and legal and other kinds of discrimination against transgender should stop.
- There should be a special legal protection against this form of discrimination inflicted by both state and civil society which is very akin to the offence of practicing untouchability.
- Comprehensive civil rights legislation should be enacted to offer hijras the same protection and rights now guaranteed to others on the basis of sex, caste, creed and colour.
- Section 377 of the IPC and other discriminatory legislations that single out same-sexual acts between consenting adults should be repealed.
- Every transgender should be given an opportunity for education, employment and other basic necessities like any other human.
- Even though there are many legal vents for transgender it should be strictly imposed.

POLICE REFORMS:

- Protection and safety should be ensured for transgender to prevent rape in police custody and in jail.
- The police at all levels should undergo sensitization workshops by human rights groups/queer groups in order to break down their social prejudices.
- The police administration should appoint a standing committee comprising Station House Officers and human rights and social activists to promptly investigate reports of gross abuses by the police against transgender in public areas and police stations, and the guilty policeman immediately punished.

¹⁰On 5TH April 2014



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- Comprehensive civil rights legislation should be enacted to offer hijras the same protection and rights now guaranteed to others on the basis of sex, caste, creed and colour.
- There should be transparency in matters of unlawful detention of transgender.

CONCLUSION:

Recognition of one's gender identity lies at the heart of the fundamental right to dignity. Gender, as already indicated, constitutes the core of one's sense of being as well as an integral part of a person's identity. Legal recognition of gender identity is, therefore, part of right to dignity and freedom guaranteed under our Constitution. The Supreme Court judgment was a historic one, finally recognizing the rights of transgender people and treating them as equal to other Indians. While this has helped in terms of their identity, Indian authorities now need to implement court directives aimed at mainstreaming the transgender community, ending discrimination against them, and addressing their social protection needs. Legal recognition will be an important first step toward equality. Abusive laws will have to go too. At the same time, there needs to be greater awareness regarding gender diversity in families, in public spaces, educational institutions, in health care, in workplaces, and among law enforcement authorities, including police. Thus I would conclude by saying gender identity is not the basis of discrimination because every person's right also comes under the facets of human rights enshrined under the Indian Constitution.



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WOMEN'S IDENTITY IN PERSONAL AND PROFESSIONAL SPHERES

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A woman has always been described as the 'home maker', the 'life partner', the 'reproducer of human progeny', the 'better-half of a man', the 'lady of the house' etc. Yet, we forget that a woman is the noblest creation on the earth because she is instrumental in begetting children. Many times her contributions are underestimated. For a woman, it can be so difficult to be identified as an independent and whole person. The very fabric of our society not only encourages but almost demands women to exist only in relation to men. It's so sad that no matter how successful a woman becomes personally, professionally, or in her socio-economic status, the word first directed towards her won't really be about her at all. The fact that the variety of distinct titles like 'Miss', 'Mrs' or 'Ms'. are meant only for women. A lot of women choose to have their titles as Ms, because it is supposed to represent a neutral position despite of marital status and it is also tied to being divorced or widowed.

This identity speaks volumes in terms of how women are perceived. In contrast, a man never has to struggle in the way women do in this regard, to let the world know who he is. Whether he is married, single, divorced or widowed, the language and cultural norms will always support him as a fully realized human being and determine his identity as separate of his relationship status throughout every stage of his life - with the singular title Mr. Titles are not the only issue surrounding a woman's marital status.

Women also have to struggle through decisions as to whether they have to change, keep or add their husband's last name if they decide to marry. If a woman, decides to keep her name, she must also spend time evaluating about how this may be received by her family, her partner or her partner's family.

Self-worth and identity is a central task in human development. It is an absolute necessity for each individual to establish their identity and each one of us should know who we are. When we are self-centered, we make unreasonable demands on others. But when we feel secure we no longer need to use other people to sustain our sense of identity. Women identify themselves as having multiple identities. The multiple identities include traditional categories of occupation, relationships, religion, politics, race, socio-economic class, vocational interests etc. Empowered women and girls have a truly transformative role to play in their communities but they are rarely offered the opportunities that will allow them to fulfill their enormous potential.

Around the world, healthy, educated, employed, and empowered women break poverty cycles - not only for themselves, but for their families, communities, and countries too. Sometimes groups are marginalized by society at large, but governments are often unwitting for enthusiastic participants. Marginalized people who lack self-sufficiency become, at a minimum, dependent on charity, or welfare. They lose their self-confidence because they cannot be fully self-supporting. The opportunities denied them also deprive them of the pride of accomplishment with others, who have those opportunities, can develop for themselves. This in turn can lead to psychological, social and even mental health problems.

The United Nations' World's Women 2010 Trends and Statistics states that two thirds of the 774 million adult illiterates worldwide are women, the same proportion for the past 20 years. And across most regions, women are less likely to have access to land, credit or decent jobs. Occupational segregation and gender wage gaps continue to persist in all parts of the world. The UN statistics envisage that women perform 67 percent of the world's working hours and earn only 10 percent of



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the world's income. They have less than 1 percent of the world's property. According to the International Labour Organization (ILO) there is a tendency to under value women's work in rural areas where they are taken as unpaid family labour, but if it is quantified, the World's Gross National Product (GNP) would increase by 20-30 percent (ILO, 1981-85).

In India, women share nearly half of the entire population. They constitute fifty percent of human resources and knowledge of the country. Although, the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles grants equality to women and also empowers the State to adopt measures of positive discrimination in favour of women yet, they are challenged by a number of obstacles that restrict their ability to play significant roles in their communities and the broader society. For a long time women have lagged far behind men in key socio-economic indicators that place them at a huge disadvantage. About 77 percent of women belong to rural areas. Majority of women come from small marginal and landless families. Their main occupation is agricultural and allied activities, involving either as cultivator, or agricultural laborers. About 60-70 percent of labour input is provided by women in production, processing and storage of grain.

In recognition of the status of women all over the world the United Nations declared the year 1975 as the International Women's Year and the period between 1975 and 1985 as Women's Decade. The UN World Conference (Mexico, 1975) recommended the member nations to initiate plans for raising the status of women and to ensure their full involvement and integration in the process of development at all levels.

In India, the appointment of the National Committee on the Status of Women and the publication of its report in 1975 marked an attempt to study and recommend changes to improve women's position in society. In recent years, the empowerment of women has been recognized as the central issue in determining the status of women. Besides ratification of International conventions, several legislative Acts have been passed to ensure women empowerment. The 73rd and 74th Amendments (1993) to the Constitution of India have provided for reservation of seats in the local bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision making at the local levels. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993. However, there still exists a wide gap between the goals enunciated in the Constitution, legislation, policies, plans, programmes, and related mechanisms on the one hand and the situational reality of the status of women in India, on the other.

According to our Late Former Hon'ble President A.P.J. Abdul Kalam "Empowering women was a prerequisite for creating a good nation, when women are empowered, society with stability is assured. Empowerment of women is essential as their thoughts and their value systems lead the development of a good family, good society and ultimately a good nation."

Therefore, it is important that people start to think critically and question that in a society where men control the destiny of women how is it possible to empower women?

Empowerment of women enables them to realize their identity, potentiality and power in all spheres of their lives. It is a multi-dimensional social process that helps people to gain control over their own lives and communities in their society by acting on issues that they define as important. There are several indicators of empowerment:

At the individual level: participation in crucial decision making process, ability to prevent violence, self-confidence and self-esteem, improved health and nutrition conditions.

At the community level: existence of women's organizations, increased number of women leaders, involvement of women in designing development tools and application of appropriate technology, etc are very crucial.



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At the national level: the indicators are awareness of social and political rights, adequate representation in legislative bodies, and integration of women in particular in national development plans, etc.

Women's Identity in their Personal and Professional spheres should enable them to recognize and improve

1. Their self- worth.
2. Develop their identity.
3. Improve their self-esteem.
4. Develop professionalism as an attitude.
5. Highlight the socio economic contributions of women for the development of the nation.
6. Encourage women to involve in decision making process.
7. Educate them about women's rights.
8. Draw attention to the challenges faced by women at various levels.
9. Project the practical issues of women in reaching the top positions.
10. Share their thoughts to the Govt. in order to bring necessary changes for the overall development of women.

The Internet as a tool of empowerment

The growing access of the web in the late 20th century, has allowed women to empower themselves by using various tools on the Internet. With the introduction of What's app, Smart Phones, women have begun to use social networking sites like Facebook and Twitter to start online activism. Women are able to empower themselves by organizing campaigns and voicing their opinions for equality rights without feeling oppressed by members of society. Facebook takes down various pages that spread hatred about women. In recent years, blogging has also become a powerful tool for the educational empowerment of women. With the easy accessibility and affordability of e-learning (electronic learning), women can now study from the comfort of their home anywhere, anytime. By empowering themselves educationally through new technologies like e-learning, women are also learning new skills that will come in handy in today's advancing globalized world.

Economic benefits of women empowerment

Most women across the globe rely on the **informal work sector** for an income. Empowering women in developing countries is essential to reduce global poverty since women represent most of the world's poor population. Eliminating a significant part of a nation's work force on the sole basis of gender can have detrimental effects on the economy of that nation. In addition, female participation in counsels, groups, and businesses is seen to increase efficiency. Therefore, women can also help businesses grow and economies prosper if they have, and if they are able to use, the right knowledge and skills in their employment. In **economic development**, the empowerment approach focuses on mobilizing the **self-help** efforts of the poor, rather than providing them with **social welfare**. Economic empowerment should focus on empowering the disadvantaged sections of the population.

Barriers to the empowerment of women

Many of the barriers to women's empowerment and equity lie ingrained in cultural norms. Many women feel these pressures, while others have become accustomed to being treated inferior to men. Even if men, legislators, NGOs, etc. are aware of the benefits women's empowerment and participation can have, many are scared of disrupting the status quo and continue to let societal norms get in the way of development.

Research shows that the increasing access to the internet can also result in an increased exploitation of women. Releasing personal information on websites has put some women's personal safety at risk. In 2010, Working to Halt Online Abuse stated that 73% of women were victimized through such sites. Types of victimization include cyber stalking, harassment, online pornography etc.



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Recent studies also show that women face more barriers in the workplace than do men. Gender-related barriers involve sexual harassment, unfair hiring practices, career progression, and unequal pay where women are paid less than men are for performing the same job. Such barriers make it difficult for women to advance in their workplace or receive fair compensation for the work they provide.

Conclusion:

To conclude, true empowerment of women would occur only when the following components are achieved globally:

1. Equal access to opportunities for using society's resources.
2. Prohibition of gender discrimination in thought and practice.
3. Freedom from violence.
4. Economic independence.
5. Participation in all decision making bodies.
6. Freedom of choice in matters relating to one's life.

Empowerment is then the process of obtaining these basic opportunities for marginalized people, either directly by those people, or through the help of non-marginalized others who share their own access to these opportunities. It also includes actively thwarting attempts to deny those opportunities. Empowerment also includes encouraging, and developing the skills for, self-sufficiency, with a focus on eliminating the future need for charity or welfare in the individuals of the group. This process can be difficult to start and to implement effectively.

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**A STUDY ON THE MEDICAL TERMINATION OF PREGNANCY (MTP)
ACT UNDER THE INDIAN ABORTION LAW**

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Introduction:

"I rise up my voice-not so I can shout, but so that those without a voice can be heard. We cannot succeed when half of us are held back" – Malala malala yousafzai.

The right to control ones reproductive function should not be left with the male only but also the female. This research paper focuses on the area of women's struggle for their rights especially Reproductive rights. The concept of women's right and their struggle for equal status in the society is incomplete without understanding their role in the decision making in every field whether it is related to education, career, marriage or procreation. They must be privileged to make decisions in their life without fear. The issue of reproductive right is significant since there is lack of concern on the part of the government and a lackadaisical attitude in the society to recognize and protect this right. Freedom and rights of women is impossible to achieve without assuring them reproductive rights. Therefore, it is necessary to define and re-define reproductive rights and to understand its importance in a women's life.

Reproductive rights:

The reproductive rights of women means the right of women to attain the highest standard of sexual and reproductive health and at the same time achieving full participation in the social and economic life. Reproductive rights also mean a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity. It includes various rights of women such as -right to abortion, right to make her own decision regarding her body and her reproductive life, right to safe sex, right to procreation and to have family etc.

The WHO defines reproductive rights as "Reproductive rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. They also include the right of all to make decisions concerning reproduction free of discrimination, coercion and violence".

The concept of reproductive rights is an International concern ,challenge and endeavour . The first time a reproductive right was clearly mentioned was in the Convention on the Elimination of Discrimination against Women (1979). At Alma Ata Conference in USSR in 1978, primary health care was exclusively discussed and access to family planning, maternal and child health care was accepted as the basic human rights.

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) provides "the obligation to ensure the full development and advancement of women for the purpose of guaranteeing them the exercise and enjoyment of human rights where men and women have equal rights". India is also a signatory country to the International Conference on Population and



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Development, 1994, and has determined to establish standards in family planning services including the right to reproductive autonomy and collective gender equality.

The Human rights include various reproductive rights. The following are some the basic reproductive rights identified by International organization.

- a) Right to control ones reproductive functions
- b) Right to protect from gender based practices such as female genital cutting.
- c) Right to access in order makes reproductive rights free from coercion, discrimination and violence.

Medical Termination of Pregnancy (MTP) Act:

History:

During the last thirty years many countries have liberalized their abortion laws. The worldwide process of liberalization in abortion only started after 1980. Today only 8% of the world's population lives in countries where the law prevents abortion. Although majority of countries have restricted abortion laws, 41% of women live in countries where abortion is available on request of women. In India, Shantilal Shah Committee (1964) recommended liberalization of abortion law in 1966 to reduce maternal morbidity and mortality associated with illegal abortion. On these bases, in 1969 Medical Termination of Pregnancy Bill was introduced in Rajya Sabha and Lok Sabha and was passed by The Indian Parliament on Aug. 1971. Medical Termination of Pregnancy Act, 1971 (MTP Act) was implemented from April 1972. The Implemented rules and regulations were again revised in 1975 to eliminate time consuming procedures for the approval of the place and to make services more readily available. The MTP Act, 1971 preamble states "That an Act to provide for the termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto".

Objectives of MTP act are following:

- To improve the maternal health scenario by preventing large number of unsafe abortions and consequent high incidence of maternal morality & morbidity
- To legalize abortion services
- To promote access to safe abortion services to women
- Offer protection to medical practitioners

Benefits:

- Ensures right to live with dignity- under Art. 21 of the Constitution the act allows a woman to take a call for abortion by allowing her to exercise the right to reproductive freedom in case she is not in a position to raise her child with dignity.
- Reduction in Maternal Mortality Rate
- Personal circumstances taken into account- such as rape survivor, unplanned pregnancy, divorce, death of the partner, inability of the woman to raise the child single-handedly on her own.

Abortion Rights in India:

Abortion is described as the expulsion of the products of conception before the embryo or foetus is viable. Abortion has been legal in India since 1971, when the Medical Termination of Pregnancy Act was passed. The law is quite liberal, as it aims to reduce illegal abortion and maternal mortality. An abortion can be performed in India until the 20th week of pregnancy.

Abortion laws:



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The government of India has enacted Pre Natal Diagnostic Techniques Act of 1994 and the Medical Termination of Pregnancy Act of 1971 with the object of reduction in the incidence of illegal abortion and consequence maternal mortality and morbidity.

The Indian Penal Code (Act No. 45 of 1860) provides an exception and permits abortion only when it is justified for the good faith purpose of saving the life of the woman.

Statistics:

Historical Abortion statistic by Johnston Robert

Year	Live birth	Abortion reported	Abortion ratio	Abortion %
2001	26,130,000	770,714	29.5	2.87
2002	26,150,000	744,686	28.5	2.77
2003	26,380,000	763,126	28.9	2.81
2004	26,060,000	726,096	27.9	2.71
2005	26,150,000	721,859	27.6	2.69
2006	26,240,000	682,242	26.0	2.53
2007	26,200,000	642,174	24.5	2.39
2008	26,260,000	651,974	24.8	2.42
2009	26,310,000	689,534	26.2	2.55
2010	26,290,000	657,191	25.0	2.44
2011	26,380,000	625,448	23.7	2.32

- Abortions reported include legal reported induced abortions.
 - Abortion ratio is abortions per 1000 live births.
 - Abortion % is abortions as percentage of pregnancies.
- A total of 15.6 million (1.56 core) abortions took place across India in 2015, against the 7 lakh figure The Centre has been putting out every year for the last 15 years, according to a research paper published in The Lancet Global Health medical journal.
- According to the Lancet study, India sees an abortion rate of 47 per 1,000 women aged 15 to 49 years, which is similar to the abortion rate in neighbouring South Asian countries.
- Abortion rates in India were highest among women under the age of 20 in urban areas – 13.6% of pregnancies in that age group – but this wasn't the case in rural areas where early marriages mean fewer premarital and/or unwanted pregnancies.

Challenges:

Forced abortion:

Forced abortion is one major issue in Reproductive rights. Causes for forced abortion are “son preference” and unplanned pregnancy. Despite of having various laws and policy women in India are still living in dark and they cannot take decision by their own. There is no EQUALITY in reproductive decision.

Case study:



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Shri Bhagwan Katariya And Others v. State of M.P: Misc. Criminal Case Nos. 6993 and 7340/2000

In this case, after the complainant conceived pregnancy, the husband and the other family members took an exception to it, took her for abortion and without her consent got the abortion done. The Court held the doctor liable and opined that if on reference to Section 3 of the Medical Termination of Pregnancy Act, 1971, a doctor is entitled to terminate the pregnancy under particular circumstances. If a pregnancy is terminated in accordance with the provisions of concerned law, it shall be presumed that without the consent of the woman it could not be done.

Thus, the case laws establish that a woman has an absolute right to abortion and no one can take away this right from her. Right to abortion is a fundamental right of privacy. The Judiciary has been playing a vital role in securing these rights to women.⁸

Denial of reproductive rights:

In India reproductive rights of women is totally denied by family members, society and also Government officials.

Case study:

Centre for Health and Resource Management v. State of Bihar and Others (2011) C.W.J.C. No. 7650/2011

07.20.11 - CHARM v. State of Bihar and Others is a public interest litigation petition filed in March 2011 by the Center's partner in India, Human Rights Law Network. It seeks legal accountability from the state government of Bihar for its failure to provide essential maternal health care, including safe abortion services, in public health facilities, leading to shockingly high rates of maternal mortality. In 2011, at the request of our partner, the Center for Reproductive Rights prepared a supplementary brief in the case discussing the legal obligations under international human rights law for the state government to ensure the right to survive pregnancy and childbirth.

Gender inequality:

Gender is socially and culturally imbibed in any society. As reproduction exist in close interrelation with social, cultural and political context without having condition for gender equality it is not possible for women to enjoy and exercise reproductive rights. There is no doubt that women are silent victim in the society. The percentage that shows unequal sex ratio and higher female infant mortality rate in large part of our country reflect the general devaluation of women. There is no denying that one of the reasons for poor reproductive health of Indian women is gender discrimination. The reasons of gender discrimination is complex and diverse such as poor status of women in the family, attitude of the people, low level of education, limited access to resources, cultural norms, etc.

Poor Implementation of Health Care Programme:

The health care programmes made for women are maternal and child health services, reproductive and child health project and the family welfare programme. These programmes aim at providing better reproductive services encouraging institutional deliveries and spacing between the children. These programmes also take initiative to provide health education. But it's not properly implemented and people are not aware about it. All the primary clinics are not maintained properly even in some clinic they don't have facility to give first aid.

Unsafe and illegal abortion:

Abortion is legal only up to 20 weeks according to MTP Act. There are many case women undergoes unsaved abortion when fetus is 30 weeks or more. Unsafe abortion is done through unauthorized clinic and with illegal medicine. Illegal abortion is became more profitable business and it affects the development of reproductive rights.

Case study:

issue: Illegal abortions case: Doctor Couple arrested in Maharashtra



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According to the police, it is suspected that as many as 36 illegal termination of pregnancy have taken place at their facility and in five cases, sex determination was conducted at the nursing home's sonography centre, registered under Priya Gandhi's name.

A complaint against the duo was registered by Solapur civil surgeon M R Pattanshetty at the Akluj police station. Senior inspector at the police station Arun Sawant said the couple was arrested under relevant sections of the MTP Act and for causing miscarriage, and disappearance of evidence of offence.

issue: Whether a husband has to provide consent for abortion?

Court's Ruling: Section 3(4)(b) of the MTP Act requires consent from just one person: the woman undergoing a medical termination of pregnancy. A husband cannot force his wife to continue a pregnancy.

In this case, the wife had started living with her parents after matrimonial disputes arose. They started living together after reconciliation efforts made by the Lok Adalat. Despite their living together, the differences between them persisted. The wife became pregnant during that time. She made the decision to terminate the pregnancy. Her husband refused to sign consent forms at the hospital and eventually he filed a court case to legally prohibit her from terminating her pregnancy without his consent. The husband withdrew this case when his wife underwent a termination at six weeks and four days. Subsequently, the husband filed suit against his wife, her parents, her brother, and the doctors who conducted her termination demanding Rs. 30 lakhs in compensation for mental pain and agony. The husband argued that a woman cannot obtain a termination unless the pregnancy endangers the woman's health. The doctors argued that they abided by the MTP Act and conducted the surgery in a registered facility.

Issue: Should emergency contraception be regulated under the MTP Act?

Court's Ruling: Emergency contraception does not cause termination of pregnancy and cannot be regulated by the MTP Act.

Arguments: Krupa Prolifers furthered three demands: First, the group asked the High Court to ban all advertisements for the i-pill brand of emergency contraception. Secondly, Krupa Prolifers argued that emergency contraceptive pills result in termination of pregnancy and therefore should not be available without a prescription. Thirdly, the Krupa Prolifers urged the Court to ban the sale and distribution of the i-pill brand of emergency contraception.

The Judgment: The Court notes that it is "not required to go into the morality aspect, but only [to] consider the medical consequences of the i-pill drug...whether it is a contraceptive tablet or it is a medicine for causing abortion.". The Court notes that the MTP Act does not define pregnancy. The Court relies on 'undisputed medical science' in deciding that emergency contraception does not terminate a pregnancy.

The Court finds that the process of implantation takes place between 5 to 7 days after fertilization, hence in the first 72 hours, when the emergency contraceptive is to be taken, the fertilized egg has not yet been implanted. At this stage, the emergency contraceptive merely prevents the implantation from taking place, preventing the pregnancy. The Court also relies on the Report of the Consortium on National Emergency Contraception, which found that most women in India had little knowledge of emergency contraceptive pills. The Court was concerned that many women resort to "quacks or old women" for abortions, at great risk to their health and lives (para. 10).

Analysis: This judgment defines pregnancy under the MTP Act as the stage when a fertilized egg has implanted into the lining of the uterus five to seven days after fertilization (i.e., in the pre-embryonic stage). This case sets an important precedent of relying on science and not moral arguments to make determinations about contraception and abortion. In fact, the Court notes some people may have moral objections to contraception but that, "the courts cannot go into it." (para. 12). Finally, this



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judgment acknowledges the link between access to emergency contraception and preventing unsafe abortion.

Suggestion:

Awareness:

Only 4 in 10 women know about the reproductive rights and the Laws relating to it. Government should take steps to reach people and every women in our society should know about all their rights. It gas to provide health care information to grass root level through awareness programme in the large scale

Breaking Stereotype:

Many part of India still reproductive rights considered as stereotype and they follow traditional way to abort which is unsafe it also causes lot of health issues. Woman should have Right to EQUALITY in reproduction decision, Right to sexual and reproductive security and Right to sexual health service, and Right to access information and sex education.

Proper Health care service:

Health care services must be improved and all the health care programmes must be implemented in a proper way so that it reaches people. There is also a must to have door to door services for health check-up for women on a monthly basis so that woman who cannot afford to go to hospital gets the essential treatment. Government should take steps to:

- Increase availability and access to safe abortion service
- Link the policy with technology and research and good clinical practice
- Apply uniform standards for both the private and public sector
- Ensure quality of abortion care

Banning of illegal medicine and unauthorized clinic:

Despite of various laws still availability of illegal medicines exists. It's also available in online. Government should take steps to ban all the illegal medicines and unauthorized clinic.

Urgent needs:

Government should focus on the health needs of women, their nutritional status, the risk of early marriage and child bearing all these are sensitive issue of concern and require urgent attention if condition of women has to be improved.

There is a need to have access to appropriate, affordable and quality health care facilities and related services for women. Health programmes should focus more on women's health including reproductive health.

Conclusion:

The aspect Privacy is a very sensitive and recognised fact around the world based on the social system and cultural aspects and it is safeguarded by the Universal Declaration of Human Rights and in many other International and Regional Human Right Treaties. The findings of this study questions the legal status of abortion in countries where the law is restrictive, or to strengthen family planning efforts in order to reduce abortion incidence. This can occur spontaneously as a miscarriage, or be artificially induced through chemical, surgical or other means. Commonly, "abortion" refers to an induced procedure at any point in the pregnancy; medically, it is defined as a miscarriage or induced termination before twenty weeks gestation, which is considered nonviable. It is noteworthy that the mother plays an important role in bringing up its offspring and hence mother has to be given proper legal guidance, awareness and help to regulate her body and do what is best. The legal system, the government, society, friends and family should play an important role to help the woman to make the right decision. There should not be hostility but warmth and love. "It is the right of a woman to give birth to a child, but it is not the right of a husband to compel his wife to give birth to a child for the husband. A woman is not a machine in which raw material is put and a finished product comes out.



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She should be mentally prepared to conceive, continue the same and give birth to a child. The unwanted pregnancy would naturally affect the mental health of the pregnant women." Now it is in the hands of the society to reason out and understand the need of the hour is allow the women to make the right decision. Choice is for us to make it or break it. Let it be fair! Hence there is an urgent need to revisit MTP-act and ensure the rights are safeguarded and protected in the interest of women and at the same time there is no misuse or abuse of their body as the body is the temple of God's spirit.



THE UNIFORM CIVIL CODE IN INDIA - A CRITICAL ANALYSIS

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Introduction:

The Paper on Uniform Civil Code focuses on the debate to replace the personal laws based on the scriptures, customs of each major religious community in India with common set of rules governing every citizen. The demand for a uniform civil code was first put forward by women activists in the beginning of the twentieth century, with the objective of women's rights, equality and secularism. It also enlightens about the leaders who supported for the need for Uniform Civil Code for all citizens. The paper aims to understand merits and demerits of Uniform Civil Code. The study evaluates the intricacies in bringing the Uniform Civil Code as a law. The paper speaks about the effective steps of Hindu Code Bill and Special Marriage Act towards the enactment of Uniform Civil Code. The critical analysis of the cases that insists the enactment of Uniform Civil code is deeply enlightened in the study. It also brings out the nationwide view of Uniform Civil Code on political basis. The gap between the minority and majority communities for the lack of Uniform Civil Code are looked in a deep concern. The article aims to bring out the need to reform our social system, which is full of inequities, discriminations and other things which conflict with our Fundamental Rights and need for the code related to divorce and succession which are governed by Personal laws. The study also examines how Article 25 cannot be violated and the need for the co-existence of Uniform Civil Code and Personal laws. It examines the history of the Sharia Law and introspects the Article 44 to implement Uniform Civil Code.

ORIGIN OF UNIFORM CIVIL CODE

The British Government in 1840 on the basis of Lex Loci report had framed Uniform laws for crimes, evidences and contract but personal laws of Hindus and Muslims were left by them intentionally. On the other hand, British India Judiciary provided for application of Hindu, Muslim and English law by British Judges. Reformers were also raising voice to frame laws related to women against the discrimination done by them basically under religious customs like Sati etc.

The Constituent Assembly was set up to frame the Indian Constitution in 1946' in Independent India which consists of both types of members: those who wanted to reform the society by adopting Uniform Civil Code like Dr. B. R Ambedkar and other was basically Muslim representatives who perpetuate personal laws. Also, the proponents of Uniform Civil Code were opposed by the minority communities in the Constituent Assembly. As a result, only one line is added in the Constitution under Article 44 in Part IV of Directive Principles of State Policy.

Uniform Civil Code on the ongoing point of debate within India insists to replace the personal laws based on the scriptures and customs of each major religious community in India with a common set of rules governing every citizen. The Indian Constitution is very clear that if Uniform Civil Code is followed, integration can be imbibed. There is an argument that this code will affect the religious freedom of minorities. But by abiding the law of land one can never go against religious principles. This code does not insist people to practice the rituals of other religion. With changing



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living styles along with the time, there should be a uniform civil code irrespective of all religions as far as social ethics are concerned.

OBJECTIVE

Article 44 states that it is the duty of the state to secure for the citizens a Uniform Civil Code throughout the territory of India. This law covers marriage, divorce, inheritance, adoption and maintenance. Goa is the only state which has a common family law and 1954 Special Marriage Act allows any citizen to marry outside the realm of any special religious personal law. The objective of Uniform Civil Code is to effect an integration of India by bringing all communities into a common platform which is at present governed by personal laws which do not pave way for a common platform for all citizens.

Hindu Code Bill

Jawaharlal Nehru in 1930, though he supported a uniform civil code, he had to face opposition by senior leaders like **Vallabhbhai Patel** and **Rajendra Prasad**. The Indian Parliament discussed the report of the Hindu law committee during the 1948–1951 and 1951–1954 sessions. The first Prime Minister of the **Indian republic**, **Jawaharlal Nehru**, his supporters and women members wanted uniform civil code to be implemented. As Law Minister, **B. R. Ambedkar** was in charge of presenting the details of this bill. It was found that the orthodox Hindu laws were pertaining only to a specific school and tradition because monogamy, divorce and the widow's right to inherit property were present in the **Shashtras**. Ambedkar recommended the adoption of a Uniform Civil Code. Ambedkar's frequent attack on the Hindu laws and dislike for the upper castes made him unpopular in the parliament. He had done research on the religious texts and considered the Hindu society structure flawed. According to him, only law reforms could save it and the Code bill was this opportunity. He thus faced severe criticism from the opposition. Nehru later supported Ambedkar's reforms but did not share his negative view on Hindu society.

The Hindu bill itself received much criticism and the main provisions opposed were those concerning monogamy, divorce, abolition of coparcenaries (women inheriting a shared title) and inheritance to daughters. The first President of the country, Rajendra Prasad, opposed these reforms. The women members of the parliament, who previously supported this, in a significant political move reversed their position and backed the Hindu law reform; they feared allying with the fundamentalists would cause a further setback to their rights.

Thus, a lesser version of this bill was passed by the parliament in 1956, in the form of four separate acts, the Hindu Marriage Act, Succession Act, Minority and Guardianship Act and Adoptions and Maintenance Act. It was decided to add the implementation of a uniform civil code in Article 44 of the Directive principles of the Constitution specifying, "The State shall endeavor to secure for citizens a uniform civil code throughout the territory of India."

Special Marriage Act

The Hindu code bill failed to control the prevalent gender discrimination. The laws on divorce were framed giving both partners equal voice but majority of its implementation involved those initiated by men. Since the Act applied only to Hindus, women from the other communities remained subordinated. For instance, Muslim women, under the Muslim Personal Law, could not inherit agricultural land. Nehru accepted that the bill was not complete and perfect, but was cautious about implementing drastic changes which could stir up specific communities. He agreed that it lacked any substantial reforms but felt it was an "outstanding achievement" of his time. He had a significant role in getting the Hindu Code bill passed and laid down women-equality as an ideal to be pursued in Indian politics, which was eventually accepted by the previous critics of the bill. Uniform civil code, for him, was a necessity for the whole country but he did not want it to be forced upon any community, especially if they were not ready for such a reform. According to him, such a lack of



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uniformity was preferable since it would be ineffective if implemented. Thus, his vision of family law uniformity was not applied and was added to the Directive principles of the Constitution.

The Special Marriage Act, 1954, provides a form of civil marriage to any citizen irrespective of religion, thus permitting any Indian to have their marriage outside the realm of any specific religious personal law. The law applied to all of India, except Jammu and Kashmir. In many respects, the act was almost identical to the Hindu Marriage Act of 1955, which gives some idea as to how secularized the law regarding Hindus had become. The Special Marriage Act allowed Muslims to marry under it and thereby retain the protections, generally beneficial to Muslim women that could not be found in the personal law. Under this act polygamy was illegal, and inheritance and succession would be governed by the Indian Succession Act, rather than the respective Muslim Personal Law. Divorce also would be governed by the secular law, and maintenance of a divorced wife would be along the lines set down in the civil law.

CASES THAT INSIST THE FRAMING OF UNIFORM CIVIL CODE

Case I

Shah Bano Case

In 1978, Mohammad Ahmed Khan divorced Shah Bano Begum after his second marriage and refuses to provide her promised maintenance of Rs. 200. Bano filed a plea in a local court against her husband under Section 125 (Code of Criminal Procedure) asking him to provide the money for her and her children. Mohammed Ahmad Khan gave Shah Bano an irrevocable talaq and said since she is not his wife under Islamic law; he is not obliged to pay her the maintenance. Shah Bano won the maintenance case with the local court ordering Khan to provide her with maintenance of Rs. 25 per month. In 1980, Shah Bano filed another plea asking for a revised maintenance. The Madhya Pradesh High Court gave order in her favor with a revised maintenance of Rs. 179.20. In 1981, the two-judged Bench referred the Shah Bano case to a larger Bench. In 1985, in a larger judgment, the Supreme Court ruled in favor of Shah Bano and upheld the decision by the High Court. Rajiv Gandhi came to power in 1984 after the assassination of his mother Indira Gandhi. In what is seen as caving in under pressure from Muslim hardliners, PM Rajiv Gandhi enacted a law in Parliament and overturned the Supreme Court judgment in the Shah Bano case. The 1986 Muslim Women (Protection of Rights on Divorce) Act diluted the Supreme Court judgment and allowed maintenance to a period of iddat, or till 90 days after the divorce. Besides her case, two other Muslim women had previously received maintenance under the Criminal code in 1979 and 1980.

Critical Analysis

Shah Bano Case brought into focus the plight of the Muslim women, the discrimination they have to face in matter related to marriage. Women are dominated not by secular laws, not by uniform civil laws, but by religious laws. Uniform Civil Code will protect the social and personal life of women in India irrespective of religion. It will not only liberate Muslim women but also provide them with a sense of equality. It will provide them with a sense of empowerment

Case II

Sara Mudgal Case

This is the second instance in which the Supreme Court again directed the government under Article 44. In this case *Sara Mudgal v Union of India*, the question was whether a Hindu husband, married under the Hindu law, by embracing Islam can solemnize second marriage. The Supreme Court held that adopting Islam for a second marriage is an abuse of Personal laws. Further said that Hindu marriage can be dissolved under Hindu Marriage Act, 1955 i.e. mere by converting itself into Islam and marry again does not dissolve the marriage under Hindu Marriage Law and thus will be an offence under Section 494[5] of the Indian Penal Code.



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Critical Analysis

The SaraMud gal judgment has issued no directions for implementations of Uniform Civil Code, though Justice Kuldeep Singh has requested the government to look at the Article 44 of the Constitution. This Case brings forth the importance of Uniform Civil Code as this will promote the gender equality thus improving the social respect of women.

IMPLEMENTING UNIFORM CIVIL CODE

It states that "The State shall endeavor to secure for the citizens a Uniform Civil Code throughout the territory of India". As it is incorporated in Directive Principles of State Policy they are neither enforceable in the court nor any political discrepancy been able to go beyond it because minorities mainly Muslims felt that their personal laws are violated or abrogated by it. Then a series of Bills were passed to codify Hindu laws in the form of Hindu Marriage Act, 1955, The Hindu Succession Act, 1956, The Hindu Minority and Guardianship Act, 1956 and the Hindu Adoption and Maintenance Act, 1956, are collectively known as Hindu Code Bill (covers Buddhist, Sikhs, Jains as well as different religious denominations of Hindus) which allows right to divorce and inheritance to women, made caste irrelevant to marriage and abolished bigamy and polygamy.

Also mere three words regarding UCC not only affect our nation but are also enough to divide the nation in to two categories due to which to take decision on it becomes a little difficult. Politically, the nation is divided as BJP propagates the implementation of Uniform Civil Code (UCC) and the non BJP like Congress, Samajwadi Party who don't want to implement UCC. Socially, the literate persons of the country who had analysed the pros and cons of UCC & on the other hand illiterate who have no idea about it and being in hands of political pressure they will take decision. And religiously, there is a gap between the Hindus that are in majority and Muslims minority community. In 1985, the Supreme Court directed the Parliament to frame a UCC

SUPREME COURT OF INDIA

JJ Act 2014: It is a step towards UCC. On passing the verdict of Juvenile Justice (Care and Protection of Children) Act seems to be an attempt in moving towards UCC. As, it paved the way for an adoption of child by persons from Muslim Community even though not allowed under their personal laws. The Supreme Court of India again asked the Union Government to form a UCC to remove gender inequality and abolish the retrograde practices followed under the framework of personal laws. Common Civil Code would put in place a set of laws to govern personal matters of all citizens irrespective of religion is perhaps the need of the hour. In fact, it is the cornerstone of true secularism. Such a progressive reform would not only help end discrimination against women on religious grounds but also strengthen the secular fabric of the country and promote unity. There is a need to reform our social system, which is full of inequities, discriminations and other things which conflict with our Fundamental Rights. As we know that there is a Criminal Code which is applicable to all people irrespective of religion, caste, tribe and domicile in the country but there is no similar code related to divorce and succession which are governed by Personal laws.

Article 25 states Freedom of conscience and free profession, practice and propagation of religion. So, the UCC cannot be forcefully imposed on the people as then it will be clearly violation of Article 25 of the Indian Constitution. Therefore, UCC and Personal laws should co-exist. UCC is nothing but the incorporation of modern and progressive aspects for all existing personal laws which can't be ignored. In Goa after Independence, State of Goa has adopted the Portuguese Civil Code which enforced a UCC for all its citizens. Under this code, Married couple holds joint ownership in all assets owned and acquired by each spouse. Even Parents can't disinherit their children entirely at least half of the property must be passed on to them. Muslim persons who have registered their marriage in Goa are not allowed to practice polygamy.



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MERITS OF THE UNIFORM CIVIL CODE

UCC will promote justice, equality and national integration. The enactment of UCC will promote Gender equality and welfare of women. It can be argued that Personal Law system violates the principle of equality of the Constitution because by having different personal laws for different religions, we are going against the secularism and equality. But UCC can promote equality and justice by incorporating similar laws for all citizens.

Another advantage of UCC is that it will simplify the cumbersome legal matters governed by personal laws and will promote gender justice by removing the inbuilt gender injustice of personal laws. In the absence of UCC judges interpret various provisions like maintenance in case of Muslim women according to their prejudices and opinion. The introduction of UCC will prevent such interference and promote Uniform provisions for the welfare of all women.

The paramount objective of unity and integrity of India as resolved by the People of India in the preamble could be achieved only when Article 44 is transformed into enforceable Uniform Civil Code. In India, secular laws like Special Marriage Act 1954, already exists. This law governs members of all the religions whether Hindu, Muslim, Parsi, Christian, etc. it is acceptable among all the citizens of India. This shows that there is no reason that why a uniform secular law cannot be extended and enacted for whole India.

It has been rightly pointed that UCC will not violate Article 25 and 26 and it will help in attaining secularism. Further, it can be argued that marriage, succession etc. are secular matters and law can regulate them. Article 25 of the Constitution of India gives power to state to interfere in matters of religion. So, the state can enact provisions for welfare of religious entities and we can argue that UCC is welfare legislation because it will remove the inherent injustice and loopholes of Personal Law System.

The introduction of UCC will promote monogamy among all the citizen of India including Muslim and it will lead to betterment in the position of women. It will also remove prejudices against women regarding personal laws on divorce and maintenance.

In India, laws governing Hindu women are progressive and less discriminatory as compared to laws governing Muslim women. There is no reason that why one portion of women should be excluded from the benefits of such rights. The introduction of UCC will ensure uniform rights for the women all over India.

DEMERITS OF UNIFORM CIVIL CODE:

It is argued that drafting a UCC will not prove good for India because India has a more diverse culture with people of so many religions living and professing their religion and so India should not blindly copy the west positivism centered legal trajectory. Secondly, the continuing personal law system can handle the potential inequality through the intricate process of gradual harmonization of Indian personal laws.

It is largely looked upon by Muslims as a threat to their identity because the code in itself seems to be favoring the majority population of Hindus. It looks like a Uniform Hindu Code rather than a uniform code that will be secular in nature. But this problem can be resolved by taking into the consideration the problems of the minority group like insecurity, complete loss of identity and marginalization within Indian society.

CONCLUSION

Uniform Civil Code will promote justice, Gender equality and national integration and it will simplify the cumbersome legal matters governed by personal laws. The objective of unity and integrity of India enshrined in the preamble could be achieved only when Article 44 is transformed into enforceable Uniform Civil Code and it can promote monogamy among all the citizen of India including Muslim and it will lead to betterment in the position of women. Moreover the problem of opposition of UCC can be resolved by resolving doubts relating to the problems of the minority



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group like insecurity, complete loss of identity and marginalization within Indian society. For an ideal state UCC would be an ideal safeguard of citizen's rights. Its adoption will be a progressive legislation. With changing times, the need has arisen for having a Common Civil Code for all citizens, irrespective of religion, ensuring that their fundamental and Constitutional rights are protected. Even Secularism and National Integrity can also be strengthened by introducing UCC. At the end we should recall the words of Mahatma Gandhi: "I do not expect India of my dreams to develop one religion, i.e. to be wholly Christian or wholly Muslim, but I want it to be wholly tolerant, with its religious working side-by-side with one another".

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GENDER JUSTICE AND DEVELOPMENTAL GOALS

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Introduction:

Why do we keep developing ourselves? Is it not to achieve the best of our self and give back what we have received? A perfect equilibrium is said to be achieved when the people get to enjoy their rights bestowed upon them as human born. Sustainable development and equality with regard to human rights promises a future with such wide vision. The greatest gift man has been enshrined with is his power of consciousness and rational thinking to choose the best for himself and others. When he claims a perfect plan has been made for the benefit of all ensuring what has been promised, there will be a few unnoticed minorities to whom it has not reached or could reap the benefits. Those downtrodden and beasts of burden are the subjects of my presentation.

SUSTAINABLE DEVELOPMENT AND GENDER EQUALITY.

We cannot succeed if half of us are held back.- Malala Yousafzai.

The new 2030 Agenda for Sustainable Development is largely about youth and for the youth. Therefore, we cannot dismiss today's young men and young women as solely the beneficiaries of development or even as the leaders of tomorrow – for they are already leading today. The force and inspirations of our youngest leaders represent one of the critical drivers for accelerating progress on sustainable development and gender equality.

Facts and Figures from United Nations Factsheet on Girls and Young Women

- There are 1.8 billion young people aged 10-24

Years old in the world, the largest youth population

Ever. Of these, 600 million are

Adolescent girls and young women.

WOMAN EMPOWERMENT

Woman empowerment can be understood as a process where woman, individually and collectively develop awareness of the existing discrimination and inequality between woman and men and how it affects their lives. For many women, young women, adolescent girls, and girls, progress is not happening nearly fast enough. No country in the world has achieved gender equality, and many are still far behind. At the current pace of change, it will take 50 years to achieve parity in political participation and 118 years for true pay equality to break these trajectories and achieve by 2030 requires us to take bold and decisive actions.

The concept of empowerment arose from an understanding that increasing woman's participation in development process, without fundamental changes to these process would bring about little changes.

Woman need to be able to assert their own agency to break out of the gender discrimination. Empowerment involves awareness, raising and building self-confidence, expansion of choices involvement in decision making and increased access and control over resources.

The greatest flaw of the millennium development goal was that their broad targets allowed the most deprived groups to be over looked. In the future neither income, nor gender, nor ethnicity, nor disability, nor geography will determine whether people will live or die, whether her child has a fair chance in life.



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WHY IT MATTERS?

Woman and girls represent half of the world's population and therefore half of the potential is vested with them. Gender equality is fundamental human right critical to all areas of a healthy society from reducing poverty to promoting health, education and well-being.

Over the past 25 years, trade and openness spread of information and communication technologies have expanded economic opportunities. What started with greater trade openness is growing into global economic integration, independence, and interdependence. The capital accelerates and transitional movement of people and information various doors that remained locked for many were accessible.

These factors lift the constraints to greater gender equality. Female employment in manufacturing sector has grown faster in developing countries and increased female employment levels between 1995 and 2015 with increase in international trade.

We recognize the need to include and engage young men and young women with greater seriousness and urgency. We are at a defining moment at which the women's movement and the youth movement must come together with stronger partnerships and greater focus to ensure that the new agenda for sustainable development delivers for all women and girls, especially those facing multiple and intersecting forms of discrimination and marginalization. The United Nations Youth and Gender Equality Strategy seeks to Empower young women and young men as partners in achieving gender equality. The Framework, Includes three thematic pillars –

- 1: Leadership of Young women in all spheres strengthened,
- 2: Economic Empowerment and skills development of young Women
- 3: Action on ending violence against Young women and girls – three crosscutting Approaches:
 - 1: Strengthening Participation,
 - 2: Voice and Partnerships with young women and their organizations,
 - 3: Partnerships with young men as partners of Gender equality; and Intergenerational Partnerships throughout the life cycle to achieve a gender transformative Society.

Consider the modern world as an aircraft designed to shoot the dreams and imaginations about a better living to a level better than the present. It will only be possible if the aircraft has two wings that can balance and help what human has ever aspired to achieve.

Like wise both man and woman being the wings should guide and fly the aircraft through the trajectory.

INDIAN CONSTITUTION AND FUNDAMENTAL RIGHTS.

Every structure without a rigid framework or support is abolishable. Constitution is the backbone on which the entire system holds up. The varied consciousness and polychromatic mode of thinking is definite in inviting differences among men. These indifferences should be embraced and a social system where each and every individual irrespective of the indifference can perform, function and prosper. Every country is more than a horde of people settled in a large land mass for procreation. It is an organic body of its own, and constitution is its soul.

Bringing into the scenario, all major countries constitution has guaranteed equality between man and woman.

It should be the prime motive to advance woman to all sectors of the living organism called society and be its driving force. Fundamental right promises equality in all areas of a healthy society from reducing poverty and ensures no exploitation is made behind the veils.

ARTICLE -14

The state shall not deny to any person equality before law or equal protection of the laws within the territory of India.

Equality before law is taken from English law, the declaration of equality of all persons on the eyes of law.



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EXPANDING THE HORIZONS OF EQUALITY

Equality is a dynamic concept which goes on changing with times and social contexts. The equal protection of laws should be read as a positive obligation on the state to ensure equal protection of the laws by bringing in necessary social and economic changes so that everyone may enjoy equal protection of laws and nobody is denied the protection. The underlying principle of equality is not the uniformity of treatment to all in all respects, but rather to give them the same treatment in those respects in which they are similar and different in which they are different. But let us clarify, that even though no two human beings are similar in all respects, they are similar in one respect, namely they are human beings. They should be treated as human beings.

The state must not treat people unequally, but it must also take positive steps to remove existing inequalities especially those which treat human beings less than human beings.

Justice Bhagwati J, Justice Chandrachud, Justice Krishna Iyer JJ in a concurring opinion in *E. P. Royappa v. State of T.N* propounded a new approach to Article 14, in the following words.

Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits. From a positive point of view, equality is antithetic to arbitrariness; they are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of article 14. Phenomenal advancement has been made by the judiciary in numerous cases where the beacon of light has been held high by renowned Justices who have dedicated their life in the achievement of equality and washing away arbitrariness from the face of society.

ARTICLE 15

Prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth.

ARTICLE 21

Protection of life and personal liberty. No person shall be deprived of his life or personal liberty except according to the procedure established by law.

In *Munn v. Illinois*, Field J spoke of the right to life in the following words.

"By the term 'life', as here used, something more is meant than mere animal existence".

TRANSGENDERS RIGHTS AND HUMAN RIGHTS

What is Human? Human body as per the scientific knowledge acquired after centuries of trial and error process can only state that it is a complex mechanism of biochemical activism coordinated by the main processing unit called brain suspended in a cerebrospinal fluid protected in a skeletal frame. This is what the centuries of study process and calculation and experiment could define about human body. What we have defined in a complex scientific language is just like constricting knowledge to a limited source of light. We humans are more than what we tend to believe, the driving force of nature and the invisible aura of energy that channelizes through our body is more than the mere definition given by the scientific society about humans. All beings have the same energy conspiring them to fulfill the motive of their existence. The definition of life is not to be confined in any pressed wood or on any stone. Its quintessence cannot be denied or restricted by any living or nonliving. Thus I come to the conclusion that nature and justice should be in equal conformity and any deviation from nature is without doubt injustice. There is disparity between artificial laws, customs and institutions of natural law. This disparity is the main reason of social dissension. The state should mold its seal that sanctions and elevates those laws facilitating equality, equal protection of law and preservation of the right to live with dignity. If the state leaves the existing inequalities untouched by its laws, it fails in its duties of providing equal protection of its laws to all persons. Discrimination of Transgender people on the ground that they are not in accordance with laws of nature is deprivation of an individual his right to live.

Transgenders are individuals of any age or sex appearance, personal characteristics or



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behavior differ from the stereotypes about how men and woman are supposed to be. Transgender people have existed in every culture, race and class since the story of human life has been recorded.

What we understand as transgender has been understood quite differently at various periods of time. In the earlier ages, people who were quite seem to bridge the fending were quite often thought to possess wisdom that traditionally generated people did not and were venerated for this.

As civilizations transformed from matrilineal and communal societies into male driven societies with rigid class divisions and emphasis on property ownership those male driven cultures reduced the status of woman and they were threatened by a persistent belief that the blurred gender lines possessed some greater insights, they set out to crush gender transgressive people most of all. Mostly they were neglected and suppressed because the opinion of the majority outweighs the minority and such indifference incline toward inequality and injustice. Into the modern age even though they resurfaced, it was a long climb back just to restore any sense of equality.

Hijras are transgenders called in India have a recorded history of more than 4000 years. Ancient myths bestow them with special powers to bring luck and fertility.

Shikhandi the character in Hindu epic the Mahabharatha is one such depicted as transgender. He was born as a girl child named Shikhandini to Dhruvad, after much penance to lord Shiva who promised that his child will attain sex change at a later phase, the king of Panchala Shikhandi, fought in the Krukshetra on the side of the Pandavas which changed the course of war overnight. Bhishma laid down his weapon in front of Arthanareeswarar, showing his respect towards holy union of Shiv and Parvati. Yet despite the supposedly sanctioned place in Indian culture, Hijras face severe harassment and discrimination from every direction.

There are upward 4 million Indians who identify as Hijra with community recorded back more than 4000 years. Maximum number of Hijras found in Uttar Pradesh with around 5% of total percentage of state population.

Transgenders have always been in the Indian scenario for centuries. If we inspect into the social setting of ancient India, Hijras have held a respected position among people and led a pious life dedicated to art and worship. New born children are blessed by Hijras to bring prosperity and they are considered a good omen and treated as utmost respect. However, when Indian subcontinent came under colonial rule during the 19th century, British authorities sought to eradicate and criminalize the Hijra community through various rules. These shattered the status from a respected to repelled class. They were pushed to the periphery as a social outcaste and many end up begging and dancing.

The main problems that are being faced by the transgender community are of discrimination, unemployment, lack of education facilities, homelessness, lack of medical facilities like HIV, care and hygiene, depression, hormone pill abuse, tobacco, alcohol abuse, penectomy and problem related to adoption/marriage. This is by all mean, human trafficking. Sometimes running out of all option to feed themselves thus even engage themselves as sex workers for survival. HIV rates are very high among the Hijra community, Statistic vary between 50% and 80%.

Study documented that in 2014, the Supreme Court ruled that the government must enact broad reforms to correct the custom of transgender discrimination of the parts of gender identity.

Specific findings - 85% believe that transgender people should be protected from discrimination by the govt.

82% of Indian supported the 2014, Supreme Court order protecting the transgender rights with 47% of them strongly agreeing.

64% of Indian believes that transgender person should be allowed to the biological parents to children.

Hijra social movement have campaigned for recognition as a third sex in 2005. Indian passport application forms were updated with three gender options M, F, and E.

In 2009 India agreed to list enunch and transgender people as others distinct from males



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and females in voting rolls and voter identity cards. Transgenders are again resurfacing with rights and dignified living. Kerala became the first state to unveil transgender policy. The policy covers all categories of Transgender including male to female transgenders and intersex people. The policy is a first of its kind envisaging to end the social stigma towards the sexual minority group and ensure them non discrimination. It has provisions to protect the community by providing equal access to social and economic resources, protecting the right to equal treatment under the law, the right to life, liberty and justice, and the right to non-discrimination based on sex. We are witnessing the growth in society. As we have contemplated before any growth that is in conformity with natural law and natural justice is a positive growth for human kind.

A very powerful statement made by Sheetal Smitoj, a transgender activist from Kerala in her thirties, speaking at the International Conference on Gender Equality in Thiruvananthapuram, Sheetal said, "Why are we called the third gender? Who is first gender and second gender? Men? Women? Why are we third?"

G.B road- A close survey.

The much known red light area of Delhi presently known as Shradannand Marg named after the Arya Samaj leader. The close proximity to the New Delhi railway station exacerbates the crowded and unhygienic living conditions with influx of anonymous and fast moving population.

G.B road presents a composite picture of mini India with diversity of caste, creed, religion and languages with girls from all states. There are 96 brothels and 10 dancing rooms. There are about 20-25 girls in one brothel. In total there are 2300 girls in total. The trafficked population includes Hindus, Muslims and also foreigners. There are specific kothas called Nepali Kotha where the majority of the girls are from Nepal.

The trafficked girls are disoriented from the very first. They are forced into trade by different tactics physical abuse or psychological pressure. The police turn a blind eye toward the exploitation and trafficking happening here. When a new girl arrives the kotha owner has to pay the respective police officials. Some of them even said the police officers advise them to change their name and also tell minor girls to say they are above 18 years of age.

Will you be ever able to reconcile to the fact that I am also a woman not a prostitute? I know I am pure and innocent, but you all made me a prostitute. A deafening question by one of the intimates in kotha at G.B road. A person dies when hope inside them dies. The woman here are nothing but machine set to motion for the gratification of basic instinct of humans called sex. Most of the intimates are either trafficked or sold to the pimps by their own parents. Many are stuck to this profession because they fear they would be ostracized by the villagers if they came to know about their profession. A woman aged 50 who insisted her name to be kept pseudonymous said, "once we are labeled as sex workers, we feel we are impure and have no opportunity of getting married or going back to our families to start a normal family life".

Majority of the women showed their interest in pursuing other works and return to normal life, but the ghost of their past haunts where ever they go. They are outcasted from their family and village where they live. This leads to no other option but to go back to the dirty rooms of kotha.

Nirmal Chhaya is a complex of welfare institutions run by Department of Social Welfare of Government of Delhi.

On 2001 Dec 15, 250 minor girls were rescued from the darkness of G.B road. They were given accommodation and facilities.

Those who were suffering from serious health ailments were taken to hospitals. Marriages and related functions were organized. 15 girls who chose men they wish to spend their life with. As a follow up of High Court decision these marriages were solemnized.

In the dim lights of Kotha rooms and crowded streets, many birds forget to fly maybe some may even lose feathers. The work of various NGO's and other human welfare societies have proved



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effective, but on the upper level where they can operate. The main problem lies in the root of family where the woman does not know her rights, her individual rights and she is bend by the maledominance either it can be her father or husband. These words should eco throughout our mind when we deal with the problems of trafficked woman "Will you be ever able to reconcile to the fact that I am also a woman not a prostitute? I know I am pure and innocent ,but you all made me a prostitute"

CONCLUSION

Today even after the claimed modernization and revolutionized mentality, visibly there is not enough to be proud about and comes with real risk to safety especially for those who are part of marginalized community. It will take fifty years more to achieve gender equality in many of the developing nations and many programs and initiatives by international organizations need to penetrate into grass root level to solve the existing injustice and gender disparity. One solution that I find most effective is sowing the seeds when the soil is fertile. By fertile land I mean the minds and soul of young children should be enlightened with knowledge about their rights and existing inequalities and their duty towards society as an individual. For this we should plant healthy seeds and nourish it with sunlight,water and fertile soil.

The beacon of hope for a prosperous future can be ensured if the present generation is well educated and thereby securing the future generations evolve in a progressive manner. At last is it not the purpose of our existence?

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SURROGACY NEED FOR REGULATION WITH SPECIAL REFERENCE TO SURROGACY [REGULATION] 2016

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Motherhood and childhood are entitled to special care and assistance.¹ In recent years, sharp growth in surrogacy in the world has drawn much attention and has raised several ethical concerns. Globally, it is estimated that 15 percent of couples around the world are infertile, which implies that infertility is one of the most highly prevalent medical problems. The magnitude of the infertility problem also has enormous social implications. Adoption has always been a potential means for an infertile couple to become parents. But now-a-days, adoption has become a process which is lengthy, time consuming, expensive and legally arduous. Moreover, the number of children available for adoption is declining. Adoption involves a response to a child needing a family. It irrevocably extinguishes any legal relationship between a child and its parents and creates a new relationship between the adoptive parents and the child. Adoption is the only way a person, other than a natural parent can become the legal parent of a child. Surrogacy, on the other hand, involves the planned creation of a child to meet the needs of an infertile couple that every couple has the right to have a child. With the enormous advances in medicine and medical technologies, today 85 percent of the cases of infertility can be taken care of through medicines, surgery or through the new medical technologies such as In-Vitro Fertilization (IVF) or Intra-Cytoplasmic Sperm Injection (ICSI).

Indian practice on surrogacy

India offer a much cheaper platform for such medical tourism industry, which easily provides the 'desperate and infertile' parents the child of their own genes and the surrogate in turn gets the much needed money for running her family life. Once a taboo, surrogacy is now socially accepted and practiced in India as because either the couples suffer from the problem of infertility or the poor, illiterate Indian women feel the grudge to earn money for their family and kids and the latter thing drags them into this whole racket of womb labour. In the social context specially, children are also a kind of old age insurance.²

Understanding the Meaning of Surrogacy:

According to Black's Law Dictionary, the word 'surrogate' has its origin in the Latin word 'surrogatus', meaning a substitution or replacement, i.e., a person appointed to act in the place of another.³ The term 'surrogate mother' or 'surrogate' is usually applied to the woman who carries and delivers a child on behalf of another couple. It is considered as a 'blessing' and 'miracle of science'.

¹Article 25 of Universal Declaration of Human Rights.

²Preamble, The Assisted Reproductive Technologies (Regulation) Bill, 2010.

³ Garner, Bryan A., *Black's Law Dictionary*, 9th ed. 2009.



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Surrogacy arrangement and types

A woman agrees to a pregnancy, achieved through assisted reproductive technology, in which neither of the gametes belong to her or her husband, with the intention of carrying it to term and handing over the child to the person(s) for whom she is acting as surrogate, wherein the procedure is called 'gestational/full/host/IVF surrogacy'.⁴

In partial or natural surrogacy, also known as traditional surrogacy, the commissioning mother has no role to play. The surrogate mother provides her own egg, which is fertilized by artificial insemination, carries the foetus and gives birth, to a child for another person. She gestates the child which makes her the biological or genetic mother of the child. The child may be conceived via artificial insemination using fresh or frozen sperm or impregnated via IUI (intra-uterine insemination), or ICI (intra-cervical insemination) performed at a health clinic. The child that results is genetically related to the surrogate and to the male partner but not to the commissioning female partner.

On the other hand, in gestational or total or IVF surrogacy, the child has the genetic combination of the commissioning parents. The 'genetic mother' provides the egg, which is fertilized by in-vitro fertilization and another woman, i.e., surrogate mother carries the foetus in her womb and gives birth to the child. Thus, in this method an embryo is created by the process of IVF/test tube in a laboratory, which is done by combining the genes of both the commissioning parents, which is then implanted into the womb of the surrogate mother.

There is another classification of surrogacy arrangements which can either be 'Commercial' or 'Altruistic'. There are only the Supreme Court guidelines on the regulation of commercial surrogacy in India⁵. In 'Commercial Surrogacy', the gestational carrier/surrogate mother is paid apart from medical and other reasonable expenses, to carry a child to maturity in her womb. This is usually resorted to by the higher income infertile couples who can afford the cost involved in the surrogacy arrangement and can complete their dreams of becoming parents. Commercial surrogacy is indeed a modern practice as opposed to traditional surrogacy. Infertility of either of the partners and the desire for a child has led them to fetch for alternate ways of child bearing. The development of assisted reproductive technology has made it possible for childless couples to have a child to be born through a surrogate mother to whom the child is not genetically related. This procedure is practiced on a large scale in several countries including India because of high international demand and readily available poor surrogates, low cost of the treatment, illiteracy, lack of power possessed by India women, lack of regulation of Assisted Reproductive Technology clinics and better flexible laws.

In 'Altruistic Surrogacy' arrangement, unselfish concerns are shown for the welfare of others by the surrogate mother and she receives no financial reward for her pregnancy or for the relinquishment of the child, although usually all expenses related to pregnancy and birth are paid by the intended commissioning parents. The carrier receives no compensation besides medical and other reasonable expenses for carrying and delivering the child. This is generally done by a friend or a close relative⁶ who is paid only the necessary related expenses and there is no reward to the surrogate.

⁴ Rao, Mamta, *Surrogacy: The Ethico-Legal Challenge*, January 2012, Vol. XIII, Issue-1, pp.12-14.

⁵ *Baby Manji Yamada v. Union of India*, (2008) 13 SCC 518.

⁶ In September 2012, Casey gave birth to her grandson when her daughter struggled with infertility. Her daughter's egg and her son-in-law's sperm were used in in vitro fertilization procedure, making the couple biological parents of the surrogate child born through his grandmother; accessed from <http://abcnews.go.com/blogs/health/2012/09/04/surrogate-mother-61-gives-birth-to-her-grandson/>; last visited on 25/01/2013; time 11:00 am (IST); place Meerut, Uttar Pradesh, India.



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Infertility Clinics/Centers

Many a times, the couples seeking surrogacy are foreign couples and they are assisted by such type of infertility clinics in their endeavour to be parents, infertility⁷Clinics are also becoming more competitive not just in pricing, but in the hiring and retention of Indian females as surrogates. The expression 'wombs for rent' was coined when it became possible for fertilized eggs to be implanted and, thus, grow to a full term baby in any womb, sometimes even with the help of cross-border surrogacy mothers. This may also be termed as 'outsourced pregnancy' or 'baby farms' These clinics also arrange donors of gametes when required, determine the money involved, arrange for legal help to work out the terms of the surrogate agreement and the benefits to each of the parties, supervise the pregnancy of the surrogate mother, monitor her during the gestation period, successfully deliver the child, obtaining of birth certificates from the municipal corporation and the final formalities to ensure that the baby is handed over to the intending parents. In turn, a surrogate receives the due sum of money for carrying the foetus to term. The desire of the infertile couple to have their own child is been fulfilled through this process of surrogacy. Surrogacy is also resorted to as a solution by childless couples because of difficulties with adoption..

The surrogacy debate

In India in 2008, when two-week-old Baby Manji Yamada was left stateless after the commissioning parents in Japan divorced during the pregnancy and the commissioning mother refused to accept the baby. While the court granted custody to the baby's grandmother after a long legal battle, the case led the Gujarat HC to state that there is "extreme urgency to push through legislation" which addresses such issues. Subsequently, the 228th report of the Law Commission of India recommended prohibiting commercial surrogacy and allowing ethical altruistic surrogacy to the needy Indian citizens by enacting a suitable legislation.⁸

New trends

The Bollywood celebrities like Shah Rukh Khan and Aamir Khan, who had children by way of surrogacy, recently producer and actor Karan Johar became the father of twins – a boy and a girl – through a surrogate mother "rich people outsource pregnancies to poorer women because their wives cannot go through labour pain. We have put a complete stop to celebrities who are commissioning surrogate children like a hobby, despite having biological ones."⁹

The Surrogacy (Regulation) Bill, 2016 for illustrative purpose only.

The Union Cabinet, cleared the Surrogacy (Regulation) Bill, 2016, banning commercial surrogacy in India¹⁰. The Bill also bars foreigners, homosexual couples, people in live-in relationships and single individuals, making only childless, straight Indian couple married for a minimum of five years eligible for surrogacy. Eligible couples will have to turn to close relatives, not necessarily related by blood for altruistic surrogacy – where no money exchanges hands between the commissioning couple and the surrogate mother. The Bill will apply to the whole of India, except Jammu and Kashmir. Before being passed by the Cabinet, a Group of Ministers (GoM) had recently cleared the Bill. Further, the new Bill mandates that women acting as surrogates can do so only once. And all Assisted Reproductive Technology (ART) clinics will be registered.

Key aspects of the Bill

1. The draft surrogacy Bill aims at regulating commissioning of surrogacy in the country in a proper manner.

⁷Section 2(u):infertility means the inability to conceive after at one year of unprotected coitus or an anatomical/physiological condition that would prevent an individual from having a child.

⁸Law Commission of India Report. 228 titled 'Need for Legislation to Regulate Assisted Reproductive Technology Clinics As Well As Obligations of Parties to a Surrogacy'

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2. As per the 2009 Law Commission Report, the assisted reproduction treatment industry is Rs. 25,000 crores industry.
3. The Bill aims to prevent exploitation of women, especially those in rural and tribal areas.
4. The Bill promises to ensure parentage of children born out of surrogacy is "legal and transparent."
5. The new Bill proposes complete ban on commercial surrogacy.
6. As per the Bill, only legally-wedded Indian couples can have children through surrogacy, provided at least one of them have been proven to have fertility-related issues.
7. Foreigners, even Overseas Indians, are barred from commissioning surrogacy.
8. A woman will be allowed to become a surrogate mother only for altruistic purpose and under no circumstances money shall be paid to her, except for medical expenses.
9. Unmarried couples, single parents, live-in partners and homosexuals cannot opt for surrogacy as per the new bill.
10. Surrogacy regulation board will be set-up at Central and State-level.

Surrogacy - Violation of Human Rights

Surrogacy is exploitation which compromises the dignity of the child by making the child the object of a contract—a commodity. It further compromises the dignity of the mother, even if her participation is voluntary, by merely treating her as a gestational oven. The exploitive reality of surrogacy arrangements and the resulting commodification of women and children have united unusual allies. "Religious fundamentalists, the Roman Catholic Church, and feminists alike have condemned the practice of contractual surrogacy as 'baby selling'—one that demeans and threatens women."¹¹ The business of surrogacy is ripe with opportunities to exploit women and children. Theresa Erickson, an American attorney who was recently convicted of orchestrating a profitable illegal surrogacy ring exploiting both surrogates and contracting parents, stated that her participation in abusing the system was just the "tip of the iceberg."¹² To prevent both current and future inevitable exploitation, it is essential that the Council of Europe apply the principles embodied in existing documents, such as the Convention on the Rights of the Child and the Convention on the Adoption of Children (Revised), to the issue of surrogacy, and lead European nations in the movement to ban the practice of surrogacy [T]he recruitment, transportation, transfer, harbouring or receipt of persons, by means . . . of coercion, of abduction, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, . . . forms of sexual exploitation, . . . practices similar to slavery, [or] servitude . . ."¹³

The consent of the person exploited, in this case the surrogate, is irrelevant when the above criteria are met.¹⁴ There are already documented instances of such exploitation. Currently, the Council of Europe adheres to a policy that human trafficking is "an offense to the dignity and integrity of the human being" and therefore violates the human rights of the victim.¹⁵ Additionally, each nation that ascribed to the Convention on Action against Trafficking in Human Beings is required to legislate in order "[t]o discourage the demand that fosters all forms of exploitation of persons, especially women

¹¹ Janice C. Ciccarelli & Linda J. Beckman, Navigating Rough Waters: An Overview of Psychological Aspects of Surrogacy, 61 J. SOC. ISSUES 21, 22 (2005).

¹² Rory Devine and R. Stickney, Convicted Surrogacy Attorney: I'm Tip of Iceberg, NBC SAN DIEGO (Feb. 29, 2012, 5:52 PM), <http://www.nbcsandiego.com/news/local/Theresa-Erickson-Surrogacy-Abuse-Selling-Babies-140942313.html>.

¹³ Convention on Action against Human Trafficking art. 4(a), May 16, 2005, C.E.T.S. No. 197. Similar wording in Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

¹⁴ Id. at art. 4(b).

¹⁵ Convention on Action against Human Trafficking preamble, May 16, 2005, C.E.T.S. No. 197.



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and children”¹⁶ These provisions establish a policy of protection for women and children who are vulnerable to exploitation. In furtherance of this policy, surrogacy should be prohibited because of the exploitation that is inherent in promising a young woman financial benefit for consenting to use her body as a means of producing a child that she agrees to surrender before giving birth. Surrogacy is contrary to human dignity and therefore should not be permitted. Refusal to transcribe the filiation of children obtained through international surrogacy in the civil registry is one of the most effective way of dissuading intending parents from resorting to a surrogate mother abroad.

Conclusion

Commercial surrogacy remains a highly stigmatized issue in India where surrogates have a tendency to keep the pregnancy secret from the world, as reproduction is considered acceptable only within marriage and if taken outside the domestic sphere for financial gains, it may be seen as a ‘dirty work’ or ‘baby selling’ or ‘womb renting’. The altruistic surrogacy should be preferred upon commercial surrogacy, which will help in reducing the commodification and exploitation of poor Indian women. This can be achieved only when the Indian Parliament enacts a law regarding the control of such pregnancies for commercial purposes. The enactment of the Surrogacy Regulation Bill 2016 is now becoming a dare necessity because of the fact that foreign couples are flogging in India and are utilizing the services of such women who are easily available at cheaper costs.

¹⁶Id. at art. 6.



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INTERNATIONAL CONVENTIONS ON WOMEN GENDER JUSTICE IN INDIA

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INTRODUCTION:

In ages past, yet women face the atrocities either through society, culture, caste, tradition or through humans. Even though women are be worshiped as Goddess yet the pain have no limits. Women become the major source of victims through violence, discrimination and exploitation. They are been looked down as a secondary citizens. Even though with so many provisions like constitutional, legislative and judicial efforts, there still a wide gap between the classic grail and contemporary truth. The rights of women are far extend to reach as it is inalienable, integral and invisible part of the reality. The main discrimination is of two phase: 1. Gender and 2. Grinding poverty.

Deprivation through economic resources and their dependency towards male members has put women largely into an axe. In the contemporary scenario women are been praised by many feminist moments, protected by laws, and also praised in media and through other activities. The secondary citizens such as women belong in rural areas seem to be under deprived from all the benefits. The task of women is not limited. Undoubtedly, woman plays a multi task responsibility either in the house or the society. The General Status of women in the family and in the society has been low and unrecognized. From the cradle to grave, females are under the clutches of numerous evils such as discriminations, oppressions, violence everywhere.

According to Thomas Reuters, a poll was conducted in 2014 which overviewed that India is the fourth dangerous country in the world for women to survive. The root cause of all the problems faced by the women is because of her illiteracy, economic dependence, caste restrictions, religious prohibition, etc. The patriarchal system in India made women to live at the mercy of men, who exercise unlimited powers over them. In view to make women be safer the Indian legislature enacted larger volumes. Eg. Abolition of Sati 1829, ban on female infanticide 1870 etc. The Rights of women play an important role in maintaining peace in the society. The women rights and privileges are been recognized by the world community as an integral and indivisible part of the Human Rights. The term women rights referred to the freedom inherently possessed by women and girls at all ages, which is ignored by law or custom in a specified society.

INTERNATIONAL PRIVILEGES FOR WOMEN:

1. The rights towards women came into a narrow focus with the adoption of the convention on Elimination of all forms of Discrimination Against women (CEDAW) by the General Assembly of the united Nation 1997. This was treated as the Magna Carta of women's human rights. As per the conventions, the state parties are obliged by the convention to eliminate discrimination in the exercise and enjoyment of all cultural, civil , economic, and social rights. The united nation security council protects both the Gender and affirms equal rights.
2. According to Universal Declaration of Human Rights 1948, which says, no discrimination and every one are born free with equal rights and dignity without any sex discrimination
3. United Nation General Assembly with one mind adopted Declaration of Eliminations of discrimination against women 1967 resolving to abolish sex discrimination and 1993 conference called for full participation of women an all aspects of life.



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4. 1975, 1980 and 1985 achievement in bringing UN Declarations for women, equality development and peace.
5. And the Beijing conference on Women Action for Equality Development and Peace 1995 and 2000, "LOOK AT THE WORLD THROUGH WOMEN'S EYES."

"No single Phrase in the recent human history has been privilege to bear the mission and burden of human dignity. The reason behind is that the million of women , youth and children around the world will be born , live and die and never know they are the owner of Human Rights.

- Ivanka corti, former chairperson CEDAW."

CEDAW RATIFICATION:

In 1994, India ratified the CEDAW treaty. The aim of the Article 1 is to outline the forms of discrimination face and help to eliminate the description either by knowing or has to reason for limiting women from taking part in public life. From Article 2 to 16 it talks about the laws and the steps taken to eliminate all form of fight against gender justice. It is believed that the ratification did not give any effect in India. The violence took place and still it is been. The main reason for the failure of this ratification is the agreement was not legally implemented and enforced throughout Indian Society. But , according to United Nations, India ratified CEDAW in 1993, with declarations which was noted by the Netherland is irrelevant and incompatible with the purpose and object of the convention. The First convention was Article 5(a) (UN 2013) and the Second convention was Article 29 (UN 2012). India had a very hard time in ratifying and enforcing CEDAW. It may be because of the Multi linguist or Multi cultural people holding different cast and religion. Since there is zero reports to the committee, if there any dispute on CEDAW it cannot complain because a reservation makes states.

Our Indian constitution states that the state shall endeavor to foster respect for international law and treaty obligations; however, because of India's special 'dualist' regime, any provisions or international laws ratified by the central government are not directly binding unless there is an explicit measure, through enactment of a statute, to internalize these obligations. a statute, to internalize these obligations. Therefore, in India, international conventions and laws are not very effective unless they have been translated into domestic laws¹. This becomes propaganda for the international communities, which lacks in giving a valuable action plan to protect the female population in India.

Rights means the right relating to life, liberty, equality and dignity of the Individual guaranteed by the constitution or embodied in the International covenants and enforceable by the courts in India.

VIOLENCE IN INDIA:

India considered to the land of peace and harmony with Unity in Diversity yet there are also a black face hidden in the minds of the human. Women are not exempted from any violence. This paper talks about three limited issues - 1. Dowry abuse, 2. Female infanticide and 3. Sex slaves. The reason why I picked up these three because it covers the three-fourth of the main violence what women are undergoing today.

DOWRY ABUSE:

In simple term Dowry abuse mainly happens to Daughter-in-law. Abuse through burning her in the intention to torcher many at times leading to death. The husbands are then available for remarriage². The pain and the agony of the women meant no value in the international convention

¹ Hameed, Hlatshwayo, Tanner, Turker & Yang, 2010

² Jutla & Heimback, 2004. According to Lakhani (2005): between 1947 and 1990, approximately 72,000 young brides between the ages of 15-20 years old were burned to death, an average of 1,674 murders per year. Between 1990 and 1998 alone, more than 20,000 women were killed, an average of 2,500 murders per year. In 1995, the



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CEDAW and there was no reduce in violence against women. The law against dowry known as the Dowry Prohibition Act was enacted in 1961(Act No. 28 of 1961) and forbids the taking or giving of dowry as well as makes it an offense that is punishable by up to six years in prison (Government of India, 1961). This law has proven to be ineffective and was taken up by the National Commission for Women in November of 2005 for the wording in the act is a bit ambiguous and allows for defendants to simply state that gifts were given out of affection, were customary for certain events, or were required to sustain a financial stringency that was necessary for urgent domestic expenses (National Commission for Women, 2005). In 1986, the Indian government added 'dowry deaths' under penal code 304-B³.

The statics:

while in 2005, eleven years after the signing of CEDAW, that number increased to 6,787 dowry murders and 58,319 incidents of dowry harassment (National Crime Records Bureau: Ministry of Home Affairs, 2005). As of 2008, there were 31,950 pending cases of dowry deaths, 117 cases withdrawn, 1,948 convicted, and 3,876 acquitted or discharged (National Crime Records Bureau: Ministry of Home Affairs, 2008). The trend for dowry harassment and dowry deaths are on the rise, therefore there is no evidence that the ratification of CEDAW has helped reduce this violent act against women.

FEMALE INFANTICIDE:

Infanticide or killing of a child is one of the largest crime in India. The female fetuses are selectively aborted after the pre-natal sex determination⁴. This selection process makes the female population lower in India. Infanticide is killing intentionally. The reduction in female births of approximately 13 per thousand clearly shows an increase in female genocide and does not support the claim that CEDAW reduces violence against women. To control female feticide, the Government of India enacted the Prenatal Diagnostic Techniques Act (PNDT) in 1994, which restricts the determination and revelation of gender of the fetus through ultra sounds that impede the implementation of the Act⁵. The failure of this act is evident due to the sex ratios of females to males that have continued to decline in India, as mentioned earlier. To control infanticide, the Indian government enacted Section 318, "concealment of birth by secret disposal of the dead body and amounts to culpable homicide"⁶.

The statics:

In 2000, "infanticide cases increased 19.5% over the previous year". According to an article printed in the India Tribune (2011), the Report of the Union Ministry of Health and Family Welfare showed that during 2009-2010, only 139 cases were reported under the PNTD Act. This is a ridiculously low number when it is estimated that "as many as 50 million female foetuses might have been aborted illegally"⁷. These numbers not only indicate that the ratification of CEDAW did not help to prevent violence against women; it shows the government's lack of enforcement in this particular form of violence against women.

SEX SLAVE:

Indian government reported that an estimated 6,500 women per year die as a result of dowryrelated deaths (p. 258)

³ where a bride, within 7 years of her marriage[,], is killed and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband, or any relative of her husband, or in connection with any demand for dowry, such death shall be called 'dowry death' and such husband or relative shall be deemed to have caused her death (Lakhani, 2005, p. 9)

⁴ Grewal & Kishore, 2004

⁵ Law is Greek Reporter, 2010

⁶ Tandon & Sharma, 2006

⁷ Kashap, 2011



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Sex slaves are defined as “ the procurement, recruitment, transportation, transfer, harboring or receipt of persons, legally or illegally, within or across borders, by means of threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of giving or receiving payments or benefits to achieve the consent of a person having control over another person, for monetary gain or otherwise”⁸.

In CEDAW, there are several legal provisions in India to prevent human trafficking. In 1956 India passed the Immoral Trafficking Prevention Act (ITPA) which has severe penalties ranging from seven years’ to life imprisonment. In 2002, India ratified the South Asian Association for Regional Cooperation that aims to instigate regional cooperation on the rights of women and children in South Asia⁹. India also prohibits bonded and forced labor through the Bonded Labor Abolition Act, the Child Labor Act, and the Juvenile Justice Act¹⁰. With the enormous amount of Girl children caught up in trafficking in India, the number of reported cases for 2007 and 2010 are very high. Statistically, these numbers show that CEDAW has not reduced this violent act against women.

The statics:

India’s National Crime Records Bureau reported an increase in ‘Procuration of Minor Girls’ from 253 reported cases in 2007 to 679 reported cases in 2010¹¹. The number of reported cases for ‘Selling of Girls for Prostitution’ also increased, from 69 reported cases in 2007, to 130 reported cases in 2010.

NATIONAL PROVISIONS:

The Indian constitution was adopted on November 26, 1949; two years after India became a sovereign nation. Article 14 of the Indian constitution, Equality Before Law, states, “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”. Article 15 Prohibits discrimination on grounds of religion, race, caste, sex or place of birth¹². The rights of women in India are a fundamental right and were recognized in the constitution over 70 years ago but never enforced. From a national level, in 1992, India established the National Commission for Women, which is the national mediator for women. In 1997 India established a parliamentary committee on the empowerment of women, and in January 2001, India announced its commitment to the empowerment of women through the launching of a new National Policy on Women’s Empowerment¹³. According to Amnesty International, however, “these policies should be more than just further rhetoric and should firmly address ongoing problems of non-implementation and/or discriminatory implementation of safeguards and impunity for perpetrators of violence against women”. Violence against women is maintained in India despite the framework like legislation, constitutional and administrative provisions make women more vulnerable and also due to gender, caste and class biases within the society puts the legal safeguards meaningless¹⁴.

India identified women as equals upon their sovereignty in 1946, and they have continued to recognize the problem of violence against women by creating provisions, committees for the empowerment of women, national policies, and other organizations and actions encouraging

⁸ India Development Gateway, 2011

⁹ Ministry of External Affairs, 2002

¹⁰ Hameed, et al., 2010

¹¹ National Crime Records Bureau, 2010

¹² (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to – (3) nothing in this article shall prevent the State from making any special provision for women and children

¹³ United Nations, 2012

¹⁴ Samiti, 1999



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participation in international policies and treaties. However, if we look at the statistics for the increases in violence, the sex ratio statistics, and compare the conviction rates for offenders of violent crimes against women, one would have to agree that these policies seem rhetorical rather than meaningful, enforceable, legal safeguards. Violence against women and the lack of protection for them may also be a direct result of the male preference commonly found in Indian society. Although not all families desire only male children, it is common within the culture to prefer male children due to several factors.

These factors generally include: “economic, religious, social and emotional desires, and norms that favor male children and make female children less desirable” and less important. In India, “parents expect sons – but not daughters – to provide financial and emotional care, especially in their old age” as sons usually remain living in the community home throughout adulthood, take over the family business, or get higher paying jobs than women. Sons also become the head of the household when the father is too old to resume this role. Daughters, on the other hand, are generally considered an expensive burden because of the cost of weddings and dowries and their tendency to either not work, or receive low paying jobs. Sons also continue the family lineage, carrying on the household name, but daughters get married and usually move to their husband’s household, removing with them the family’s personal wealth “Sons perform important religious roles; and sons defend or exercise the family’s power while daughters have to be defended and protected, creating a perceived burden on the household”¹⁵. These beliefs in regards to gender roles create a clear disparity in equality and desirability between the sexes. It is important to consider these beliefs in regards to gender preference when understanding the challenges in obtaining equality for women and the complexities in ending violence against them.

CONCLUSION:

The first ever women president who was elected in 2007 seems to be a turning point for women. Therefore, it would appear that the rights of women are progressing and that laws would be enforced to prevent violent crimes against them. Unfortunately, that is not the case: although there are many laws and organizations in place, these practices have not reduced violent crimes due to the ratification of CEDAW. It does appear India recognizes there is a problem for the women of their country, for acts have been passed, and laws and organizations have been put into place that identify specific problems that women face. From a statistical perspective, these laws do not appear to be having a positive effect, but only show on paper that India is trying to protect women. In fact, all of the violent acts mentioned in this paper are considered crimes and are illegal in India, but it does not appear that CEDAW or any of the other laws are protecting women and reducing violence. The statistics are alarming as we see each crime presented in this paper rise statistically since the ratification of CEDAW, while criminal convictions are relatively low. Brides are being burned as their husbands and in-laws demand more dowries at a rate that has increased over the last few decades. Birth rates for women are decreasing as girl children are being aborted or murdered as infants in the form of female gendercide. Young girls by the thousands are being abducted and used as sex slaves while only a handful of these trafficked girls are being reported. In a country where boys are preferred and considered an asset for economic, social, and religious reasons, it is difficult to make changes on a national level when access to education is limited, poverty is widespread, and some individuals are unaware of the International Conventions. India’s ratification of CEDAW did not make the country change its religious and cultural beliefs about the value of the female population. In fact, the ratification of CEDAW does not appear to have changed anything. The president of India, Pratibha Devisingh Patil posts on her web site “empowerment of women is particularly important to

¹⁵ Rande, R., & Malhotra, A. (2006). Son preference and daughter neglect in India. International Center for Research on Women



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me as I believe this leads to the empowerment of the nation" (National Informatics Centre, 2012). Yet, women as a whole are not being empowered. The statistics show the contrary. India, in order to reduce gender-based violence, needs a more effective governing policy, as CEDAW has clearly done nothing to help Indian women.



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GENDER JUSTICE AS HUMAN RIGHTS -THIRD GENDER IS NOT A WORD, IT IS A GENDER

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INTRODUCTION

"Sex" is biological differences what you are born with, "gender" is an identity what you recognize and "sexuality" is what you discover. But, Transgender is the state of one's gender identity or gender expression not matching one's assigned sex. The definition of transgender includes, "People who were assigned a sex, usually at birth and based on their genitals, but who feel that this is a false or incomplete description of them. Transgenderism is one such phenomena where the transgendering person. Gradually but recurrently perceives and recognizes his/her gender as different from the one assigned at birth, discovers and unfolds one's sexuality in the midst of perceived as well as publicly expressed rejection and isolation in society at large.

MISCONCEPTION ABOUT THE TERM 'TRANSGENDER'

According to "Sen" Transgender is the most commonly used term to describe people who "cross socially constructed gender boundaries." Transgender is a blanket term that covers all people whose sense of gender identity does not match their physiological sex. Transgender is not a term limited to persons whose genitals are intermixed but it is a blanket term of people whose gender expression, identity or behaviour differs from the norms expected from their birth sex. Various transgender identities fall under this category including transgender male, transgender female, male-to-female (MTF) and female to male (FTM). It also includes cross-dressers (those who wear clothes of the other), gender queer people (they feel they belonged to either both genders or neither gender) and transsexuals. In India, there are a wide range of transgender related identities which includes the Hijras, Aravanis, Kothis, Jogtas/ Jogappas, Shiv Sakthis. In the past, they were treated with great respect.¹

'Hijra' is a Persian word translated as eunuch which is used in common parlance for transgender community in India.

'Aravani' is a term used for male-to-female transgender who undergo genital modification through SRS (Sex Reassignment Surgery) or perform Nirwaan which is a traditional mode of castration.

'Kothi' is used for those who adopt a feminine role in same sex relationships, but do not live in communes as Aravanis.

'Jogtas/ Jogappas' found in Maharashtra and Karnataka are male to female transgender who devote themselves to the service of a particular god.

'Shiv Shakthis' found in Andhra Pradesh are males who are considered married to gods particularly Lord Shiva. They usually work as spiritual healers or astrologers.

RIGHTS GRANTED UNDER INDIAN LAW TO TRANSGENDER

The rule of law is supreme and everyone is equal in the eyes of law in India. Yet, the transgender community is in a constant battle as they have to fight oppression, abuse and discrimination from every part of the society, whether it's their own family and friends or society at large. The life of transgender people is a daily battle as there is no acceptance anywhere and they are ostracized from the society and also ridiculed. While the Hijra community is still revered by society at

¹blog.ipleaders.in



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large and celebrated in religious and spiritual ceremonies, they are often the victims of abuse and discrimination. Violence and crimes against the community are common, as is housing and other discrimination. The government has tried to address this by introducing bills for the protection of transgender persons, with prison terms and other punishments for those offending them.

The judgement covers persons who want to identify with the third gender as well as persons who want to transition from one identity to another, i.e. to male to female or vice versa. The Court has directed Centre and State Governments to grant legal recognition of gender identity whether it is male, female or third gender.

Legal Recognition for Third Gender:

In recognizing the third gender category, the Court ruled that fundamental rights are available to the third gender in the same manner as they are to males and females. Further, non-recognition of third gender in both criminal and civil statutes such as those relating to marriage, adoption, divorce, etc is discriminatory to the third gender.

Legal Recognition for people transitioning within male/female binary:

As for how the actual procedure of recognition will happen, the Court merely states that they prefer to follow the psyche of the person and use the 'Psychological Test' as opposed to the 'Biological Test'. They also declare that insisting on Sex Reassignment Surgery (SRS) as a condition for changing one's gender is illegal.

Public Health and Sanitation:

Centre and State Governments have been directed to take proper measures to provide medical care to Transgender people in the hospitals and also provide those separate public toilets and other facilities. Further, they have been directed to operate separate HIV/ Sero-surveillance measures for Transgender.

Socio-Economic Rights:

Centre and State Governments have been asked to provide the community various social welfare schemes and to treat the community as socially and economically backward classes. They have also been asked to extend reservation in educational institutions and for public appointments.

Stigma and Public Awareness:

These are the broadest directions - Centre and State Governments are asked to take steps to create public awareness so that Transgender people will feel that they are also part and parcel of the social life and not be treated as untouchables; take measures to regain their respect and place in society; and seriously address the problems such as fear, shame, gender dysphonic, social pressure, depression, suicidal tendencies, and social stigma.

Challenging 377:

The judgment contradicts the findings of the Supreme Court in Suresh Kumar Koushal in various ways. The main points include:

- The judgement notes that Section 377, though associated with specific sexual acts, highlighted certain identities, including Hijras. It also recognises that sec 377 has been used as an instrument of harassment and physical abuse against Hijras and transgender persons. The judgment only says that this amounts to a misuse of the Section as opposed to what it actually dictates, thus refusing to meaningfully apply a fundamental rights analysis to it. Now we have a clearly contradictory finding
- The argues against Koushal's infamous 'miniscule minority'² argument noting that Transgender, even though insignificant in numbers, are still human beings and therefore they have every right to enjoy their human rights.

²dictzone.com



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- The Court finds that discrimination on grounds of sexual orientation and gender identity violates Article 14³, and that transgender are extremely vulnerable to harassment, violence and sexual assault in public spaces, at home and in jail, also by the police. If we are to read this with their finding that 377 is used to harass and physically abuse transgender persons, we can clearly make the link that 377 fails the test of equality under the Constitution.

However, the Supreme Court of India in its pioneering judgment by the division bench of Justices K.S. Radhakrishnan and A.K. Sikri in *National Legal Services Authority v. Union of India & Ors.*⁴ Recognized the third gender along with the male and female. By recognizing diverse gender identities, the Court has busted the dual gender structure of 'man' and 'woman' which is recognized by the society. "Recognition of Transgender as a third gender is not a social or medical issue but a human rights issue," Justice K.S. Radhakrishnan told the Supreme Court while handing down the ruling.

CONSTITUTIONAL RIGHTS

The right of equality before law and equal protection of law is guaranteed under Article 14 and 21 of the Constitution. The right to choose one's gender identity is an essential part to lead a life with dignity which again falls under the ambit of Article 21⁵. Determining the right to personal freedom and self determination, the Court observed that "the gender to which a person belongs is to be determined by the person concerned." The Court has given the people of India the right to gender identity. Further, they cannot be discriminated against on the ground of gender as it is violate of Articles 14, 15, 16 and 21.

The Court also protects one's gender expression invoked by Article 19 (1) (a) ⁶and held that "no restriction can be placed on one's personal appearance or choice of dressing subject to the restrictions contained in article 19(2) of the Constitution". The Court recognized the right to as to how a person choose to behave in private, personhood and the free thought process of the human being, which are necessary for the fullest development of the personality of the individual. The Court further noted that a person will not realize his dignity if he is forced to mature in a gender to which he does not belong to or he cannot relate to which will again hinder in his development. The Supreme Court has given certain directions for the protection of the rights of the transgender persons by including of a third category in documents like the election card, passport, driving license and ration card, and for admission in educational institutions, hospitals, amongst others.

Human rights are basic rights and freedoms which are guaranteed to a human by virtue of him being a human which can neither be created nor can be abrogated by any government. It includes the right to life, liberty, equality, dignity and freedom of thought and expression.

In *Corbett v. Corbett*⁷, an annulment of his marriage with 'April Ashley' a Post operative transsexual woman. The court held that despite the sex change the respondent was still a male & a marriage between males was void. *R.V. Tan*⁸, the court applied *Corbett* approach and held a post operation male to female transsexual, still being in law, a man. Neither the Hindu marriage act nor the special marriage act includes eunuchs in their ambit. Eunuchs are not protected under national commission for woman because they technically do not form a part of fairer sex. Section 2(c) of National Commission for minorities⁹ which defines minority communities as Muslims, Christians, Sikhs, Buddhists' but do not come under the category of minorities under this act.

³www.legalservicesindia.com

⁴[Writ Petition (Civil) No.400 of 2012(NALSA)]

⁵<http://www.legalserviceindia.com>

⁶www.legalservicesindia.com

⁷(1970) AIR33

⁸(1983) Q 131053

⁹indiankanoon.org



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The preamble of UDHR¹⁰(Universal Declaration of Human Rights) reads “whereas the people of United Nations have in the charter reaffirmed their faith in fundamental human rights ” in the dignity and worth of human person & in the equal rights of man & woman & have determined to preamble social progress & better standards of life in larger freedom .The charter of United Nations also has given no place to this gender.¹¹

VIOLATION OF HUMAN RIGHTS

They are deprived of social and cultural participation and hence they have restricted access to education, health care and public places which further deprives them of the Constitutional guarantee of equality before law and equal protection of laws. It has also been noticed that the community also faces discrimination as they are not given the right to contest election, right to vote (Article 326)¹², employment, to get licenses, etc. and in effect, they are treated as outcast and untouchable.

The transgender community faces stigma and discrimination and therefore has fewer opportunities as compared to others. They are hardly educated as they are nor accepted by the society and therefore do not receive proper schooling. Even if they are enrolled in an educational institute, they face harassment and are bullied every day and are asked to leave the school or they drop out on their own. It is because of this that they take up begging and sex work. Seldom does a skilled individual from this community get into formal employment due to the policy of hiring only from either the male or female gender. Even if they do, they are ridiculed and ostracized and hence forced to leave their jobs.

They are forced into sex work which puts them at the highest risk of contracting HIV as they agree to unprotected sexual intercourse because they fear rejection or they want to affirm their gender through sex. They are viewed as ‘vectors’ of HIV in the society. Other sexually transmitted infections such as rectal gonorrhoea, syphilis, rectal Chlamydia, etc., add to the risk of HIV.

Immoral Traffic Prevention Act of 1956¹³ which was amended in 1986 has become gender neutral legislation. The domain of the Act now applies to both male and female sex workers along with those whose gender identity was indeterminate. With the amendment both the male and hijra sex workers became criminal subjects as this gives the police the legal basis for arrest and intimidation of the transgender sex workers.

Section 377 of IPC in the Indian Penal Code, 1860 criminalizes same sex relations among consenting adults “unnatural offence” is existing in conjunction with the court’s recent decision of giving ‘recognition’ to the third gender. Prior to the enactment of Criminal Tribes Act that criminalized all penile-non-vaginal sexual acts between persons, including anal sex and oral sex, at a time when transgender persons were also typically associated with the prescribed sexual practices. Reference may be made to the judgment of the Allahabad High Court in Queen Empress v. Khairati¹⁴, wherein a transgender person was arrested and prosecuted under Section 377 on the suspicion that he was a ‘habitual sodomite’ and was later acquitted on appeal. This judicial legislation plays in contrast to the historical times in India where TG Community had got a strong historical presence in our country in the Hindu mythology and other religious texts.

Lord Rama, in epic Ramayana, impressed with their devotion, sanctions them the power to confer blessings on 11 people on auspicious occasions like childbirth and marriage, and also at inaugural functions. Jain Texts also make a detailed reference to TG which mentions the concept of ‘psychological sex’. Hijras also played a prominent role in the royal courts of the Islamic world, especially in the Ottoman empires and the Mughal rule in the Medieval India.

¹⁰ <http://www.youthforhumanrights.org>

¹¹ Indrani Sen. Gupta, Human rights and Sexual minorities, 2005

¹² indiankanoon.org

¹³ <http://www.hyderabadpolice.gov.in>

¹⁴ 1884) ILR 6 All 204



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Legal experts say that the aforementioned judgment puts transgender people in a strange situation: on the one hand, they are now legally recognised and protected under the Constitution, but on the other hand they may be breaking the law if they have consensual gay sex. This is a colonial era law which makes the Transgender community vulnerable to police harassment, extortion and abuse. In *Jayalakshmi v. State of Tamil Nadu*,¹⁵ Pandian, a transgender, was arrested on charges of theft by the police. He was sexually assaulted in the police station which ultimately led him to immolate himself,

CONCLUSION

"Some people just don't think the term 'male' or 'female' fits for them," Mara Keisling, a Tran's woman and executive director of the National Centre for Transgender Equality said. Sometimes there is an overlap between transgender, gender nonconforming, gender queer, and non binary communities. People might identify with all, some, or none of these concepts, even if they exhibit traits attributed to these three forms of identity and expression. There are dozens of ways people identify and express themselves, so these three concepts fall far short of the full realm of possibilities.

There seems to be no reason why a transgender must be denied right human rights which include rights which include rights of life & liberty with dignity, right to privacy and freedom of expression, rights to education and empowerment, right against violence, right against exploitation, discrimination. Constitution has fulfilled its duty of providing rights to transgender. Now it's time for us to recognize this & to extend & interpret the constitution in such a manner to ensue dignified life of 3rd gender people. If all goes according to plan they will no longer be forced into prostitution and some hijras should be off the streets also. A mixed reaction has been observed against this third gender issue from Indian citizens. While some of the esteemed personalities like lawyer Anita Shenoy, social activist like Laxmi Narayan Tripathi, different political leaders as well as socialites and intellectuals have expressed their support and applause for the court's decision, a few of them has raised a subtle issue. According to 2009 Delhi Court Order Homosexual sex is a prohibited issue; by acknowledging third genders government has raised a controversy. These people are now protected about their fundamental rights by Indian constitution, whereas by consensual sex they will act against Indian constitution.

However, the enforcement of this third gender law transgender people is a victory of humanity and it is a step toward an undisputed impartiality of society. It is further expected that not only the government but also the social activists and general public must come forward to honour and support the third genders for their decent and peaceful living.

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¹⁵W.A.No. 1130 of 2006



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WOMEN LABOUR RIGHTS IN INDIA- SOCIO AND LEGAL PERSPECTIVE

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INTRODUCTION

Labour is one of the primary factors of production in any country. It is the aggregate of all human physical and mental effort used in the creation of goods and services.¹ Various studies have shown that economic dependence of women is their predominant cause of their subordination. Thus, a change in the structure of the economy whereby women are assigned a major productive role would be a way to improve their status. Economic independence is the foundation on which any structure of equality for women can be built. On a survey conducted by the Centre for Monitoring Indian Economy (CMIE), it was noticed that in the first four months of 2017, jobs for men increased by 0.9 million while 2.4 million women fell off the employment map. In its three-year (2017-20) "action agenda draft" released on April 23, the NITI Aayog (National Institution for Transforming India) stressed on the importance of promoting equal participation of women in the economy. Only 27 per cent women are in the labour force, the lowest among BRICS countries; among G-20 countries, it is better only than Saudi Arabia.² According to National Sample Survey (NSS), Indian female labour force participation is declining every year. The reasons are many, including shrinking of agricultural lands, less wages, job conditions etc. India is the first among countries to give women equal franchise and has a highly credible record with regard to the enactment of laws to protect and promote the interests of women, but women continue to be denied economic, social and legal rights and privileges. The Indian government has taken various steps to uplift this vulnerable section. This paper will deal with the various constitutional rights and legal rights that are available to working women in India.

CONSTITUTIONAL RIGHTS

A CONSTITUTION is a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the government of a State and declares the principles governing the operation of those organs. In India the Indian Constitution was adopted by the Constituent assembly on 26th November 1949 where few Articles³ came into force at once. The remaining provisions of the constitution came into force on the 26th January, 1950, which is the date for the commencement of the this Constitution.

THE PREAMBLE OF THE INDIAN CONSTITUTION

The Constitutional makers gave to the Preamble "the place of pride" as it embodies in a solemn form all the ideals and aspirations for which the country has struggled during the British regime. The Preamble to the Constitution is a key to open the minds of the makers, and shows the general purpose for which they made the several provisions of the constitutions.⁴ The Source of the Constitution is thus traced to the people, i.e men and women of India, irrespective of caste, community, religion or sex. The framers of the Constitution were not satisfied with mere territorial unity and integrity. According to them, the unity is to be lasting it should be based on socio,

¹www.businessdictionary.com

²<http://economictimes.indiatimes.com/articleshow>

³ Art. 5, 6, 7, 8, 9, 60, 324, 366, 367, 372, 380, 388, 391, 392 and 393.

⁴ In re Berubari Case AIR 1960 SC 845



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economic and political justice. Such justice should be equal for all. The Preamble contains the goal of equality of Status and opportunity of all citizens. This particular goal has been incorporated to give equal rights to women and men in terms of status as well as opportunity.

CONSTITUTIONAL PROTECTION

As the Preamble by itself gives women their required rights, the various Articles of the Indian Constitution that confers rights to working women are as follows: -

- FUNDAMENTAL RIGHTS
- DIRECTIVE PRINCIPLES OF STATE POLICY
- FUNDAMENTAL DUTIES
- OTHER CONSTITUTIONAL PROVISIONS

FUNDAMENTAL RIGHTS

Human Rights which are the entitlement of every man, women and children because they are human beings have been made enforceable as constitutional or fundamental rights in India. The framers of the Indian Constitution were conscious of the unequal treatment and discrimination meted out of the fairer sex from time immemorial and therefore included certain general as well as specific provisions for the upliftment of the status of women.

Justice Bhagwati in *Maneka Gandhi v. Union of India*⁵, said:

"These fundamental rights represent the basic value cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human beings can develop his personality to the fullest extent"

ARTICLE 14

Article 14 of the Indian Constitution provides equality before law. It provides that:

"The states shall not deny to any person equality before the law or the equal protection of law within the territory of India."

Article 14 embodies the general principle of equality before law and prohibits unreasonable discrimination between persons. Article 14 is an epitome of the noble ideas expressed in the Preamble of the Indian Constitution.

ARTICLE 15(1) AND 15(3)

Article 15 specifically prohibits discrimination on the ground of sex. It states that:

"Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

15 (1) the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

15 (3) Nothing in this article shall prevent the State from making any special provision for women and children

Thus Article 15(1) prohibits gender discrimination and Article 15(3) lifts that rigour and permits the State to positively discriminate in favour of women to make special provisions to ameliorate their social condition and provide political, economic and social justice. The state in the field of service and labour law has resorted to Article 15(3) and the Courts, too have upheld the validity of these protective discriminatory provisions on the basis of Constitutional mandate .

ARTICLE 16

Article 16 provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office.

These rights being fundamental rights are justiciable in court and the Government is obliged to follow the same.

DIRECTIVE PRINCIPLES OF STATE POLICY

⁵ (1978) 1 SCC 248; AIR 1978 SC 597



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The Directive Principles of State Policy contained in the Indian Constitution set out the aims and objectives to be taken up by the States in the governance of the country. Directive principles of State Policy also contains important provisions regarding women empowerment and it is the duty of the government to apply these principles while making laws or formulating any policy. Some of them are:

ARTICLE 39(a) AND 39(d): Article 39 (a) provides that the State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood.

Article 39 (d) mandates equal pay for equal work for both men and women.

ARTICLE 42: Article 42 provides that the State to make provision for securing just and humane conditions of work and for maternity relief.

FUNDAMENTAL DUTIES: Rights and duties are correlative. The fundamental duties are therefore, intended to serve as a constant reminder to every citizen that while the Constitution specifically conferred on them certain fundamental rights, it also requires the citizens to observe certain basic norms of democratic conduct and democratic behavior.

ARTICLE 51(A) (e): Article 51 (A) (e) expects from the citizen of the country to promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women.

OTHER CONSTITUTIONAL PROVISIONS: One of the landmark directions in the empowerment of women in India are 73rd amendment together with 74th amendment of the Indian Constitution (Art. 243(D)(3), 243(D)(4), 243(T)(3), 243(T)(4)). With this amendment women were given 33.33 percent reservation in seats at different levels of elections in local governance i.e. at Panchayat, Block and Municipality elections.

LEGAL RIGHTS

THE EQUAL REMUNERATION ACT, 1976: The Doctrine of 'equal pay for equal work' is not a fundamental right but a Constitutional right. Equal remuneration for men and women is the right of an employee without any qualification. The Act of Equal Remuneration, 1976 was enacted to comply with the provisions of Directive Principle of State Policy (DPDP) under Article 39. The Act, being a beneficial legislation, ensures adequate payment or remuneration to be made irrespective of the physical strength of employee and removing the scope of social and economic injustice merely on the ground of sex, thereby working to establish a just society in the country.

The main objective of the Act is to provide for protection against discrimination of women workers on the ground of sex, about the payment of equal remuneration in the matter of employment.

In a landmark case, *Randhir Singh v. Union of India*, AIR 1982 SC 879, the court held that equal pay for equal work is a constitutional goal as per the provisions of Articles 14, 16 and 39(c) and, that it can be enforced by courts in cases of unequal pay scales based on unreasonable classifications, including gender discrimination.

THE SEXUAL HARASSMENT OF WOMEN AT WORK PLACE (PREVENTION, PROTECTION AND) ACT, 2013: Sexual Harassment is behavior. It is defined as an unwelcome behavior of sexual nature. Sexual harassment at workplace is a widespread problem in the world whether it be a developed nation or a developing nation or an underdeveloped nation, atrocities against women is common everywhere. It is a universal problem giving negative impact on both men and women. It is happening more with women gender in particular. The Supreme Court of India defined Sexual Harassment as any unwelcome sexually determined behavior (whether directly or by implication) such as;

1. Physical contact and advances,
2. A demand or request for sexual favors,
3. Sexually colored remarks,



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4. Showing pornography,

5. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

A key part of the definition is the use of the word unwelcome. Such unwelcome or uninvited conduct/act is totally prohibited. Sexual or romantic interaction between consenting people at work may be offensive to observers or may also lead to the violation of the workplace's policy, but it is not sexual harassment. It was in the landmark case of Vishaka and others Vs. State of Rajasthan that laid down guidelines for the preventing and redressal of the complaints by women who were sexually harassed at workplace. The Guidelines entrusted the Employer with the obligation to provide a safe and woman friendly environment. The guidelines included the definition of sexual harassment, preventive steps, duty of employer, criminal proceedings, disciplinary action, complaint mechanism, complaint committee, workers initiative, awareness, third party harassment etc..

THE MATERNITY BENEFIT ACT, 1961: International attention on maternity protection, of the world community was attracted when the first Maternity Protection Conferences was convened in 1919 by the International Labour Organization. In this matters relating to maternity leave, economic benefits during absence from work, leave from bringing up children and non- termination of service during pregnancy and immediately after delivery deliberated upon and a resolution was passed. Keeping in view the Convention of the International Labour Organization and the fact that there was a need for providing maternity benefits, there were various provisions in various acts in India. But the scope of qualifying condition for payment, the rate and period of benefit was not uniform under these Acts. Therefore in 1961 the Maternity Benefit Act was enacted to remove these disparities and to have uniform rules.

The Maternity Benefit Act, 1961 regulates the employment of women in factories, mines, plantations, shops or other establishments employing ten or more persons, except the employees who are covered under the Employees' State Insurance Act, 1948, for certain periods before and after child-birth and provides for maternity and other benefits.

Benefits under the Act:

Cash Benefits

- Leave with average pay for six weeks before the delivery
- Leave with average pay for six weeks after the delivery
- A medical bonus if the employer does not provide free medical care to the woman
- An additional leave with pay up to one month if the woman shows proof of illness due to the pregnancy, delivery, miscarriage or premature birth
- In case of miscarriage, six weeks leave with average pay from the date of miscarriage.

Non Cash Benefits/Privilege

- Light work for ten weeks (six weeks plus one month) before the date of her expected delivery, if she asks for it
- Two nursing breaks in the course of her daily work until the child is 15 months old
- No discharge or dismissal while she is on maternity leave
- No change to her disadvantage in any of the conditions of her employment while on maternity leave
- Pregnant women discharged or dismissed may still claim maternity benefit from the employer.

Salient features of the Maternity Benefit (Amendment) Bill, 2016 are:-

- Duration of maternity leave
- Maternity benefit prior to expected delivery
- Maternity benefit for a woman having two or more children
- Maternity benefit to adopting mother and commissioning mother
- Provision for Crèche facility



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- Option to Work from Home
- Informing women employees of the right to maternity leave

THE EMPLOYEES' STATE INSURANCE ACT, 1948: The object of the Employees' State Insurance Act 1948 is to provide for certain benefits to employees in case of sickness, maternity, and employment injury and to make provisions for certain other matters like funeral expenses, dependants' benefits, medical benefits and disablement benefits. The main object of the Act is to evolve a scheme of socio-economic welfare, making elaborate provisions in respect of it.

MATERNITY BENEFITS :Under section 50 of the ESI Act, 1948, the qualification of an insured women to claim maternity benefit, the condition subject to which such benefits maybe given, the rates and period thereof shall be or such as maybe prescribed by the Central Government. The Central Government made the Employees' State Insurance (General) Regulation, 1950 in exercise of power conferred by section 97 of the ESI Act, 1948

FACTORIES ACT 1948: In India the first Factories Act, 1881 was passed to protect children and to provide for a few measures for the health and safety of workers. This Act contains some provisions especially fo the welfare of women. Few are:-

- Prohibition of women's employment near cotton-openers
- Latrines and urinals for women
- Creches
- Prohibition on or near machinery in motion and various other restrictions

MINES ACT 1952: As mines are not included within the preview of the Factories Act a separate legislation was enacted for the operation of mines called the Mines Act 1952. The prohibition of employment in a mine which is below ground is made in the interest of women as the process of activity in the mines are hazardous and causes maternal impairment of the health of women.

THE BEEDI AND CIGAR WORKERS (CONDITION OF EMPLOYMENT) ACT, 1966

Beedi and cigar making is an area where a larger number of women and children are employed. They are then subjected to exploitation in terms of wages and working hour. Long hours of work and less wages compelled the Government to enact the Beedi and Cigar Workers (condition of employment) Act 1966, which provide benefits to women workers.

Under section 25 of the Act it has been laid down that no women or young person shall be required to work on any industrial permits except between 6 a.m and 7 p.m. This has been provided to ensure the welfare and safety of women workers.

SUGGESTIONS

Though there are many provisions ensuring many rights for the working women, they are still deprived of those rights due to many factors. Few of my suggestions are:-

- More awareness among both men and women
- Voice out if rights are denied
- Make at most use of the provided benefits which can only be done after awareness of it.

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TRIPLE TALAQ- BATTLE FOR GENDER JUSTICE

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Introduction:

Triple talaq, also known as talaq-e-biddat, instant divorce and talaq-e-mughallazah (irrevocable divorce), is a form of Islamic divorce which has been used by Muslims in India. It allows any Muslim man to legally divorce his wife by stating the word talaq (the Arabic word for "divorce") three times in oral, written, or more recently electronic form.¹

GENERAL PRACTICE

Triple talaq is a form of divorce that was practised in India, whereby a Muslim man could legally divorce his wife by pronouncing talaq (the Arabic word for divorce) three times. The pronouncement could be oral or written. The man did not need to cite any cause for the divorce and the wife need not be present at the time of pronouncement. After a period of iddat, during which it is ascertained whether the wife is pregnant, the divorce becomes irrevocable. In the recommended practice, a waiting period was required before each pronouncement of talaq, during which reconciliation is attempted. However, it had become common to make all three pronouncements in one sitting. While the practice was frowned upon, it was not prohibited. A divorced woman could not remarry her divorced husband unless she first marries another man, a practice called nikahhalala. Until she remarried, she retained the custody of male toddlers and prepubescent female children. Beyond those restrictions, the children came under the guardianship of the father.

CURRENT TRIPLE TALAQ CASE.

Like so many others, ShayaraBano was divorced by speed post. "Talaq, talaq, talaq", no reason given, no questions asked, and 14 years of marriage were over. AafreenRehman too received her talaqn timer in the mail. They are the lucky ones. Others have been summarily divorced on SMS, WhatsApp and Skype. One was packed off because her waist was too "thin". Another was dismissed because she attended a funeral without her husband's permission. And yet another could do nothing when her husband decided to remarry.

Unlike most, ShayaraBano and AafreenRehman decided to fight back. The women are clear. They do not want to return to their marriages. Joined by a small group of victims in a similar situation, they are knocking at the doors of the Supreme Court asking for a ban on instantaneous "triple talaq", polygamy and nikah-halala.²

FACTS:

ShayaraBano v. Union of India, which has popularly come to be known as the 'triple talaq case'.

ShayaraBano holds a master's degree in sociology. Her husband, Rizwan Ahmad, had barely completed high school, but he had an agency for a soft drink manufacturer, their nikaah took place in 2001. The problems began soon enough—she was taunted by members of her husband's family for not bringing dowry. Bano was criticized for the way she cooked, looked, cleaned, kept house, she says. Ahmad was violent, physically and emotionally. The birth of her first child, a boy, made things easier for a bit. But after the birth of her daughter, she got pregnant several times and says her husband made her undergo "six or seven" abortions by feeding her some tablets she cannot name.

¹https://en.wikipedia.org/wiki/Triple_talaq_in_India

²<http://www.livemint.com/Leisure/NFVOLKJHsuF6J7w9R8Yg3M/The-battle-for-gender-justice.html>



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It was this that resulted in chronic weakness and illness. Finally, Ahmad called up her father and told him he was sending her back home to Kashipur, Uttarakhand, so that she could recover.

Banu received the letter delivered by the Indian postal department that abruptly ended her 14-year-long marriage. She was at her parents' home, recuperating after a prolonged illness when it arrived, the talaqnama, on that day of 10 October 2015.

She took the letter to the local maulvi. He confirmed that she was indeed divorced. There was a cheque for Rs15, 651, the mehr amount promised to her at the time of marriage. And that was that. She has had no contact with her children in all these months and her husband has already married someone else. Many Muslim women live in the fear of instantly divorce from the moment they get married. This is one of the many cases which caused the triple talaq case which was not a cry just for gender justice but for fundamental right to dignity and equality for all Muslim women. Supreme Court:

This triple talaq case was heard by multi-faith bench of supreme this year (2017). It was declared as unconstitutional by 3:2 majority. Justices Kurian Joseph, UU Lalit and RF Nariman delivered the majority Judgment. Chief Justice Khehar and Justice Abdul Nazeer dissented. Separate Judgments were delivered by Chief Justice Khehar, Justices Kurian Joseph and RF Nariman.

Majority judgements:

In the words of Justice Kurian Joseph

I find it extremely difficult to agree with the learned Chief Justice that the practice of triple talaq has to be considered integral to the religious denomination in question and that the same is part of their personal law.

Merely because a practice has continued for long that by itself cannot make it valid if it has been expressly declared to be impermissible. The whole purpose of the 1937 Act was to declare Shariat as the rule of decision and to discontinue anti-Shariat practices with respect to subjects enumerated in Section 2 which include talaq. Therefore, in any case, after the introduction of the 1937 Act, no practice against the tenets of Quran is permissible. Hence, there cannot be any Constitutional protection to such a practice and thus, my disagreement with the learned Chief Justice for the constitutional protection given to triple talaq. I also have serious doubts as to whether, even under Article 142, the exercise of a Fundamental Right can be enjoined.³

In the words of Justices RF Nariman and UU Lalit [Majority- Judgment written by RF Nariman]

Given the fact that Triple Talaq is instant and irrevocable, it is obvious that any attempt at reconciliation between the husband and wife by two arbiters from their families which is essential to save the marital tie, cannot ever take place. Also, as understood by the Privy Council in Rashid Ahmad (supra), such Triple Talaq is valid even if it is not for any reasonable cause, which view of the law no longer holds good after Shamim Ara (supra). This being the case, it is clear that this form of Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it. This form of Talaq must, therefore, be held to be violative of the 393 fundamental right contained under Article 14 of the Constitution of India. In our opinion, therefore, the 1937 Act, insofar as it seeks to recognize and enforce Triple Talaq, is within the meaning of the expression "laws in force" in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq, is within the meaning of the expression "laws in force" in Article 13(1) and must be struck down as being void to the extent that it recognizes and enforces Triple Talaq. Since we have declared Section 2 of the 1937 Act to be void to the extent indicated above on the narrower ground of it being manifestly arbitrary,

³<http://www.livelaw.in/supreme-court-said-triple-talaq-judgment-read-judgment/>



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we do not find the need to go into the ground of discrimination in these cases, as was argued by the learned Attorney General and those supporting him.⁴

Action taken by the supreme court in favour of the judgement:

Though two judges upheld validity of triple talaq (talaq-e-biddat), the three other judges held that it was unconstitutional, thus barring the practice by 3-2 majority. The bench asked the central government to promulgate legislation within six months to govern marriage and divorce in the Muslim community. The court said that until the government formulates a law regarding triple talaq, there would be an injunction against husbands pronouncing triple talaq on their wives.

CONCLUSION:

The Muslim women's fight for gender justice goes back to the drafting of the Constitution when it was decided that various religions would be allowed to keep their own personal laws in matters of marriage, divorce, inheritance and adoption. By the mid-1950s, however, Hindu personal law went through a series of amendments that benefited women in terms of marriage, divorce and inheritance. In the late 1970s, and early 1980s, Shah Bano, a middle-aged divorced woman, and Shehnaz Sheikh, founder of feminist Muslim organization Awaaz-e-Niswaan, separately approached the Supreme Court, challenging aspects of the Muslim personal law. Despite a landmark judgement in 1985 won by Shah Bano, which pertained to maintenance beyond the period mandated by Muslim personal law. The then Congress government, panicky in an election year, gave into the pressure of Muslim orthodoxy and enacted a law with its most controversial aspect being the right to maintenance for the period of iddat after the divorce. It was a codification that has really set the clock back for women.

Coming back to our current case, the ruling government formulated the bill after 100 cases of instant triple talaq in India since the Supreme Court judgement in August 2017. On 28 December 2017, Lok Sabha passed the Muslim Women (Protection of Rights on Marriage) Bill 2017. The bill makes instant triple talaq (talaq-e-biddat) in any form spoken, in writing OR by electronic means such as email SMS and instant messengers illegal and void, with up to three years in jail for the husband. After 19 Amendments the bill was passed in the Lok Sabha. But it is still pending in Rajya Sabha. Expect India Instant triple talaq has been banned in 22 Muslim majority countries including Pakistan. So that the history does not repeat itself the government has to take immediate action pertaining to triple talaq controversy.

⁴<http://www.livelaw.in/supreme-court-said-triple-talaq-judgment-read-judgment/>



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INCLUSION OF THIRD GENDER AND THEIR RIGHTS

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I. INTRODUCTION:

The sexual orientation ought to be viewed as a core part of individual identity and as an inalienable component of the Right to Life. Therefore the prohibition of certain private, consensual sexual relations under section 377 unreasonably abridges the right of privacy and dignity within the ambit of Right to Life and Liberty under Article 21 of the Indian constitution. Justice V.R. Krishna Iyer, in *Prem Shankar Shukla v. Delhi Administration*, observed that human dignity is concerned with both physical and psychological integrity along with empowerment. He added that this dignity is enhanced by laws which are sensitive to the needs, capacities and merits of different individuals, taking into account, the context underlying their differences. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, the Supreme Court argued that the "Right to dignity includes expressing oneself in diverse forms...all of which is essential for the complete development and evolution of persons".

In this background, the current paper makes an attempt to highlight the exploitation which the victims of injustice with alternative identities have been subjected to, both socially as well as legally. Postulating a repressed and homogenized identity, efforts have been made to discover, acknowledge and represent their fundamentally concealed identity. But the author is conscious of the fact that by claiming an independent identity, we can reverse or struggle with an oppressive gaze though we cannot back out of it and replace our muted or distorted identities with a real and authentic one. The person-as-subject in such a situation is defined by the other and the person recognizes themselves as an image or reflection of the "other".

II. SOCIAL RECOGNITION: BIOLOGY VS. PSYCHOLOGY

The life of transgender people is a daily battle as there is no acceptance anywhere and they are ostracized from the society and also ridiculed. They face high levels of stigma in almost every sphere of their life such as health, schools/colleges, employment, social schemes. Until the 1960's, the term "gender" was primarily used to refer to the feminine and masculine references. In 1968, Robert Stoller, while writing on trans-sexuality began using the term "sex" to refer specifically to the biological traits and the term "gender" to refer specifically to the degree of femininity and masculinity exhibited by a person. In fact he was the first one to introduce the concept of "gender identity". Despite the intellectual understanding (which, in turn, originated from the parallel feminist movement), till the 1990s, transsexuals were deprived of a dignified social existence. It was for the first time, in 1992, that the European Court of Human Rights concluded that there had been a violation of Article 8xi of the European Convention on Human Rights, in a case concerning the recognition of transsexuals. With specific reference to India, around 2008-09, the state of Tamil Nadu introduced a transgender welfare policy, enabling them to access free Sex Reassignment Surgery (SRS) in the government hospital, free housing programme, various citizenship documents, admission in government colleges with full scholarship for higher studies, alternative sources of livelihood through formation of self-help groups (for savings) and initiating income-generation programmes (IGP). To this effect, the then Minister of Finance, in the government of Tamil Nadu, while presenting the Budget for the session of 2008-09 in the Legislative Assembly, commented, "Welfare of Transgenders - ...Viewing transgenders with compassion as in the case of disabled persons, this Government has been providing a helping hand to them by establishing a separate welfare board for them and issuing them family cards. Transgenders will be given vocational training



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and will be facilitated to take up vocation either individually or as Self Help Groups. In addition, as per the new Small Industries Policy, special incentives have been provided for industries started by transgenders. This Government will extend financial assistance to establish a transit home for transgenders in transition through NGOs." In other parts of the world and in judicial systems of all jurisdictions, amongst the catena of legal judgements which relate to members of the "third gender", the 1993 pronouncement by Justice Lockhart stood out. He was amongst the first few who socially engineered individual recognition, and argued that it should not be regarded merely as a matter of chromosomes but rather be treated as a purely psychological question, balancing upright partially on self-perception and partially on social perception. However, unfortunately, the binary notion of gender, from which is derived the Corbett Principle, reflects itself in the Indian Penal Code (IPC) and also in other Indian statutes related to marriage, adoption, divorce, succession, and even some welfare legislation. It is a complete violation of human rights because ignoring the psyche of the individuals, it causes immense discomfort, distress and psychological trauma, which has a high probability of narrowing down to Gender Identity Disorders (GID) such as "gender dysphoria", which could further lead to mental disorder.

III. PLIGHT OF THE THIRD GENDER IN INDIA

The dilemma of conformity and non-conformity has always been so patriarchal in India that one doesn't need to dwell any further to relate to the fact that as objects of desire, be that be through occasional empowerment because of the fear of being offensive to Goddess Bahucharaji (the giver of masculinity) or merely to satisfy occasional sexual urges through explorations guided through the lanes of Kamasutra, the people with "third nature" (Tritiya Prakriti), popularly known as the transgender have often been subjected to abuse, and have been mocked and ignored at. The term "transgender", generally refers to people who transgress social gender norms. Their sexuality is interpreted as deviant and devalued in the dominant culture. Be it be under the celebrated guise of Hindu mythological "sacred" characters such as Brihanalla or Shikhandani, or the innumerable "others" with desires on the margins of society and pleasures and bodies outside the assumed arenas of social reproduction, transgenders have always been portrayed with an abnormal differentness, which is in conflict with normal binary of social beings, the male and the female. In fact this "away from the normal category" of individuals, is not a homogeneous group. It has its own segments, making the group heterogeneous and this is very often overlooked. What enhances the heterogeneity is that the differences and contradictions exist not just between identities, but also within them. With specific reference to India, this „beyond binary category" is divided into Hijras, and Kinnars, and Eunuchs, and Aravanis/Thirunangi, Kothis and Shiv Shakthis. Since this heterogeneity has no acceptance in the world of the „biological normal" therefore there is an apparent invisibility of empathy towards them. This is apparent from the comparative study of the categories of the hijras and the thirunambis in India, both of whom are transgender but hijras are Male-to-Female (MTF), while thirunambis are Female-to-Male (FTM). The Hijras have self-organized themselves into a cultural and social space through a Guru-Chela system under seven main gharanas (clans) and have their own internal legal system called Jamaats, where senior hijras play the role of judges and solve disputes between themselves. Ignoring this heterogeneity, the SRS, as a part of the transgender welfare scheme in Tamil Nadu, is applicable only for the Hijras and not for the FTM category, which is popularly known as thirunambis (some of whom are categorized as lesbians), leaving the latter to struggle at the threshold. Since it is the (op)position that creates a community, which is otherwise not homogeneous, the different sub-identities are often put aside and with globalized simplicity, clubbed into community of LGBTIQ (lesbian, gays, bisexual, transgender, intersex and queers) overlooking the fact that a definitive, easily-conceivable LGBTIQ identity does not exist. The specificities of this identity are formed with respect to the wider socio-political conditions with their persona been variously constructed – as deviant practice, as adverse ideology, and as a social indicator. The gravity



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of the problem enhances when viewed through the lens of Mills' Sociological Imagination for this exclusion is not a personal trouble located at an individual platform but rather a public issue, wherein the entire social and cultural landscape is to be held accountable. The lack of education and access to job opportunities pushes a substantially large number of persons with alternative sexualities into prostitution, which makes them vulnerable to contracting HIV and other Sexually Transmitted Diseases (STDs). This is statistically notified by the 2013 data released by AVERT according to which the transgender people are emerging as a group at high risk of HIV transmission in India.

Denied the full rights and protections of citizenship, they endure shaming and assault; exclusion from the rights and privileges of marriage and parenthood; curbs on their rights of expression and association; the absence of sexual autonomy; demeaning stereotypical depictions in the media; harassment and disparagement in everyday life; and exclusion or marginalization in public spheres and deliberative bodies, all of which are injustices of recognition. After 2014, in India, they got caught into the politics of recognition, where in they have been labelled into the category of "the others" on the electoral rolls for the Lok Sabha polls rather than being acknowledged with dignity as the "third gender", as done on the Aadhar card. Interviews revealed that the term "eunuch", used on the passports, was felt to be highly derogatory while the use of "transgender" or "third gender" would have been more empathetic in its tone. To add to the mounting victimization of being shelved, the 2011 census shows that there were a total of 4.9 lakh transgenders in India. However, the respondent community activists claimed that the actual number is very high and the discrepancy is primarily because the data collection methodologies which failed to capture the entire transgender population primarily due to, fears of prejudicial reactions, differing terminologies employed, and other factors in the data collection process.

IV. LAWS IN INDIA: VIOLATIVE OF HUMAN RIGHTS

There is no articulate mention of transgenders in either the statutes of India or the legislation, leaving them invisible and dependent on how general clauses relating to their human rights protection are interpreted, yet there are some legal provisions which passively provide rights to them. Further, India has ratified most of the international treaties with specific reference to the broad purview of human rights, be it be with regard to children, women, disabled or the elderly but since long there has been a disconnect between the plight of the transgenders and the Yogyakarta Principles, which were developed by a coalition coordinated by the International Service for Human Rights and the International Commission of Jurists and were formally adopted by a panel of leading international law experts way back in November 2006. These provide authoritative guidance on the human rights of LGBTIQ and the obligations of states to promote and protect these rights, ensuring full equality and addressing discrimination. It is because of this disconnect that the perpetration of human rights violations, on grounds of sexual orientation and despite the ratification, on ground of gender identity, is a common practice and is entrenched in India, to the point of being systematic, while discrimination on the same ground is institutionalized. With regard to the domestic laws, Article 51 of the constitution of India, strives to promote international peace and security and foster respect for international law and treaty obligations in the dealings for international law and treaty obligations, and is supplemented by Article 253, which necessitates the state to create legislations for giving effect to international agreement. Article 14 states that the state shall not deny to "any person" equality before the law or equal protection of the law. The article does not limit the term "person" to just male or female. Article 15 prohibits discrimination by the state on ground of „sex“ with regard to access to shops, hotels or use of well, tanks and other public places; Article 16 guarantees equal opportunity for employment irrespective of sex, but unfortunately, despite these articles, India still has discriminatory laws that contravene international human rights law. Further, though the articles do address and attempt to redress sex discrimination, transgenders are still systematically denied rights under articles 15(2) and 15(4), with almost the entire onus on the state. Under Article 19(1) (a)



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certain basic freedoms, which constitute as human rights, are granted as natural rights to all the citizens of India including, right to freedom of speech and expression of his self-identified gender and the right to choose one's personal appearance. Though the values of privacy, self-identity, autonomy and personal integrity are guaranteed to the members of the transgender community under it and the state is bound to protect and recognize these rights, but in many cases, there exists a disassociation between their gender, their social name and their identification documents which dehumanizes them and also denies them their civil and legal status. The greatest and most inclusive constitutional provision is Article 21 which states that no person shall be deprived of life or personal liberty except according to procedure established by law commonly understood as "Right to life", which includes within it self-determination of gender which is an integral part of personal autonomy. However, somehow we have failed in letting the people with alternate sexualities live a life with respect and dignity.

V. JUDICIAL ROADBLOCK

While the crowd in America is celebrating the decision of the US Supreme Court in *Obergefell v. Hodges*, we, despite being world's largest constitutional democracy, are still grappling in the hetero-normative caves of undermining alternative sexualities. In 2009, the fundamentals behind the Fundamental Rights seemed to accomplish a triumph for the alternate sexualities when the Delhi High Court held section 377 of IPC, which categorized any penile non-vaginal activity as an unnatural offence, in violation of the Fundamental Rights enshrined in the Constitution of India, insofar as criminalizing consensual sexual acts of adults in private. It was further stated that, "Where society can display inclusiveness and understanding, such persons can be assured of a life of dignity and non-discrimination." However this celebration was short lived as the Supreme Court in *Suresh Kumar vs. Naz Foundation*, in 2013, set aside the decision of the High Court declaring "that this Court has merely pronounced on the correctness of the view taken by the Delhi High Court on the constitutionality of Section 377 IPC and found that the said section does not suffer from any constitutional infirmity." It was further held that amending or repealing Section 377 should be a matter left to Parliament, not the judiciary and the Supreme Court subsequently dismissed the review petition against the verdict. This reinstitution of Section 377 resulted in deep unrest amongst the society with various debates being held across the country and influencing people of high offices such as a former Minister of foreign affairs, India, calling for the arrest of American diplomats in India having same sex companions. The US Supreme Court, in its above mentioned 2015 majority judgment had argued that the Fundamental Rights of a citizen are beyond the whims of the majority and the bondages of the Parliament, which empowered the members with alternate sexualities to directly invoke their right to constitutional protection before a court, when curtailed. Though in this case, it was specifically in the background of recognizing the marriages of the same-sex couples but by expansive interpretation, it should be seen as an essential component of a life with dignity. In April, 2014, taking the aforementioned domestic laws into consideration along with various case laws, the Supreme Court in *NALSA vs. Union of India* did grant constitutional recognition to the transgenders as third gender stating that they did form a distinct group and any discrimination towards them was violative of their constitutional rights. However, the Court observed that, "The modern definition of transgender", would include only the gay, lesbian and bisexual, further directing the government to treat them as a "socially and educationally backward class", entitling them to quotas like those for the Other Backward Classes, in educational institutions and for public appointments. Though 2014 judgment does exhibit a remarkable empathy in describing the "trauma, agony and pain" experienced by the transgender community but it stopped from going any further by building a degree of disassociation with the wider meaning of the expression "transgender".

As a result, though "transgenders" have been recognised, the other persons with alternative sexualities have not really been recognised, either by the society or by law. Further, though the



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members of the transgender community have been granted certain rights, they have been deprived of one of the essentially basic in nature right, that other people who fall within the heterosexual duality take for granted, and this right is the right to love with dignity. Love is a stream of emotions which may or may not get stereotyped in the institution of marriage. Further marriage must not be associated with procreation, for this would also question the status of single parents and those already suffering under the stigma of infertility. Thereafter, in February 2016, submitting to the plethora of protests and debates, the final hearing of the curative petition submitted by the Naz Foundation and Others came for hearing in the Supreme Court, in which the three-member bench headed by the Chief Justice of India T. S. Thakur said that all the 8 curative petitions submitted would be reviewed afresh by a five-member constitutional bench.

VI. CONCLUSION

The road to the legal recognition of the transgenders as a third gender has been, and continues to be a long and difficult one. It is very essential to invoke judicial activism, resulting in a shift in constitutional meaning rather than initiating an amendment, and also being cautious of not treating court as a majoritarian institution. With a history of reverence but a reality of discrimination it's almost unimaginable how it is taking the state and the society so long to legally recognize them as dignified alternate sexualities, so that they no longer have to resign to a life that forces them to identify themselves either as a male or female.



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**CRITICAL ANALYSIS ON THE TRANSGENDER PERSONS
(PROTECTION OF RIGHTS) BILL, 2016, ITS LACUNAE**

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*"Recognition of transgender as a third gender is not a social or medical issue but a serious human right issue." -
Justice K.S. Radhakrishnan¹*

"THE RIGHTS OF TRANSGENDER PERSONS BILL, 2014: A Bill to provide for the formulation and implementation of a comprehensive national policy for ensuring overall development of the transgender persons and for their welfare to be undertaken by the State and for matters connected therewith and incidental thereto."

"THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) BILL, 2016: A Bill to provide for protection of rights of transgender persons and their welfare and for matters connected therewith and incidental thereto."

The Rights of Transgender Persons Bill, 2014 and The Transgender Persons (Protection of Rights) Bill, 2016 were passed in accordance to the Articles 14², 15³, 16⁴, 19⁵ and 21⁶. The aim of both the bills is to create provisions that uplifts the transgender community so that they can be brought equal to men and women by providing them personal liberty, dignified life and expression of their views. The Rights of Transgender Persons Bill of 2014 was the First private member's bill to be passed by Rajya Sabha in 45 years. This bill is considered historic as most of the bills are withdrawn after the debate, it got introduced in Rajya Sabha by a leader of Dravida Munnetra Kazhagam named Trichi Siva, On 24th April 2015 the bill got passed in Rajya Sabha and was introduced to Lok Sabha on 24th April 2015. But there was an delay in discussion of the bill in the Lok Sabha. The reason of the delay came clear when the Ministry of Social Justice and Empowerment uploaded a bill on transgender protection with diluted provisions on December 26, 2015. The Transgender Persons (Protection of Rights) Bill, 2016 of the government being massively diluted betrays a lack of understanding of the community and its concerns. Through decades of struggle the community has achieved some dignity which will be totally reversed if the bill is passed. The definition of the transgender given in the government bill is degrading and scientifically incorrect it defines them as part male and part female, an incompleteness with the binary gender as the reference point. This definition is highly contraventional to the definition of transgender provided by the Supreme Courts NALSA Judgment, the private members bill passed on 2014 and the definition of the expert committee on transgender persons of the Union government. In actual words a transgender is a person whose gender does not match to that person's gender that is assigned to him at birth. The transgender community is becoming one of the most disempowered and deprived group in the Indian society due to the hostility displayed by the state and society. In the aim of uplifting the neglected community the Supreme court in National Legal Services Authority (NALSA) v. Union of India⁷ upheld the right of transgender people to self identify their gender and also some more legal

¹National Legal Services Authority (NALSA) v. Union of India, (2014)5 SCC 438

²Equality before the law & equal protection prohibiting discrimination on grounds of religion, race, caste, sex or place of birth

³Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

⁴, Equality of opportunity in matters of public employment Article 19, freedom of expression and information

⁵freedom of expression and information

⁶Right to life and personal liberty

⁷National Legal Services Authority (NALSA) v. Union of India, (2014)5 SCC 438



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declarations. But the government bill i.e. The Transgender Persons (Protection of Rights) Bill, 2016 proposes a district committee that are to certify the transgender persons. This propose violates the NALSA judgment as it upheld that the transgender persons have the right to decide their self identified gender. Even the constitutionally guaranteed rights of equality before the law and freedom of persons is violated under this propose and the clause which provides in setting up of National and State Transgender welfare Commissions is removed which is really an unbearable deletion as the National Council for Transgender Persons which is envisioned by the government bill would be in immense bureaucratic structure as it has no enforcement abilities, without any power to be a protector of rights. On the top the bill passed by the government has dropped the provision for employment and education to transgender persons, which was provided under the private member's bill 2014 which was directed by the Supreme Court. The government bill tries to put an end to the ages old tradition of begging that transgender engage in for their livelihood, it tries to put an end to it by criminalizing the person who persuade the young transgender persons beg against their wish. But as the reservations are not given to them there is no other means for them for there livelihood so it is not bought under there view how they are to earn for their livelihood. According to a recent survey 32% of transgender persons beg for their survival needs, 67% of them earn through sex work and 20% of them are involved in both i.e. begging and sex work; Only 25% of transgender persons have found formal employment at this point such restriction may be used by the agencies of the state like the police and law enforcement to subject the transgender persons to further violence and criminalize them this is dangerous to the gender nonconforming youths who have nowhere to go as the transgender youths are often driven away from home 74% of the transgender persons had to leave their home and their birth families having faced violence and abuse of being an transgender. They are left with almost no contact with them resulting to no financial support or even emotional support and end up as refuge in fictional families. The government bill completely takes away the right of fictional families of transgender youth in Section 13⁸, many of whom runaway from home or are driven out and it subjects them to the arbitrariness of court. . It persuades upon them the option of a rehabilitation centre by way of legal procedure, without explaining the need for such a provision. A case study from SARA⁹, Theni, a community managed by transgender for the transgender, a 14 year old gender nonconforming child ran away from his home and came to the house of a transgender refuge, the parents of the child informed the police and the police brutally hit all the members in the house and took the child back to his parents. The child was produced before the the district magistrate, he seeked the interest of the child doctrine and stated he may reside with anyone he chooses. The child choose the transgender refugee home. This was an unusual case, where the judiciary ruled in favor of the transgender and defended them from police and structural abuse. Moreover adequate definition is not given for the term discrimination towards the transgender in the bill which is much necessary when jobs, education and aspects of having an family is opened out for them. The government bills does not even provide the free Sex Reassignment Surgery or any specific provisions for transgender health care with was mentioned in the private members bill, which mentioned free Sex Reassignment Surgery and allied medical treatments for the Transgender persons. Further to this the bill also does give the transgender persons any guard against police violence although it has been extensively documented about physical and sexual violence by the police to the transgender community. Some of the issues including the right to marriage, adopting and inheritance have also been avoided. Due to these lacunae of the bill the transgender community has publicly

⁸ "No transgender person shall be separated from parents or immediate family on the ground of being a transgender, except on an order of a competent court, in the interest of such person [...] (3) Where any parent or a member of his immediate family is unable to take care of a transgender, the competent court shall by an order direct such person to be placed in rehabilitation centre."

⁹Social Action and Rehabilitation Association



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expressed there dissatisfaction. At present both the private members bill and the government bill i.e. The Rights of Transgender Persons Bill, 2014 and The Transgender Persons (Protection of Rights) Bill, 2016 are pending in the Lok Sabha and are said to be discussed in the upcoming parliament session. At this time it is much important that the MPs must be much concerned about the welfare and rights of the transgender persons and act accordingly to ensure the passage of a bill that would enable the aspirations of transgender community for generations.



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THIRD GENDER AND THEIR RIGHTS- AN ANALYSIS

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INTRODUCTION:

Human rights are basic rights and freedoms which are guaranteed to a human by virtue of him being a human which can neither be created nor can be abrogated by any government. It includes the right to life, liberty, equality, dignity and freedom of thought and expression. The right to choose one's gender identity is an essential part to lead a life with dignity which again falls under the ambit of Article 21. Determining the right to personal freedom and self-determination, the Court observed that "the gender to which a person belongs is to be determined by the person concerned." The Court has given the people of India the right to gender identity.

Education & skills opportunity plays pivotal role in enhancing jobs and economic opportunities for an individual. The United Nations Convention on the Rights of Child, 1989 (UNCRC) article 29 'The education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential'; and the Constitution of India consider 'education' as a fundamental right for children for six to fourteen years. Every child of the Age of six to fourteen years shall have a right to free and compulsory education in neighbourhood school till completion of elementary education. Promulgation of a separate Act further provided impetus to the government efforts in providing free compulsory education to children, as it has now become constitutional obligation for the state to provide free education.

India has achieved significant growth and development. It has improved on crucial human development indices such as levels of literacy, education and health. There are indications, however, that not all disadvantaged groups have shared equally the benefits of the growth process. Among these, the transgender community, one of the marginalized and vulnerable communities in the country is seriously lagging behind on human development indices including education (Rajesh & Naveed 2013). What is appalling is that despite affirmative action (reservation policies, Right to Education, etc.) the disparities remain substantial among the transgender community in India. Majority of the population is uneducated or undereducated thereby excluding them from participating in social, cultural, political and economic activities. Along with teachers' apathy towards transgender community, exclusion from society, poverty, continued discrimination, violence are some of the important factors which can be attributed to the poor participation of transgender persons in educational activities.

The life of transgender people is a daily battle as there is no acceptance anywhere and they are ostracized from the society and also ridiculed. They face high levels of stigma in almost every sphere of their life such as health, schools/colleges, employment, social schemes and entitlement. Extreme social exclusion diminishes self-esteem and sense of social responsibility. The community needs to be included in the mainstream development program of the country and be protected from all forms of abuse and exploitation. Transgender is not a term limited to persons whose genitals are



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intermixed but it is a blanket term of people whose gender expression, identity or behaviour differs from the norms expected from their birth sex. Various transgender identities fall under this category including transgender male, transgender female, male-to-female (MTF) and female to male (FTM). It also includes cross-dressers (those who wear clothes of the other), gender queer people (they feel they belonged to either both genders or neither gender) and transsexuals. In India, there are a wide range of transgender related identities which includes the Hijras, Aravanis, Kothis, Jogtas/ Jogappas, Shiv Sakthis. In the past, they were treated with great respect. 'Hijra' is a Persian word translated as eunuch which is used in common parlance for transgender community in India. Aravani' is a term used for male-to-female transgender who undergo genital modification through SRS (Sex Reassignment Surgery) or perform Nirwaan which is a traditional mode of castration. Kothi is used for those who adopt a feminine role in same sex relationships, but do not live in communes as Aravanis. Jogtas/ Jogappas found in Maharashtra and Karnataka are male to female transgender who devote themselves to the service of a particular god. Shiv Shakti's found in Andhra Pradesh are males who are considered married to gods particularly Lord Shiva. They usually work as spiritual healers or astrologers.

Transgender people are individuals of any age or sex whose appearance, personal characteristics, or behaviours differ from stereotypes about how men and women are "supposed" to be (Satashivam 2012). Transgender people have existed in every culture, race, and class since the story of human life has been recorded. Only the term "transgender" and the medical technology available to transsexual people are new. The literal meaning of transgender is "beyond gender." Transgender and trans-identified are umbrella terms to represent a wide range of gender identities and expressions (Wikipedia). A transgender or trans-identified individual is a person whose gender identity, outward appearance or gender expression transcends culturally defined categories of gender. Transgender fall under the LGBT group (lesbian, gay, bisexual and transgender) (Athreye).

According to Indian Census 2011, there are around 4.9 lakh transgender in the country. Census data also reveals that this community has low literacy levels, just 46 per cent transgenders are literate, compared to 74 per cent literacy in the general population. This community comes under the category "disadvantage group" defined by the Right to Education Act (Indian Express 2014). It means these kids will be eligible for 25 per cent reservation under the economically weaker section (EWS) and disadvantaged student's category for admission. 'Transgender' does not include sexual orientation or physical sex characteristics, but is in fact a less clinical term which pertains to gender identity and gender expression. Thus transgender people encompass those people whose identity and behaviour do not adhere to the stereotypical gender norms. There are so many problems which are faced by the transgender in India are as: They are shunned by family and society alike. They have restricted access to education, health services and public spaces. Recently, they were excluded from effectively participating in social and cultural life. □ Politics and decision-making processes have been out of their reach. They do not have their fundamental right. Reports of harassment, violence, denial of services, and unfair treatment against transgender persons have come to light.

HISTORICAL BACKGROUND OF TRANSGENDERS:

Members of the third gender have played a prominent role in Indian culture and were once treated with great respect. They find mention in the ancient Hindu scriptures and were written about in the greatest epics Ramayana and Mahabharata. In the great epic Mahabharat 'Shikhandi', was a transgender. In medieval India too, they played a prominent role in the royal courts of the Mughal emperors and some Hindu rulers. Many of them rose to powerful positions. Their fall from grace started in the 18th Century during the British colonial rule when the Criminal Tribes Act of 1871 categorised the entire transgender community as "criminals" who were "addicted" to committing serious crimes. They were arrested for dressing in women's clothing or dancing or playing music in public places, and for indulging in gay sex. After Independence, the law was repealed in 1949, but



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mistrust of the transgender community has continued. Even today, they remain socially excluded, living on the fringes of society, in ghettoised communities, harassed by the police and abused by the public. Most make a living by singing and dancing at weddings or to celebrate child birth, many have moved to begging and prostitution. In 2003, the Hon`ble High Court of Madhya Pradesh upheld the order of an Election Tribunal which nullified the election of a Hijra, Kamala Jaan, to the post of Mayor of Katni, on the ground that it was a seat reserved for women and that KamlaJaan, being a 'male' was not entitled to contest the seat. It is submitted that all the citizens of India have a right to vote and to contest elections. But in the electoral rolls only two categories of the sex are mentioned – male and female. This is unfair to the third sex of India as they are deprived of their statutory right to vote and contest elections.

In 2009, India's Election Commission took a first step by allowing transgender to choose their gender as "other" on ballot forms. But India is not the first country to recognise a third gender. The spirit of the Constitution is to provide equal opportunity to every citizen to grow and attain their potential, irrespective of caste, religion or gender. In a landmark judgement in April 2014, the Supreme Court of India observed that "The transgender community, generally known as "Hijras", are a section of Indian citizens who are treated by the society as "unnatural and generally as objects of ridicule and even fear on account of superstition". In its judgement, the Supreme Court passed the ruling that "In view of the constitutional guarantee, the transgender community is entitled to basic rights i.e. Right to Personal Liberty, dignity, Freedom of expression, Right to Education and Empowerment, Right against violence, Discrimination and exploitation and Right to work. Moreover, every person must have the right to decide his/her gender expression and identity, including transsexuals, transgenders, hijras and should have right to freely express their gender identity and be considered as a third sex." Thus, today the transgender people in India are considered to be the Third Gender.

STATUS OF TRANSGENDER EDUCATION:

Third Gender i.e. Transgender is a new sex in Indian Constitution. This new sex emerges with a major population. They are deprived of social and cultural participation and hence they have restricted access to education, health care and public places which further deprives them of the Constitutional guarantee of equality before law and equal protection of laws.

EDUCATIONAL STATUS:

No formal education for transgender is popular in Indian context. They are deprived from family and school environment, transgender discontinue their education and risk their future career opportunities. A close analysis of various reports and discussion with community and stakeholders suggest that transgender are most uneducated or undereducated, become reluctant to continue schooling. The average qualification is secondary (Matric) or senior secondary level. The enrolment is significantly low and dropout rate at the primary and secondary level is still very high. They are hardly educated as they are not accepted by the society and therefore do not receive proper schooling. Even if they are enrolled in an educational institute, they face harassment and are bullied every day and are asked to leave the school or they drop out on their own. It is because of this that they take up begging and sex work. It is mandatory for the Government to provide inclusive education for transgender students and provide adult education to them.

Beside these some transgender on working reputed place, Manabi Bandyopadhyay working as a principal to a government college in West Bengal and Amruta Alpesh Soni as the advocacy officer for the states of Punjab, Haryana and Chhattisgarh for the National AIDS Control Project.

In India, some states work for the betterment of transgender. Tamil Nadu has been the only state which has successfully pioneered transgender inclusion by introducing the transgender (aravani, as they are locally called) welfare policy. According to the policy, transgender can access free Male-to-Female Sex Reassignment Surgery (SRS) in the Government Hospital, a free housing



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program, various citizenship documents, admission in government colleges with full scholarship for higher studies, and alternative sources of livelihood through formation of self-help groups and initiating income generation programmes (IGP). It was also the first state to form a Transgender Welfare Board in 2008 with representatives from the transgender community. In March 2009, Tamil Nadu government set up a telephone helpline called "Manaus" for transgender, an initiative which was responsible for the formation of India's first helpline for the LGBTQIA community in 2011 at Madurai.

The Chhattisgarh government is also making efforts to empower the transgender community by drafting an action plan for the welfare of around 3000 eunuchs in the state. Tripura government which announced in July an allowance of Rupees 500 per month to the transgender people in the state to ensure their financial independence. The West Bengal government is not far behind. On October 1st, 2015 the government has requested the Kolkata Police to recruit transgender in the Civic Police Volunteer Force (CPVF) to end the stigma and discrimination against the community.

SOCIAL STATUS:

The transgender community faces stigma and discrimination and therefore has fewer opportunities as compared to others. They are hardly educated as they are not accepted by the society and therefore do not receive proper schooling. Even if they are enrolled in an educational institute, they face harassment and are bullied every day and are asked to leave the school or they drop out on their own. It is because of this that they take up begging and sex work. They are forced into sex work which puts them at the highest risk of contracting HIV as they agree to unprotected sexual intercourse because they fear rejection or they want to affirm their gender through sex. They are viewed as 'vectors' of HIV in the society. Other sexually transmitted infections such as rectal gonorrhoea, syphilis, rectal Chlamydia, etc., add to the risk of HIV.

CHALLENGES OF TRANSGENDER EDUCATION:

The nomenclature "third gender" is a problem in itself: it treats sexuality as a ladder-like structure in which the lowest rung is occupied by the queer community. Although it provides them with legal recognition, it does not alleviate them of their adverse conditions as they continue to be a part of the marginalized section of society and are not considered equal to the rest of the Indian population. India has finally been able to successfully adopt the inclusion principle which was for a long time hoped for but not acted upon, it is also important to bring to attention the various ways in which it has been a failure. The third gender people will be considered as OBCs. The Supreme Court of India said they will be given educational and employment reservation as OBCs. The apex court also said states and the Centre will devise social welfare schemes for third gender community and run a public awareness campaign to erase social stigma. The Supreme Court said the states must construct special public toilets and departments to look into their special medical issues.

1. Inclusion in School/ college and University: Inclusion of transgender with school and college is a big challenge. It is so challenging to provide equal opportunity of education to transgender because there is a problem of inclusion with male and female gender students.
2. Use of disrespectful names and pronouns: When a transgender youth identifies as a particular gender (irrespective of biological sex), it is respectful to the youth's human dignity to use the name chosen and the pronouns appropriate to that particular gender. To persevere intentionally in the use of a prior name and other pronouns is to be deliberately disrespectful. Transgender youth can understand and sympathize with some confusion, so long as there is continuous, good faith progress in using the proper name and pronouns.
3. Lack of access to appropriate restroom facilities: Transgender people often lack safe access to public restrooms. They may be assaulted if they use the restroom that conforms to their gender identity or forced to use a restroom that does not conform to their gender identity.



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Transgender people often have no safe access to locker room facilities that conform to their gender identity. Wherever dress codes are enforced, they may create problems for transgender youth.

4. Confidentiality: Transgender youth may have unsupportive families and may even face violence and/or ejection from their home if their gender identity or gender expression is disclosed to the family.
5. Lack of ideal personality: Transgender youth often feel alone in the world. Few programs for youth employ transgender people; few libraries offer information about biological sex and gender, gender identity, or being transgender.

SOLUTIONS:

1. Made effort for inclusion: There is a need for prepare an environment where transgender feels secure. Teacher and community people can play an important role in inclusion. India is facing acute shortage of skilled manpower in different sectors. There is a need to provide vocational education and training to teachers and other school members. At the secondary and higher secondary levels vocational training should be provided to the transgender that they prepare for their job.
2. Names and/or pronouns: Use the name and/or pronouns appropriate to the young person's chosen gender identity. Remember that it is everyone's essential dignity to be called by our chosen name, and it is everyone's right to be recognized as the person we see ourselves to be. Please apologize if you use the wrong pronoun or the wrong name.
3. Access to restroom facilities: Educate staff and youth about gender identity. Make sure that everyone understands that transgender youth. If possible, designate gender-neutral restrooms and locker rooms (toilet facilities that anyone may use, irrespective of gender identity or gender expression). Educate staff and youth about gender identity.
4. Confidentiality: Make sure that the program maintains confidentiality with regard to the gender identity, gender expression, sexual orientation, and sexual behaviour of all the youth in the program.
5. Ideal Personality: Search out transgender support groups and GLBTQ youth-serving organizations in your area. Make sure that these groups and organizations are included on your resource lists.
6. Provide financial assistance: Government should provide fee-waiver, fee-reimbursements, scholarships, free textbooks, free hostel accommodation and other facilities at subsidized rates for students belonging to the transgender in order to make higher education and professional education accessible by the community. Special coaching should be provided to the candidates for competitive examinations.
7. Establishment of anti-discrimination cell: All the educational institutions/universities should establish an anti-discrimination cell to monitor any form of discrimination against the transgender community. On the line of strict anti-ragging cell, there should be zero tolerance towards any incidence of the discrimination or complain.
8. Research: There is need for a focused institutionalized mechanism of research and academic activities to generate more data/information to identify and understand the problems related



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to various aspects of their life and help frame policies through research and academic program that would bring an effective and long-term change in their lives.

CONCLUSION:

"The biggest lacuna in the system is that nobody knows the real definition of a transgender. Sensitisation will not help until people are ready to accept change and acceptance can come only through education." Each being in this Universe is indeed unique, and an integral part of Nature. It would thus be wrong to judge and discriminate people who may be different from the stereotype, which again is man-made. It is time that India realised that every individual in this country has equal rights and privileges, and follow the policy of "live and let live." Thus the first and the foremost right transgender are deserving of is the Right to Equality under Article 14. Article 15 speaks about the prohibition of discrimination on the ground of religion, caste, sex or place of birth. Article 21, ensures right to privacy and personal dignity to all the citizens and article 21 (A) ensures education is a fundamental right to every Indian. The constitution provides for the fundamental rights to the equality and tolerates no discrimination on the grounds of sex, caste, creed or religion. The constitution also guarantees political rights and other benefits to every citizen. Despite such laws in the constitution of India, the other sex (transgender) continues to be ostracized. Transgender people faced discrimination and harassment at family, school and community forces them to move to the other places. The nature of the harassment includes verbal, physical and sexual abuse which has serious impact on the mental health as well. In a democratic country like India Transgender has no access to the social and political rights. They are not the part of any welfare scheme. Keeping in view the above findings it can be concluded that there is an immense need to intervene at individual, community and policy level to safeguard the rights of transgender.

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A STUDY ON THE MIGRANT TRIBAL WOMEN GIRLS OF SOCIO- CULTURAL AND ECONOMIC WITH REFERENCE TO SOCIAL INTERVENTION

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INTRODUCTION

India is an immense nation spread over a region of 32,87,263 sq. kms. This huge tract of land has offered sanctuary to 846.30 million individuals. India is the home to 16 for each penny of the total populace. Since pre-memorable time individuals have developed their settlements in various natural zones of India, in the higher heights of Himalayas, in the deserts of Rajasthan, in the Indo-Gangetic fields, in the level of Deacon locale, in the woods, in the beach front territories and even in islands. Individuals here have acclimated to live in shifts biological conditions. The general population of India incorporates an extensive number of tribes which are inherent piece of our national existence with their rich social legacy. The tribals settled down in India in pre-noteworthy circumstances, possessing for the most part in the meagerly populated parts of slopes and woodlands of sub-Himalayan and North-Eastern locales, in the mountain belt of Central India amongst Narmada and Godavari streams and in the Southern parts of the Western Ghats reaching out from Wynad to Kanyakumari. Subsequently, it is clear from the above definitions that tribe is a different gathering of people having their own particular personality and social qualities. The tribals have their own particular method of administration to control their gathering or society. They have standard laws, which are unwritten, yet they obey them entirely. From the distinctive definitions the accompanying regular elements of tribes develop.

1. Socially, Culturally and Politically an ethnic and sound gathering;
2. A Social gathering talking its own particular lingo and having a culture;
3. A Social gathering which is little, homogenous and unmistakable;
4. A gathering having a self - contained and independent economy;
5. A Social gathering which is topographically secluded

MIGRATION OF TRIBAL WOMEN AND GIRLS

A substantial number of women and young women from tribal zones move to urban communities and towns all finished India. The greater part of these women and young women are ignorant and incompetent. They work in barbaric conditions in urban areas as their expectation for everyday comforts is amazingly poor. An incredible number of these transients are being abused by center men, contractual workers, development organizations and different sorts of managers. Huge numbers of these ladies and young women fill in as house cleaning specialists where their working hours reach out up to 18 hours for every day.

These socio - mental issues can be viewed as unavoidable accompanying of the procedure of progress. Henceforth, these should be acknowledged as a conceivable socio-mental obstacle which would emerge during the time spent change and which ought to be dealt with as a piece of instructive program itself. At the point when arrive distance happens, movement of tribals is inescapable..

OBJECTIVES

- To think about the financial status of the vagrant tribal women and young women in 10 urban areas in India.



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- To analyze the nature and attributes of the socio – social clashes confronted by the vagrant tribal women and young women in these urban communities .
- To assess to what degree the tribal women and young women alter themselves in the new social milieu.
- To build up an arrangement of assistance and recovery of vagrant tribal women and young women with the goal that they can accomplish the objectives of their life.

LITERATURE REVIEW

Regarding human sciences, a tribe is a social gathering the individuals from which live in a typical vernacular, uniform social association and forces social homogeneity having a typical progenitor, political association and religious example. However, maybe, it would be exceptionally hard to discover numerous tribal gatherings in India who have every one of these attributes. Again various tribal gatherings are perceived by the Government and they are the planned tribes. In any case, since all the tribal and practically equivalent to social arrangements are not considered as Scheduled.

Tribes, and when tribal populace is viewed as, the quantity of real tribal populace must be significantly more than what is specified as Scheduled Tribe Population (Chaudhuri, 1992) Some of the substantial tribal groups are conveyed in a wide locale and frequently maintain fluctuated occupations. A couple of tribal gatherings are isolated into various sub-bunches which are for all intents and purposes particular tribal gatherings. By and large, some particular tribal gatherings have indistinguishable names.

RESEARCH METHODOLOGY

Since the examination is explorative and systematic in nature it required a very logical research strategy

Research Problem

An extensive number of women and young women from tribal territories relocate to urban communities and towns all finished India. The majority of these women and young women are uneducated and untalented. They work in cruel conditions in urban areas as their expectation for everyday comforts is greatly poor. Countless vagrants women and young women are being misused by agents, temporary workers, development organizations and different sorts of businesses. A significant number of these women and young women fill in as housemaids where their working hours reach out up to 18 hours every day. Countless women and young women move toward becoming casualties of money related and sexual abuse. Slowly, numerous women and young women lose contact with their kith and kinfolks back home and wind up noticeably estranged from their way of life and roots. After relocation to urban areas they confront various issues in the underlying time of settlement and from there on too. It was, in this manner, thought to ponder the financial state of these transient tribal women and young women and furthermore to look at the social intercession with respect to Government offices and the willful associations to help them in enhancing their financial status.

The present research ponder was proposed to think about the financial foundation of the tribal ladies and young women relocated to and settled in the urban communities. It was likewise proposed to consider the issues confronted by them. It was chosen to think about business open doors for them in the urban areas, their money related and sexual misuse and the endeavors made by the Government and intentional associations.

Research Study

The examination study was replied by a blend gathering of individuals among the clients of the Banks. The review was led through polls to a gathering of individuals and just 100 respondents filled in our study that concentrated on get-together data about awareness, usage of and assumptions



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about the web managing an account. In this examination comfort inspecting strategy is utilized, therefore the respondents were arbitrarily chosen.

Sample measure:

Sample sizes of 200 respondents were chosen for this examination.. The present examination depends on stratified testing The present investigation depends on stratified inspecting, which is done at three levels I.e. city, territory and family. The urban areas were chosen utilizing purposive inspecting technique. In spite of the fact that territory is taken as the second level of stratification, for viable reasons, every one of the areas in the separate urban communities were chosen as vagrant women and young women were spread over various territories, however, not in adequate number. Perceiving the way that tribal women and young women are circulated in every one of the territories, picking just a few regions would have prompted a lacuna in 37 the testing methods.

S.NO	CITY	WOMEN	GIRLS	TOTAL
1	NEW DELHI	200	200	400
2	KOLKATA	200	200	400
3	MUMBAI	200	200	400
4	HYDERABAD	150	150	300
5	PUNE	100	100	200
6	NAGPUR	150	150	300
7	BHOPAL	100	100	200
8	BHUBANESHWAR	100	100	200
9	RAIPUR	150	150	300
10	RANCHI	150	150	300
	TOTAL	1500	1500	3000

Data Collection: Data will be collected from both primary and secondary sources of information.

Primary Source: All necessary information about the study has been collected from personal contact and discussion by using of

Questionnaire method

Type of data : Primary

Data collection method : Questionnaire

Secondary sources: Data has been collected from both internal and external sources such as personal records, annual reports, web links etc.

Data analysis

The data analysis was planned in such a way that possible errors during data processing would be excluded. Numerical symbols were assigned to the responses in the interview schedule yielding a total of 58 variables. Computers were also used for statistical analysis of the data. In the first instance sorting was done to generate frequency tables for each independent variable. The report that follows incorporates the data, analysis, the interpretation and the inferences draw there from.

Number of Girls in Families

Table 1.1 Number of Girls in Families

	NO OF RESPONDENTS		
NO OF GIRLS	WOMEN	GIRLS	TOTAL
NIL	22.67%	4.87%	13.77%



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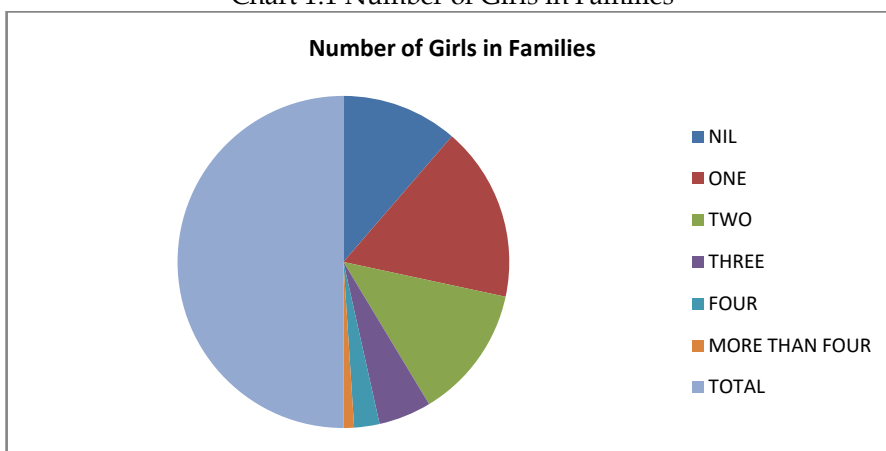
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ONE	34.06%	33.74%	33.90%
TWO	26%	35.40%	30.70%
THREE	10.27%	13.97%	12.12%
FOUR	4.94%	8.94%	6.94%
MORE THAN FOUR	2.06%	3.46%	2.76%
TOTAL	100%	100%	100%

Chart 1.1 Number of Girls in Families

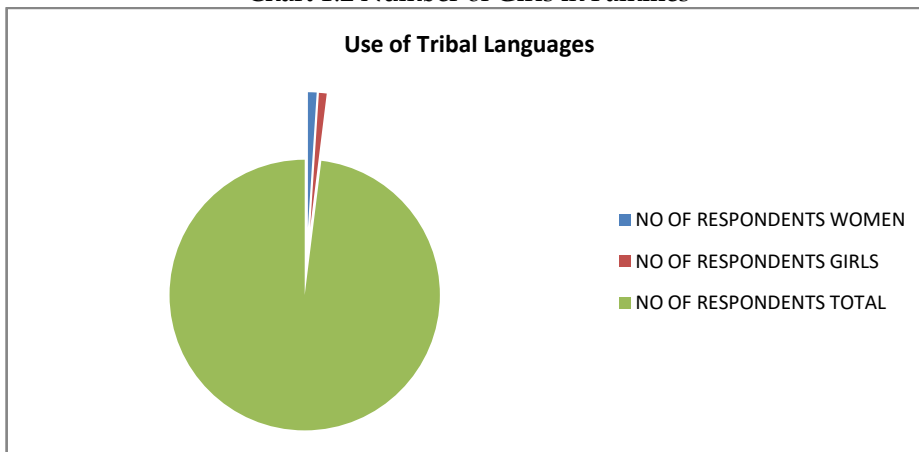


Use of Tribal Languages

Table1.2 Use of Tribal Languages

USE OF TRIBAL LANGUAGES	NO OF RESPONDENTS		
	WOMEN	GIRLS	TOTAL
YES	87.80%	78.54%	83.17
NO	12.20%	21.46%	16.83%
TOTAL	100%	100%	100%

Chart 1.2 Number of Girls in Families



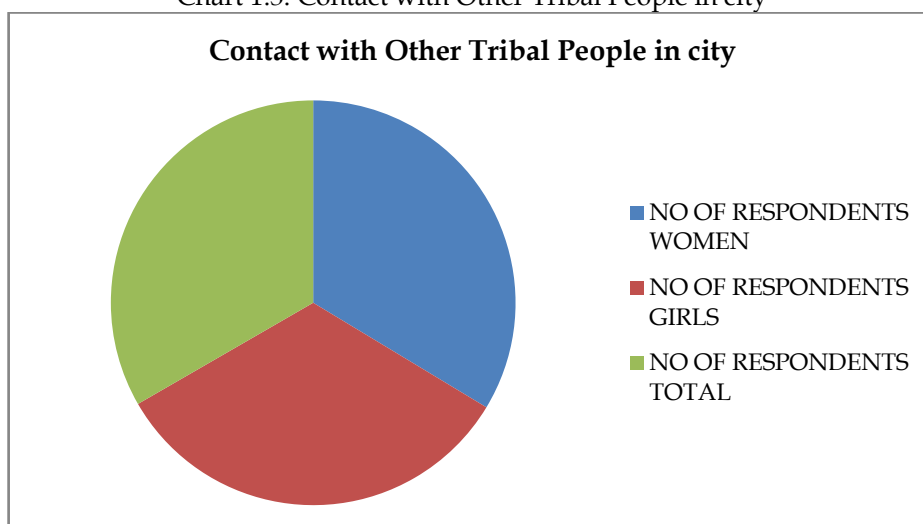


Contact with Other Tribal People in city

Table1.3Contact with Other Tribal People in city

CONTACT WITH OTHER TRIBALS	NO OF RESPONDENTS		
	WOMEN	GIRLS	TOTAL
YES	79.66%	78.20%	78.93%
NO	20%	21.80%	21.07%
TOTAL	100%	100%	100%

Chart 1.3: Contact with Other Tribal People in city



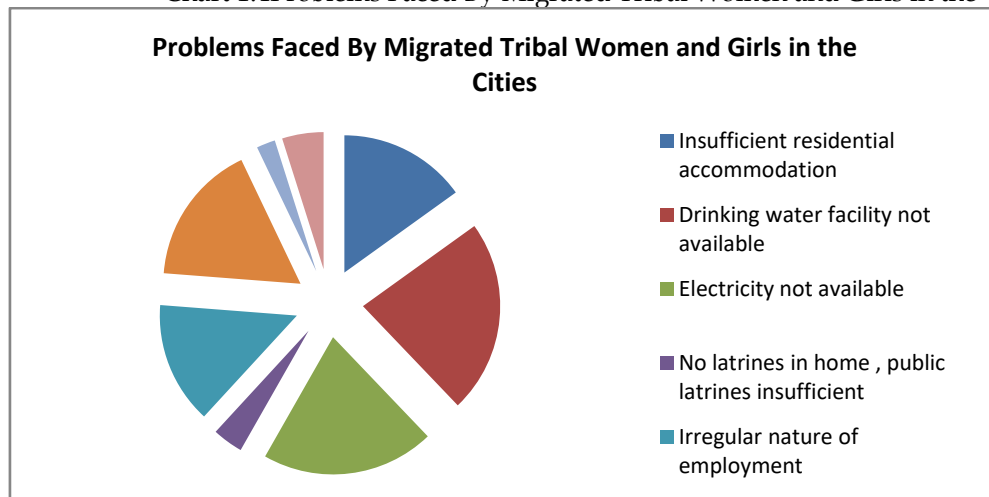
Problems Faced By Migrated Tribal Women and Girls in the Cities

Table1.4Problems Faced By Migrated Tribal Women and Girls in the Cities

Problems Faced By Migrated Tribal Women and Girls in Cities	NO OF RESPONDENTS		
	WOMEN	GIRLS	TOTAL
Insufficient residential accommodation	31.86%	24.20%	28.03%
Drinking water facility not available	48.13%	41.87%	45%
Electricity not available	43.07%	33.60%	38.33%
No latrines in home , public latrines insufficient	7.60%	4.67%	6.13%
Irregular nature of employment	30.40%	25.40%	27.90%
Very low income	35.23%	36.53%	35.83%
No school in the locality	4.67%	12.73%	8.70%
Medical facilities not available	10.33%	2.87%	6.60%



Chart 1.4 Problems Faced By Migrated Tribal Women and Girls in the Cities



Change in Life-Style after Migration

Table 1.5 Change in Life-Style after Migration

Change in life style	NO OF RESPONDENTS					
	WOMEN			GIRLS		
	YES	NO	TOTAL	YES	NO	TOTAL
FOOD HABITS	78.07%	21.93%	100%	74.67%	25.33%	100%
CLOTHING PATTERN	79.53%	20.47%	100%	78.27%	21.73%	100%
STANDARD OF LIVING	72.60%	27.40%	100%	70.80%	29.20%	100%
SOCIAL BEHAVIOUR	63.05%	37%	100%	57.93%	47.07%	100%
CULTURE LIFE	61.67%	38.33%	100%	56.27%	43.73%	100%

Chart 1:5 Change in Life-Style after Migration

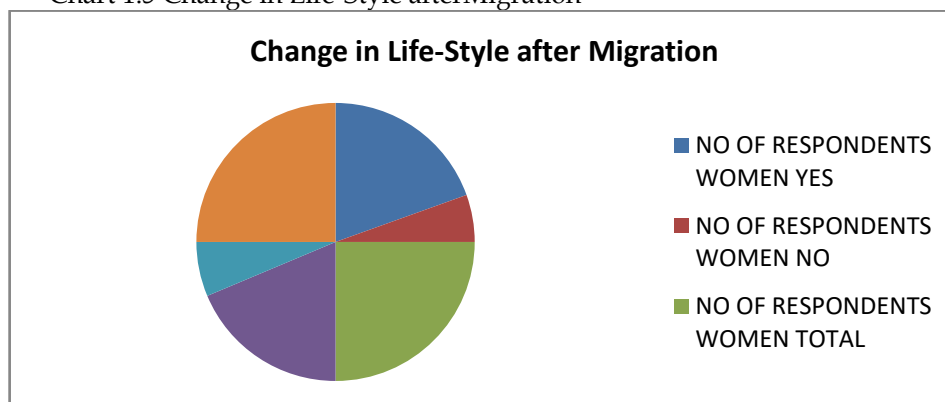




Table1:6 Impact of Migration on Social, Religious & Cultural Values

RESPONSE	NO OF RESPONDENTS		
	WOMEN	GIRLS	TOTAL
Yes,Fuly	38.67%	31.67%	35.17%
Yes,To some Extent	47%	51.60%	49.33%
Yes,To a great Extent	3.33%	4.47%	3.90%
No	11%	12.26%	11.63%
TOTAL	100%	100%	100%

Chart 1:6 Impact of Migration on Social, Religious & Cultural Values

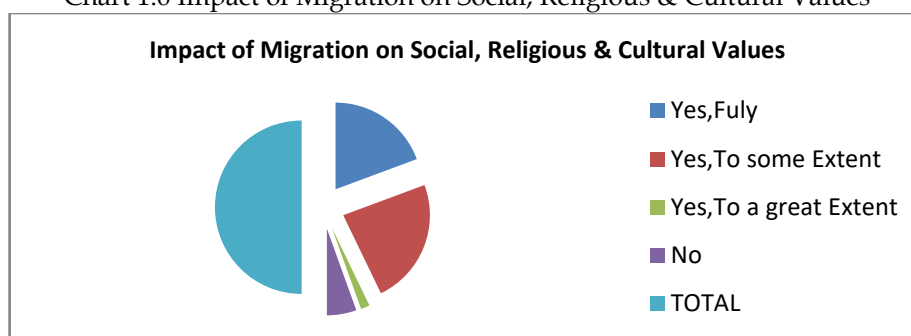
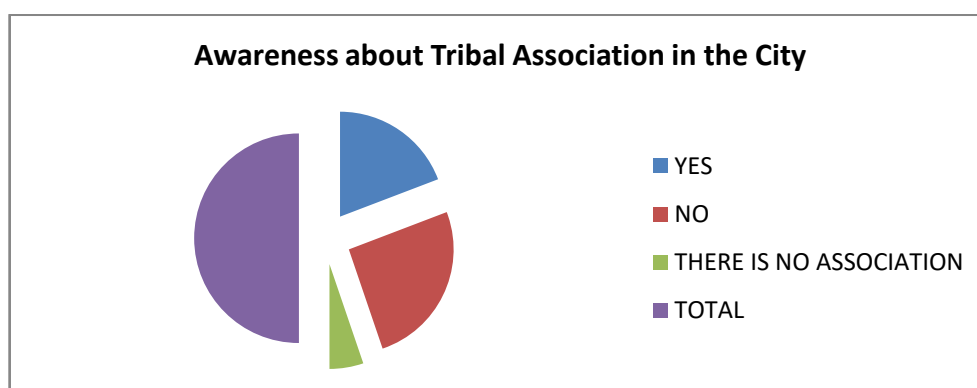


Table1:7 Awareness about Tribal Association in the City

TRIBAL ASSOCIATION IN THE CITY	NO OF RESPONDENTS		
	WOMEN	GIRLS	TOTAL
YES	38.40%	39.87%	39.14%
NO	51%	50.87%	51.00%
THERE IS NO ASSOCIATION	10%	9%	10%
TOTAL	100%	100%	100%

Chart 1:7 Awareness about Tribal Association in the City





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CONCLUSION

The investigation feels that deliberate by any measures the vagrant tribal women and young women are in reverse in all regards.. It will likewise help in taking care of the issues confronted by them in the changed city life. These incorporate both the here and now and long haul arrangement measures with respect to the Government as a submitted organization especially despite determination of the issues experienced by the vagrant tribal women and young women in huge urban areas. These tribal women and young women keep on being the most disregarded segment in the urban areas to the extent financial issues are concerned. The improvement procedure started by the Government and intentional organizations among the tribals have, on one hand, made circumstances for "restructuration" of the tribal society and on the other, offered ascend to some auxiliary issues. The detailing of particular anticipates their social and financial elevate have without a doubt achieved some adjustment in personal satisfaction of the tribals, yet new issues coming about because of these progressions are, none the less, minor ones. More finished, the vagrant tribals and particularly the transient tribal women and young women couldn't be secured under the Tribal Development Projects as the same were actualized in provincial territories of tribal districts. It is, in this manner, recommended that the Union and State Governments should outline exceptional projects of Tribal Development required by the tribals in urban areas and all the more particularly for transient tribal women and young women in urban areas.

The participatory part of tribals in enhancing their living conditions by completely investigating regular gifts and option utilizes must locate a proper place in the key approach. The social progression of tribal welfare and improvement is with the end goal that successful systems to secure tribals and their vocation suggest arranging some sort of social accord about criteria concerning tribal advancement and estimations of the general public that develops from such projects. This likewise suggests a wide social accord about the fundamental rights and openings that tribals ought to appreciate and the obligations that ought to be taken by various individual and social gathering.

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WOMEN EMPOWERMENT- A CONTRIVANCE TO EXTERMINATE GENDER INJUSTICE

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INTRODUCTION

Nature is equal to one and all, whereas the differences and discriminations are created by the unfair human minds. The differences are based on region, religion, race, sex, caste, origin etc.,. Such differences made since past, have grown up into big giant that can even affect the basic rights of human being. The deprivation of the basic rights of human beings has lead to the rise of concern over, laws and conventions on human rights. In both international and national scenarios laws for protection of human rights are being brought into execution.

The researcher in this paper has narrowed down to, the violation of human rights on the basis of gender discrimination in India. The word 'Human being' does not bring about any discrimination between genders, but when it comes to the rights of human beings the gender inequality finds its space.

Men and women were created to compliment and supplement each other to lead a happy life. But by the use of the physical power, men have tried and are trying to rule over the female gender. Women are being suppressed since the past, by projecting certain myths and by way of misusing religious belief. The victimised sector is now creating their own path by detaching themselves from the ideologies of the suppressing sector. The struggle involved in sculpting such a path has made it intense.

This paper mostly deals with the shadow casted on human rights deprivation by gender injustice. More precisely the path from women suppression to women empowerment has been discussed through the view of human rights is discussed and dealt with in this paper.

Objectives

The paper aims

- at bringing out the areas in which gender inequality has lead to the deprivation of human rights in our nation and
- in describing the growth and existence of women empowerment in India.

Scope and Limitation

The scope of the paper is that, it deals with the scenarios that witness suppression of women in India. This paper mainly focuses on the suppression of women and the path of empowerment chosen by the victims in India alone and not in other countries.

Sources of Study

The sources utilised are secondary sources which includes books, journals, articles and internet sources.

HUMAN RIGHTS

Human rights are rights, inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. ¹ All human beings are entitled to equal rights without any discrimination. Human rights ensure the dignity of the human beings. In the International scenario, the Universal Human rights are entitled through the sources of International law such as treaties, customary laws and general principles. Certain basic human rights have been listed down in the Universal Declaration of Human Rights (UDHR)

¹ <http://www.ohchr.org/EN/Issues/Pages/WhatareHumanRights.aspx>



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approved on 10th December 1948 by the UN General Assembly. The Countries are not compelled to abide by these laws. The principle of non-discrimination is complemented by the principle of equality, as stated in Article 1 of the Universal Declaration of Human Rights: "All human beings are born free and equal in dignity and rights."²

"Human rights can be classified into Constitutional Human rights, legal and moral human rights."³ The Preamble of the Universal Declaration of Human Rights (UDHR) states clearly that "recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world".⁴ Hence the importance of basic human rights is guaranteed to all the people of the society.

Gender injustice remains to be one of the constant hurdles in the path of achieving equal human rights to all human beings. The size of the hurdle seems to be reducing by the rise of 'women empowerment'.

GENDER DISCRIMINATION

When the sexes are treated differently it amounts to gender discrimination. In India, gender equality is still a dream come true as there are several causes for its existence. The prominent cause is the patriarchal society and the dependence lay upon men by women.

India is a land that gives greater importance to the social customs and beliefs. By the use of blind beliefs, the Indian society has created certain imaginary boundaries for the female gender confining them into such boundaries. These boundaries were created in the name of religion and its practices, for the creators to avoid answering the reasonable questions that arose against suppression of women. The confinements affected the growth of women in every sphere of her life. Women were made to believe they are less powerful than men to deal with external affairs and so they were confined to the kitchens and bedrooms. Women were not given the opportunity to explore themselves. At first the, right to education was denied, which led to deprivation of employment opportunities and this in turn led to poverty. The causes for suppression of women are inter-dependent on one another.

The suppression starts from the time of birth, where Indians have strong preference towards male child resulting in the killing of girl babies in the womb. In the stage of childhood to adulthood, the education which they ought to have got is considered to be unwanted way of spending resources, as women are said to be dependent on men, by the ideologies of the patriarchal society. In their adulthood women are deprived of their wages or salaries in the work place and were also deprived of property earlier. The status of women has been changing since the past till today.

STATUS OF WOMEN

The status of women was appreciable in the rig vedic period. They were given high status in the society during that period. Early marriage and sati system had no scope of existence in that age. Monogamy was common in the society but the richer sector involved in the practice of polygamy. The post vedic period witnessed the rise in the suppression of women by way of burning live widows, getting young women married and killing of female foeticide. The patriarchal society created a scenario where women are said to be dependent on men it may be her father, brother, husband or son. The then Muslim practices also favoured suppression of women and added, to the already existing gender injustice. British joined hands with the social reforms to establish human rights by way of driving away the social evils. As a result various legislations were passed, which include the following:

The Hindu widow re marriage act, 1856

Act prohibiting the practice of sati, 1850

² <http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>

³ GOKULESH SHARMA, HUMAN RIGHTS AND LEGAL REMEDIES, 147 (3rd ed. 2008).

⁴ Universal Declaration of Human Rights, Preamble, Dec. 10, 1948.



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The married women's property act, 1874

Child marriage act, 1929

The Hindu women's property rights, 1937

Caste disabilities removal act, 1850

Though there are several legislative works, the lack in the enforcement of such legislation make them ineffective. After independence, the genuine minds who drafted the constitution included individual rights. Later on as women woke up from their dormant state and came to know about their rights. They were aided by the governmental and non-governmental offices' efforts to find ways in getting back their rights. Women, in a slow and steady pace have set a benchmark in various fields. Women have now equipped themselves into multitasking individuals but till today there are several areas in which women get suppressed.

AREAS OF SUPPRESSION

Dowry- The tradition of providing gift to the bride on her way, away from her birth place was on the basis of the core objective, to help her during the post marriage crises. But this purpose has been toppled and has resulted in the scenario, where the bridegroom's family makes a demand over the amount of wealth the bride's family has to give to the bridegroom's family. The demand made upon the wealth is known as dowry. The demand though being illegal since 1961, still it attracts many ways of post suppression to women. The pity part of the dowry tradition is that, it is seen as a sign of exhibiting their status.

Men as assets; Women as liability- Men were considered to be assets of a family as they were given more scope for education and employment. Thus, men were capable of taking care of the financial demands of the family. Moreover, a strong myth was believed that the death rituals are to be performed by the male child, only then the dead person would reach heaven. On the other hand women were not give more scope for education and employment and so they were not able to bring income to the family. This made women financially and emotionally dependent on men. Women were considered to be a burden to the family and men were treated as a blessing to the family.

Female foeticide- The myth that women are burden to the society is deep rooted in the Indian society. This tuned the mindset of people to have only male babies and to get rid of the burden. But since nature shows no discrimination, the selection of sex of the baby was not possible. This led to the killing of female foetus in the womb, murdering of female babies after death or even the parents left their girl children abandoned. Thus, a law was passed against prenatal sex determination in the year 1996, but the practice is still alive in certain regions.

Child marriage - Child marriage is seen as a tradition that could secure women from external evils relating to her virginity. So women were forced to give birth in their early teens, which sometimes ended up in the death of the women as she was physically not fit to bear such pain. The age of a human being is proportional to the maturity and thinking ability of that person. Thus child marriage curtailed the authority of women over her own body.

Widow women- Widow women are considered as a sorrow in the society, their presence in any auspicious function was treated as an offence. Child marriages also lead to teenage widows, which ruined their remaining life. As women are brought up with the mind set to be dependent on the opposite sex, when they are left abandoned after the death of their husband they feel insecure and find no means to protect themselves.

Inheritance rights of women- Women were not even considered as an element, in the chain of inheritance. The right of inheritance was passed over from the father to his sons neglecting his wife and his daughters. This projected women as non-authoritative and unfit for holding properties in their own name.



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WOMEN EMPOWERMENT IN INDIA

The long domination of men and its resulting violence has stirred up the need for women empowerment. The initial opposition was initiated in the British period by certain social reformers, later on NGO and self groups took up the task of lifting up the status of women. Women empowerment demanded the scope to strengthen women both physically and mentally. The deep roots of social evil are ought to be uprooted by spreading knowledge about the ability of women. The post independence period witnessed the enactment of several laws favouring women empowerment. This led to the rise of authoritative voice against the unfair practices against women. This period is a transition period, bearing lot of odds in the society, as the male gender is not able to accept the change in the society. Thus the transition is taking a longer time.

SUGGESTIONS

- Voice must be raised against gender inequality, at least the voice raised should be respected rather than passing ill comments on the efforts made.
- Women empowerment can be taken to the next level by providing job opportunities suitable for women and their needs.
- Education for women, is not just providing knowledge to the female gender but it is far beyond that. When women get educated it reflects in the functioning of the civilised society.
- Improvement in the work place or work environment is a green signal for further growth of women improvement, because still some women are afraid of the work atmosphere which restrains them from stepping out of their comfort zone.
- The crimes relating to women have to be taken up on a serious note. The punishments must be made harsh so that the complainants believe in making such complaints and there will be strict action taken against the criminals.
- At first, the female gender has to believe that they are strong enough to achieve their dreams, only then this fact will pass over throughout the society.
- Born babies irrespective of their gender should be considered as a blessing. This will happen only if liabilities of women decrease.
- The mindset of each individual gets sculpted by the family structure, family's practice and by the influential environments. Thus, the gender equality must be taught from childhood, between siblings, cousins and friends.

CONCLUSION

The father of our Nation has quoted, "woman is the noblest of God's creation supreme in her own sphere of activity". Similar quotes are stated by many scholars by analysing the society. But the society till today fails to accept the very fact that human (male and female) rights are entitled to women also, the increasing ratio of crimes against women is an evidence for it. The above discussed causes reveal the facts that social pressures are more believed than the legislatures in India as the penal statutes are not deterrent in nature.

The rights of women that were certain in the vedic period were not the same later, those rights got submerged underneath the foolish religious customs and practices. Certain agents with authoritative laws were required to educate about women, their ability and the extent of success that can be achieved by break opening their curtailment. The astonishing fact about the gender discrimination is that, literate people also believe in the religious myths that are creating a gap between the female gender and their human rights.

Women have now become determined in achieving their goals by crossing each hurdle, knowing each hurdle is a challenge. The suppressed sector has realized that only by means of handling the tool 'women empowerment' in a wiser manner can the social evil called 'gender injustice' be driven away from the society.



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POSITION OF MEDIA AND NGO IN ACCELERATING WOMEN EMPOWERMENT

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INTRODUCTION

Gender differences can be traced from the ancient times. Gender discriminations can be defined as the imbalance or differences against women based on their sex in the society. Women were started to be suppressed by male in the society from the post Vedic period before which the women's in India enjoyed equal status as that of men. The concept of women empowerment emerged when women were treated inferior to men immensely affected women in the field of education, family, business and workplace.

Empowering women leads to empowerment of nation. The effective tool for women empowerment is Media and Non Governmental organisations as they cover and acquire support from a mass population in the society. Constitution of India prescribes the concept of Equality in its preamble but it still remains a theoretical application as in many rural areas women are still economically, socially and politically suffering to make par with the males of the society.

The status of women from the ancient till the modern period was not static it kept on changing from time to time. During the Rig Veda period women had equal status as of men and were worshipped as goddesses. They were appointed and given important positions and marriage was not compulsory at that time. Gradually in the Vedic period the status of women slowly started to decline and women were not regarded equal to men and were not allowed to enjoy the same rights and privileges as of men.

This can be evidently seen in Manu, the ancient law provider, stated that man should enjoy unquestioned supremacy over his wife and also stated that women have no right to study the Vedas. The concept of child marriage and polygamy prevailed.

The condition of women worsened in the medieval periods by making women inferior to men and also the legislations and religion did not provide any recognition or importance to the concept of Gender equality. During the 15th century the Bhakti movement emerged and played a helpful role where the saints preached for equality and equal opportunities to woman in the society. Women were removed from succession and were made to be fully dependent on male society to sustain their lives.

In the modern period the status of women saw development as many woman reformers emerged and contributed a lot towards the betterment and upliftment of women. Various laws, schemes and programmes were implemented and came into existence to curb and evade gender inequality. One such tool to achieve it is through women empowerment. Still in India women are suppressed by men, and to provide awareness and solution to it Media and Non Governmental organisation plays a major role in accelerating women empowerment in India.

OBJECTIVES

- 1) To know the evolution of women empowerment in India.
- 2) To trace the positive and negative influence of Media and Ngo on Women empowerment.
- 3) To suggests ways to evade the evil of Gender injustice.



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SCOPE AND LIMITATION

The paper deals with evolution of women empowerment, the positive and negative influence of Non Governmental Organisations and media on women empowerment in India. The researchers have curtailed their studies only to the scenarios of India.

SOURCES OF STUDY

The researchers have referred secondary sources such as journals, books, internet sources.

EVOLUTION OF WOMEN EMPOWERMENT IN INDIA

Generally Women Empowerment means the upgradation of the position and power of women in the society. Women empowerment tends to achieve to live and move freely, to make own decisions, to acquire education, to get employed and to evade domestic violence. The various aspects of women empowerment are social, educational, economic and occupational, legal and political women empowerment. The main object for empowering women is to create a effective legal structure and developing confidence in them to make decisions and claim their rights.

The women reforms started to emerge during the British Raj period where reformers such as Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Swami Vivekanda, etc.. Through the influence of modern concepts like Equality, freedom, Justice started apprehension for the empowerment of Women. The effect of emergence of such reformers forced the British to abolish the ill practice of sati and frame the widow remarriage act of 1856.

Later great leaders like Mahatma Gandhi and Pt. Nehru fought for women rights in India and also boycotted for widow remarriage as a result of which the child marriage restraint act, 1929 was enacted and the status of women started to slowly upgrade in the society economically, socially and politically

The India National Congress supported the first women delegation which met the secretary of state to demand women's political rights in 1947.¹ Almost all the leaders of the freedom struggle were against women discrimination and that women should be given equal status and opportunity in India. To empower women and to provide equal opportunity for women in all aspects various constitutional provisions were framed for practical implementation of it. Women empowerment provisions are provided under the preamble, Directive principle of state policy, fundamental duties, constitutional provisions and fundamental rights. For the practical achievement of Women empowerment not only provisions are framed and prescribed under the constitution but various acts and specific laws are enacted for the same, some are as follows:

- The Dowry prohibition Act, 1961
- The Medical termination of pregnancy Act, 1971
- The prohibition of child marriage Act, 2006
- The pre-conception and pre natal diagnostic techniques Act, 1994
- The commission of Sati (prevention) Act, 1987
- The Immoral Traffic (prevention) Act, 1956.

In the current scenario the gender injustice has drastically changed as women are participating and achieving in various filed such as education, science & technology, sports, politics, media. But still due to the deep rooted patriarchal mentality in the Indian society women are still tortured, victimised and exploited. To achieve gender equality apart from the government, contributions and efforts of Non Governmental Organisations, enlightened citizens and Media is required as even after many decades women are suppressed and discriminated in certain fields, society and parts of India.

¹Namit K Srivastava, Women Empowermen, <https://www.indiaceleberating.com/social-issues/women-empowerment/>



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POSITIVE AND NEGATIVE INFLUENCE OF MEDIA

Media is an effective tool of communication for developing the nation and the society. The basic functions and responsibility of media is to send and convey essential information to the receiver. Media reaches a wider range of population as it acts a medium of information and change. As how every coin has two sides media also creates both positive and negative effect on an issue. It degrades as well as upgrades the status of women in the society. As women are treated as the weaker sex and are not given much important in society, the government has implemented various schemes and policies that are made aware to the women through publications in newspapers and magazines. Further websites and social networking site are popularizes the activities of women empowerment in India.

In a recent report published by Google it is clear that internet is empowering Indian women with easy access to information and helping them to make inform decision in their day to day life.² The impact of social media and internet on women empowerment can be evidently seen in the Delhi Gang Rape incident where within 10 days a facebook page named the Delhi for women's safety was created and later various other groups were created as a platform to share their voice and views not only in India but also globally.³

Jaipur Rugs foundation aims to give the power to earn and raise themselves and their families by implementing programs to aid women in fields like entrepreneurship development and skills development the aim is to help women get educated and learn beyond it to stand at par with men in the society. Internet helps these types of organisations to reach out at a global scale.

Though media has positive effects by influencing the public to make an educated decision it can also negatively influence when they report only part of an issue and leaves out crucial information regarding the same then the public opinion in this case will be based on incomplete facts or information. The impact of negative media coverage of women cannot be ignored which leads to the public opinion to have negative attitudes towards women, question their credibility and eventually deny them an opportunity in advance. Moreover in campaigning for women participation in leadership, negative media coverage creates public opinions that do not have faith in women leadership and thereby pushes women to the margins.

Media the effective tool of communication and medium for reaching the larger population if used in a positive way to express and support the women empowerment and gender equality there will be a tremendous makeover of the mentality of the people in the society and public may start to give their support for women to have equal rights and opportunity in India.

POSITIVE AND NEGATIVE INFLUENCE OF NON GOVERNMENTAL ORGANISATIONS

The non -governmental organisations are playing crucial role in empowering women in India. They adopt and implement various programs to enhance the condition of women in the society economically and socially. Various training programs are conducted for women to live independently. Non Governmental organizations are created or constituted legally by private organizations or people with no participation or representation of any government. The role of ngo has positive influences than negative influence as they develop welfare programs, empowering activities such as:

Creating self help groups (SHGs):

In the current scenario various NGO are forming self help groups SHGs are nothing but voluntary association formed for the purpose of solving their problems. All technicalities relating to the formation of the SHG can be accomplished quite easily by the NGOs with grass root level

² RedAlkemi, Impact of Internet and social Media on Women Empowerment in India(19th December 2014), <http://www.redalkemi.com/blog/post/impact-internet-social-media-women-empowerment-india/>

³ RedAlkemi, Impact of Internet and social Media on Women Empowerment in India(19th December 2014), <http://www.redalkemi.com/blog/post/impact-internet-social-media-women-empowerment-india/>



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involvement. Trained field staffs in micro-credit mechanism are able to comply with all the procedures for the formation of a healthy self help group and can ensure their proper working

Nurturing self help groups:

Mere formation of SHGs is not sufficient it has to be nurtured by continuous monitoring and evaluation. All the members of the SHG should be trained with regard to maintenance of the documents, communications, decision making process; implementation of decisions etc., NGOs can arrange and conduct the training program more efficiently than by any other agencies due to their continuous interaction and involvement at the grass root level⁴.

Mobilizing resources:

The NGO's is a strong agencies in recognize needs and scheming projects for the welfare the disadvantaged. They generate both internal and external resources. The practical knowledge of many Ngo shows that they could organize resources for the benefit of women from the country and outside.

Facilitation role:

Ngo can act as catalyst of different activities like micro credit, education, encouraging for political participation etc.

Promoting people's organization:

Encourage organization of the people is a effective strategy adopted by the ngo especially for women empowerment. Aside from SHGs and NGOs do promote mahila mandals, yuvathi mandalsand various activities based on village committee with representation women .NGOs have platform for women to enjoy freedom through organization.

SUGGESTIONS AND RECOMMENDATION

- The country had focused on implementing schemes, programmes and policies and has failed to concentrate on proper supervision, evaluation and monitoring of the implemented systems.
- Loopholes in the legal system and delay in judicial procedure which has lead to the increase in crime against women in the society.
- To eliminate the concept of patriarchy in the society by the government to remove all that forces that work to keep and sustain the male dominance tradition in India.
- Women should be made aware of her rights and to access such rights entitled for each women.
- The positive approach of Media to portray women in a manner that proves that women are great contributors to the development of the nations.
- To provide and avail education to all girl child in the society.
- The perspective of girl child being a burden to them from the birth of the girl child should be eliminated from the people's mind.
- Female infanticide to be curbed
- Effective redressal mechanisms to be implemented and systematically to monitor both existing and newly implemented commission and mechanisms.
- Awareness on the schemes, programs, policies, legislation implemented and enacted for women empowerment economically, socially and politically.
- Government to allocate separate funds for women empowerment and also to provide funds to Non Governmental organisations working for empowering the women in the society.

⁴ Dr.Laxmi & Dr.Sandhyarani.M.C, Role Of Non-Governmental Organisations In Women Empowerment (10th November 2016), <http://www.socialworkfootprintd.org/social-work-articles/role-of-non-governmental-organizations-in-women-empowerment/>



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CONCLUSION

Women empowerment is the light to the darkness in the life of every woman to find their self worth and live independently. The concept of gender equality can be achieved only when the patriarchal mentality and male dominant society that suppresses woman and which makes them to feel inferior to men should be eliminated and evaded from the society.

Though the government, Non- governmental organisation, Media's contribution and effort is crucial and imperative, the step to abolish gender injustice should start from each and every households by empowering and encouraging women by providing them with equal opportunity in education, health, nutrition and decision making as that of every other member of the family.

From the various reformers and fighters many legislations and practices that degrade and cause injustice to women were eliminated but women empowerment is still not that effectively implemented as proper and systematic monitoring of the made remedies, polices and schemes are not done.

To empower women the contribution of government, non -governmental organisations is very important and essential. Media being the effective medium to convey to the receiver the social issues has to take more initiative to reach and make the women to be looked in a manner that they are not a burden but contributors to the development of the nations when they are physically, mentally, socially, economically and politically strong . Non - governmental organisations also are major contributors for empowering women by providing training to women in all aspect to stand independently in the society.

India can be a developed, wealthy and powerful nation only when it empowers women in the society.



FEMALE GENITAL MUTILATION AS VIOLENCE AGAINST WOMEN

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Introduction

It is a truth universally acknowledged that every community or nation is bound to have its own culture consisting of beliefs, customs, art, way of life and principles pertaining to it. Though culture is celebrated as heritage, laws are made to intervene certain practices that come in the way of different rights that are necessary to make life fair for all living beings. Even though some human rights activists refer to “good” cultural practices and “harmful” cultural practices and a few feminist scholars examine cultural practices that protect women from violence, many who write about women’s right to protection from violence identify culture and tradition as the source of the problem (Merry 12). The brand ambassador for this understanding of culture is female genital cutting (FGC) or female genital mutilation (FGM). It is almost always associated with 30 countries in the western, eastern and north-eastern Africa. Seldom do people realise that it is also practiced within some immigrant communities in Europe, North America and Australia and in parts of the Middle East and Asia, including our very own country, India. At present, it is known to be practiced in Maharashtra and Gujarat. Female genital mutilation, as defined by the World Health Organisation, is all procedures that involve partial or total removal of the external female genitalia or other injury to female genital organs for non-medical reasons. The recent discovery that FGM is practiced, not only by the uneducated and tribals but also by the middle-class educated people of India was an unexpected blow to the whole world. Being one of the most gruesome and cruellest violations of human rights, the country is joining hands to put an end to this custom with little or no success till now.

Female genital mutilation, also known as female circumcision are of different kinds. The most common is the Sunna circumcision when the tip of the clitoris is either cut or removed. Clitoridectomy is the complete removal of the clitoris. To put it simply, FGM involves the cutting or removal of the tissues around the vagina that are responsible for giving women pleasurable sexual feelings. In its extreme form, female genital cutting is done through infibulation. Infibulation refers to the cutting of the labia minora and inner tissues of labia majora and sewing together of the remaining tissues to leave a very small opening for the passage of urine and the discharge of menstrual blood. In India this is practiced in Mumbai and other parts of Maharashtra and Gujarat by the Bohra Community, a category of the Shia Muslims. As the practice is done secretly, many Indians are unaware of it. Girls aged six and seven are taken to dark decrepit buildings by their own mothers, grandmothers or aunts in the pretext of buying them gifts or by promising them with some other attractive offers that lure them towards their destiny of being victims to this practice. Once the girls are inside the room where the ritual is performed, they are tied using a rope. Usually the procedure of FGM in India is done in the most primitive manner, giving no proper care, and executed by untrained midwives. Usually the girl whose external genitalia is to be mutilated is made to lie on the floor with her hands and legs caught in place by the women accompanying her and the midwife heats a knife or razor blades or other such tools and then begin the process of scarring the child physically and mentally forever. “The girl’s legs are bound together tightly at the ankles, knees, and thighs to prevent her from moving, so that the healing edges of the wound will not be disturbed; the aim is to make the opening into the vagina as small and tight as possible” (Dean and Lee). It usually takes between 15 and 40 days for the wound to heal completely. Female circumcision poses many risks and



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harmful effects on the child which affect her even after she reaches adulthood. The immediate risks after this procedure are haemorrhage (excessive bleeding), severe pain, genital tissue swelling, fever, wound healing problems, injuries to surrounding genital tissues, shock and infection. The implements used for FGM may not even be sterilized, resulting in infections like abscesses, tetanus and gangrene. The most severe consequence is death due to severe blood loss. Those who believe in conducting the practice in its true form refuse to adopt medical care and antibiotics to accelerate recovery of the victims of this inhuman tradition. For example, it is found that in Mumbai, the perpetrators used indigenous medicine called abeer or kapurkanchi powder mixed with silk thread ashes to apply on the cut region for its cooling effect and adhesive nature (Baweja). Long term complications of FGM include scarring, difficulties in the drainage of urine and menstrual blood, chronic urinary tracts infections, recurrent backpain and pelvic aches, unexpected bleeding and infertility. Sexual intercourse can be painful. A victim says, "I don't think I ever enjoyed sex in my marriage. I often wonder what it would have been like if I hadn't been cut. The sad part is I will never know" (qtd. in Baweja). A woman subject to female genital cutting in almost all cases cannot enjoy sexual intercourse as it stirs in her intense pain. Complications of childbirth is another risk factor. During childbirth, the sewed up vagina is cut open for the child to come out. The mother has a risk of death during childbirth too. In communities where FGM is practiced, it is found that the infant and maternal death rates are higher as compared to other communities.

Why is female genital mutilation practiced? This question has infinite number of answers. Whether it is solely due to its cultural roots or because of the sadistic patriarchal dominance, we'll never know. It is true that FGM is deeply rooted in culture. The Bohras believe that female circumcision or khatna, as they call it, is a rite of passage that marks a girl's transition to womanhood. But it is found that female children including new born babies are subjected to this custom and hence one cannot fathom the logic behind this theory. The beliefs that the clitoral head is 'unwanted skin', that it is a 'source of sin' that will make them 'stray' out of their marriages are reasons that lie at the heart of a practice that predates Islam but thrives amongst Bohras. In other words "FGM is in many communities believed to reduce a woman's libido and therefore believed to help her resist 'illicit' sexual acts. When a vaginal opening is covered or narrowed, the fear of the pain of opening it, and the fear that this will be found out, is expected to further discourage 'illicit' sexual intercourse among women with this type of FGM" (WHO). An ideal woman was believed to be chaste. To protect her chastity before entering the institution of marriage, female circumcision is used. As Friedan aptly says, "The identity issue for the boy is primarily an occupational-vocational question, while self-definition for the girl depends more directly on marriage" (164). The clitoral head is often referred to as the 'immoral lump of flesh'. In a male dominated community, FGM is one of the ways in which men hold on to their power. The sadistic beliefs devoid of reason revolving around female circumcision are propagated by the Bohra women than the men. Being a custom that has been followed from time immemorial, the notion of the inferiority of women exercises its essence in the practice of FGM. By making the vaginal opening tight men having an intercourse with the victim of this practice derives pleasure on a higher scale. If this is the major reason why this custom exists, it is a shame to today's world that is propelled by the idea of gender justice. Male circumcision, a major practice in many communities are medically proven to be beneficial for men unlike female circumcision for women. While the former makes men resistant to infections, HIV and many other diseases, the latter causes infections, diseases and other difficulties in women. This mirrors the gender bias that spread its wings over the society, demarcating men and women placing the former in the gaining end and the latter in the losing end. The sad truth to this painful process is the fact that it is a practice being done to women by other women - by women who accept the preconceived notion of its validity and programmed not to question it. The shocking realization that female genital mutilation is practiced in India by one of the communities where women are highly educated, threw



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many off balance. Bohra girls are educated and have travelled the world. They still fail to understand the dichotomy between the regressive practice in an otherwise progressive community (Baweja). The only positive outcome within the practice that came into being because of awareness programmes and education is that the girls are now being subjected to khatna by trained Bohra doctors thus ensuring some amount of safety in an unsafe process. One reason why khatna continues is because the Bohra high priest or the Syneda, refuses to engage on the issue either with the women or the media. Though the United Nations has declared female genital mutilation a human rights violation, there is no ban in India. Young girls are still being taken to midwives and to doctors in Bohra-run hospitals.

We can draw from all these that female genital mutilation is not merely a traditional practice but a display of superfluous male chauvinism and cultural oppression that violates human rights, women's rights, child rights, right to live, rights to health, security and physical integrity, the right to be free from torture and cruel, inhuman or degrading treatment, to name a few. Boyle says that critiques inspired by this practice initially focussed on health hazards but more recently focusses on the gender oppression inherent in the practice. Thus, genital cutting became the prototype of a culturally justified practice which is recognised as an act of violence and a breach of women's human rights (Merry 27). Female genital cutting is not the oppression of women by religion but by culture and the patriarchy, both of which point their finger at religion as a means of justifying this custom to escape criticism and the law. Deriving pleasure and satisfaction from other's misery is simply called sadism. Those practicing or supporting FGM could be called the hardcore sadists of the century. The neutrality of people on this matter ought to be questioned too. Evading the need to address this issue just because it affects only a handful of people belonging to a less populated community can be equated to committing a crime, because, lesser the number of people opposing FGM, greater is its chance of survival, thereby, indirectly holding each unresponsive citizen responsible for violation of human rights. The right to equality is breached by this practice. This particular sect of women is treated unequally by putting them through this practice without their knowledge or consent. Many Bohra women had undergone FGM at a very young age that they weren't aware of the fact that their genitals had been tampered with, until women from the community starting voicing out the injustice meted out to them, publicly shunning the practice. A few women blocked the memory and refused to accept that they had been cut, thus forgetting the truth themselves until recently when news broke out that FGM is not restricted to African countries but is prevalent India as well. Many others remembered the pain and suffering that they went through and didn't want their children to go through the same. But unless a girl is circumcised, she will not be accepted by the community. But there are instances where many families who were against this custom broke away from the gendered, religious and cultural constraints and moved to different parts of the world where they weren't forced to be a part of this practice that was a part of their culture. By revealing the existence of female genital mutilation in India women can at least hope that the country will come together and put an end to this torture. Survivors or victims of khatna suffer from psychological trauma that lays its mark on them till they help themselves to get out of it. Support groups in India as well as the whole world help in the recovery of women who have undergone circumcision and provide them with medical facilities that minimise the impact of FGM.

Usually cultural traditions provide justifications to preserve discriminatory practices like female genital mutilation. Such practices that reinforce inequity based on gender, class and caste must be reviewed, challenged and if possible, put to an end. There is a dual voice that runs through the discussion of this issue: violence against women is a product of traditional cultural practices, which must be changed but cultural heritage is something to treasure. The location of gender-based violence in the form of female genital cutting in family and personal relationships and religious communities has shielded this domain of violence from state scrutiny for a long time and at the same time has



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naturalized the practice (Merry 25). Being a harmful traditional practice, FGM has some cultural legitimacy yet are harmful to women. As said by Merry, "FGM is the central issue around which the conception of harmful cultural practices or harmful traditional practices has coalesced" (27). At present, it is known that the Bohra community practices female genital cutting. One can't be sure but it might exist in different tribes and other communities in India as well. Rather than waiting for the evidence of this practice to be unearthed, doing away with it immediately by means of law will ensure gender justice in the country. Therefore, it is vital that female genital mutilation should be banned in India as soon as possible as it would provide a gateway for equality of sexes.

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RIGHT TO PROPERTY AND GENDER JUSTICE - THE INDIAN SCENARIO

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INTRODUCTION

In the historical development of humanity, in the proliferation of human civilization and in the social economy of the world, woman has always been considered as an important part as man. At the same time she has always been treated as an inferior creature as compared to their male counterparts. This inferior status of the woman exists not merely in their households and in the society but also in the matter of privileges and right. It is so because our legal system also develops itself on the basis of prevailing norms of social sphere and these social norms and values put tremendous effect on the legal system. Thus the effect of social status and position of women shows its impact over conventions and laws of our society also.

HISTORICAL BACKGROUND

Regarding the position of women in early Vedic society, women occupied the same position as the man. There was complete gender equality in all spheres of life and women enjoyed great respect, significant rights and privileges. A girl was free to get herself educated just as boys in those days. During the Vedic period, studies started after the thread ceremony, which was called 'Upnayana Samskara'.

In Rig Veda it was mentioned that who wore sacred thread were considered capable of performing many responsible jobs. Many statements in the Vedic literature indicate clearly that women were undergoing Upnayana Samskara, studied Holy Scriptures and recited Mantras. With regard to the institution of marriage, women had also an effective say in the selection of her life partner. The famous system of marriage by 'Svayamvara' had its origin in Vedic literature. It was intended that man cannot perform various religious ceremonies alone. For the performance of religious rites and ceremonies the presence of wife was must. A man was believed to be incomplete so long as he does not have a wife. The wife was said to be her husband's 'Ardhanagini' i.e. half of the man.

So far as the property rights of females are considered the Rig Veda speaks about the individual proprietorship, the sons dividing their father's property after the demise of father, unmarried daughter staying in father's home also have a share of a father's property.

WOMEN EQUALITY AND THE CONSTITUTION OF INDIA

Our Constitution in its preamble provides for Justice - social, economic and political, and with its declaration of equality of man and woman through its numerous provisions e.g. Fundamental Rights and Directive Principles. It envisages the ushering of new era wherein women as a citizen of India will be treated as equal to man in all walks of life. It is indeed a great proclamation which ends an old era and declares the principles on which the new era will be based. But it is that blueprint which is however to be realized. It is one thing to enact a principle and it is another to actualize it in real life. Though de-Jure rights and freedoms are provided with great enthusiasm but it does not essentially mean that those rights and freedoms are actually realized.

There is still a lot of gender discrimination almost in all walks of life. Though this gender inequality facets itself in different forms, but the most tiresome one relates to the effective property rights of women. Accorded those property rights to the women whereby she can constitute her independent rights of inheritance and independent stock of descent.



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Before the passing of this Act, women's right to inherit, own and control property are determined primarily by the values and norms which are socially acceptable and the primary objective of inheritance systems in Indian society has been to preserve property, especially landed property, intact for male heirs. Though the Hindu Succession Act was passed with main objective of ameliorating and to enhance the women's economic position, but the real problem began when it is going to be applied in reality. Since the question of woman's inheritance rights are concerned with immovable property, especially land, and our patriarchal structure does not allow women to inherit the landed property. Even our customs (excluding, of course matrilineal customary law) tend to limit women's property only up to the movable contents e.g. ornaments and clothing actually given to them at the time of marriage. Sometimes these customs allow them to inherit from very near relation like the father and mother or some time from the mother only otherwise it denies the right of inheritance to cognate kindred.¹

Hindu women's Right to Property in the Pre-Constitutional Period

A Hindu woman, whether a maiden, a wife or a widow has never been denied the use of her property.

- Even in Manusmriti one can see that right to hold property had been respected .
- Jurists like Yajnavalkya, Katyayana and Narada further promoted the concept of women's right to property.
- Women's property rights improved and defined during their time .The Smritikars created a unique type of property to women, the stridhana.
- Since ancient times stridhana was treated as women's separate property
- Jimutavahana went to the extent of stating that woman has absolute control over her property even after marriage.
- The ornaments, the wealth she receives at the time of marriage from her father and relatives constitute her share.
- The gifts from her own and husband's family would also be added to her own. It was Gautama Dharmasastra who first called women's property as Stridhana share. Mayne also opined that the original bride price payable to the parents appears to have become transferred into the dowry for the wife ².

Women's Property Rights under Customary law in the Southern India

Certain customs existed in southern part of India among the Dravidians to give a piece of land to the bride. The daughter can take this income and use it for her own daily needs. This constituted her stridhanam and it was passed on to the daughter by the mother. The land was named as 'manjalkani'. This would enable her to have an income for her needs especially to purchase turmeric and vermilion after marriage. Similarly a custom of handing over 1/3rd of the property by the husband existed when he remarries. It was called patnibhagam. In coastal Andhra Pradesh also a custom of giving land to the daughter at the time of marriage existed. It was termed as Katnam. The peculiar feature of this practice was that women could exercise control over this property even after marriage. In the same way 12% of the Karnataka Vira Saiva women also inherited property from the mother which would be passed to the successive generations for daughters. It is pertinent to note that women inherit this property where as even a boy could not inherit it. The Sudra women from Dharwar region also enjoyed property rights. In spite of all these women's right to property her freedom was restricted by way of non- participation in decision making especially in financial matters and that it is a patriarchal concept.³

¹: David Rene & John E.G. Briefly: Major Legal System in the World Today.' (1968) 1st ed p. 14

² Derrett J.D.M.: An Introduction to Legal System, 1st. ed. Indian Reprint (1999)

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Women's property rights in the Patriarchal Family

A Hindu father in patriarchal family enjoyed absolute power just as the Roman father in ancient Rome. The scriptures undoubtedly contributed much to make the father, the head of the family a despotic ruler. Manu said that three persons, a wife, a son and a slave are declared by law to have in general no wealth exclusively their own; the wealth which they may earn is regularly acquired for the man to whom they belong¹⁷. Similarly Narada held the view that a son could be independent only if his parents are dead; during their lifetime he is dependent even though he is grown old¹⁸. So in a patriarchal family women and children did not have property rights. The wife was put into the group of chattels and slaves. They had an oppressed and subjugated life in the traditional patriarchal families.

174th Law Commission Report of India -

Since the States brought about amendments to the HSA1956 conferring birth right to women in the joint family property Law Commission of India took the initiative and submitted its 174th Report in 2000 pointing out that in the matter of property rights of Hindu women, inequality and discrimination still exist in the 1956 Act.

Important Judicial Pronouncements

Mangatmul V. Punni Devi (1995) (5) scale 199 SC

- "maintenance must necessarily encompass a provision for residence. Maintenance is given so that the lady can live in a manner more or less to which she is accustomed. The concept of maintenance must therefore include provision for food and clothing and the like and take into account the basic need of a roof over the head

Smt. B.P. Achala Anand - Civil Appeal No. 4250 of 2000

The Supreme Court in this case observed that right of a wife to reside in the matrimonial home under personal laws. A wife is entitled to be maintained by her husband. She is entitled to remain under his roof and protection. She is also entitled to separate residence if by reason of the husband's conduct or by his refusal to maintain her in his own place of residence or for other just cause she is compelled to live apart from him. Right to residence is a part and parcel of wife's right to maintenance. . For the purpose of maintenance the term wife' includes a divorced wife.

Bharat Heavy Plates and Vessies Ltd., AIR 1985 Andhra Pradesh 207,

The husband was an employee in a company. He was allotted a company quarter in which he lived with his wife. The quarter was the matrimonial home. However, differences developed between the husband and wife, leading to their estrangement and finally the wife went to the Court, charging her husband with neglect to maintain her and her three minor children. The husband left the company quarter and it was occupied only by his wife and minor children. The husband also wrote to the company, terminating the lease which was in his favour. The hovering prospects of eviction led the wife to the Court for protection, seeking an injunction restraining the company from evicting the wife and her three minor children. The High Court upheld the order impugned before it, whereby the company was restrained from evicting the wife and her minor children. The Court took into consideration the facts that the quarter was meant to be used by the employee and the husband was under an obligation to provide shelter to the wife and children. The husband and the company had both recognized the quarter to be the matrimonial home wherein the wife too was residing. The amount of rent was directed to be deducted from the salary of the husband.

Conclusion/Suggestion:

After discussing the available relevant materials on the subject, an earnest and modest attempt has been made to forward some suggestions though not exhaustive but may go a long way to ameliorate the cause of property rights of women.

Some grass root steps should have to be taken to weed out the patriarchal biases. Participation of both men and women is equally important for the upliftment of woman. Today the



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need is to establish equilibrium between men and women, as regards to social, legal and traditional status in the existing society. It is a genetic reality that any attempt to assign women a low and artificial legal status will not stand at the test of justice and fair play.

"We must give back their rights and privileges in law of which we have robbed them. The injustices perpetrated on them in the name of law, should be remedied and as we honoured them in life, so must we make equal them to us in law then the law shall be the real reflections of life." Desired result can be achieved only when men and women both join hand for the amelioration of economic independence of women. As the fight for gender equality is not a fight against men, it is a fight against traditions that have chained them, a fight against attitudes that are ingrained in the society, a fight against system and a fight against proverbial .

Nothing in the world is perfect and no word is the last word in any branch of knowledge least of all in the study and practice of law.

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CHALLENGES OF DISABLED WOMEN

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Introduction:

The World Health Organisation defines disability as “an impairment is a problem in body function or structure; an activity limitation is a difficulty encountered by an individual in executing a task or action; while a participation restriction is a problem experienced by an individual in involvement in life situations. Disability is thus not just a health problem “.In sociological terms it is defined as a “reduction in one’s ability to perform everyday task “.Disability is pointed as a social limitation by the WHO.

Since the middle ages, the disabled were viewed differently in the society. Some thought it was a punishment for a sin (since mutilation was also a form of punishment in the primitive societies of the middle ages), others blamed it on superstition while some believed that the disabled were closer to God as they suffered more on earth and believed that these humans would get salvation after death. This relatively modern concept may be the roots of the twenty first century concept of “ differently abled or divyang “.The modern day concept of disability came after European Enlightenment in which knowledge with reason gained prominence over superstition and fetishism. The growth of modern medicine, which made study on human body easy and logical. This made society to look at disability with an open and compassionate view and hence, almost all modern countries, now have laws to protect their disabled population.

Disability rights movement grew in India after the Asian and Pacific Decade of Disabled Persons in 1993 following a National Seminar which provided a backbone several disabled friendly legislation like the Persons with Disability (Equal Opportunities, Protection of Rights and Full Partnership) Act 1995 and the National Trust for Welfare of Persons with Autism, Cerebral Palsy , Mental Retardation and Multiple Disability Act 1999 etc.

Disability may be acquired or congenital. While the former deals with” disabilities that has developed during a person’s lifetime, a disability that is the result of an accident or illness rather than a disability the person was born with”. The latter also known as “birth defect , is a condition existing at or before birth regardless of its cause “. The causes of these disabilities may be genetic, environmental and some times by reasons yet to be discovered by the medical sciences.

According to census 2001 there are over 21 million person’s with disabilities. About 9.3 million of them are women. This include persons with visual, ,speech ,locomotor or mental disability. 75% of them live in rural areas, only 49% of them are literate while only 34 %of them are employed. Persons with disabilities constitute 2.1% of our population. For a developing country like India this is a huge proportion and cannot be ignored. There is an increased need to rehabilitate them .Recognising this government has introduced the policy of Economic Rehabilitation of Persons with Disability. This national policy statement focuses on vocational training, employment and education of people with disabilities .

Due to the general patriarchal trend in our society, women with disabilities face more challenges and hurdles than their male counterparts. The challenge of getting education, obtaining a job and at the end of the day their safety ;are all matters of concern. Disabled women generally are employed in three main domains in India; government employment, private sector and self employment. While the government sector is relatively disabled friendly with an assured reservation , the lack of infrastructure facilities in some offices makes working in these offices challenging. As the



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country is growing fastly, the other two domains must be focused prominently as these domains carry an unlimited potential for job creation. Skill development programmes is a solution that will help intranforming differently abled persons in to an efficient employee. But creating a bunch of differently abled employees is not enough. The idea of creating a dynamic employer out of these efficient employee. This would give her a better position in job market negotiations and also give a sense of happiness and self confidence.

Last but not the least as a society there is much more to do. We have to accept the differently abled with their limitation, include them in our social group and encourage them to push their barriers higher.

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EDUCATION IN EMPOWERMENT OF WOMEN - THE ROLE OF JUDICIARY

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Introduction:

Human Rights are the Rights that inherent to all human rights, whatever our nationality, place, residence, sex, ethnic origin, colour, religion status. Human rights are the "Basic rights and freedom that all people are entitled to regardless of nationality, sex, ethnic origin, race, religion, language or other status. Human rights are often expressed and guaranteed by law, in the form of International treaties, customary international law, general principles accepted by International law. The general assembly of United Nations adopted "The Universal declaration of Human Rights" on 10 December 1948. The declaration was drafted by UN commission on Human Rights and adopted by the general assembly of the UN on 20 November 1959. This declaration of Human Rights, 1948 states that everyone is entitled to all the rights and freedom set forth in this declaration, without distinction of any kind, such as race, colour, sex, language etc.

WHAT IS HUMAN RIGHTS AND GENDER DISCRIMINATION?

Women have been exprise by the men throughout the ages. The genesis of discrimination and cruelty against women can be traced to the baffling attitude of social aloofness on the part of the Indian populace. Through the constitution of Indian provides equality between the sex with special protection for women. It is unfortunate that this great menace has not yet been fully examined and explored within the frame work of a legal theory. Therefore, here it is ostensible to discuss all aspects relating to discrimination against women.

There have been so persistent and frequent commission of crimes in different shapes and sizes violating their basic rights and outraging their dignity and modesty. India is no exception, that the solemnity and significance of this day has virally been lost. Women, the source of love and compassion have always been exploited by a patriarchal society. Even after 70 years of Independence, women of Indian wear a pathenic look.

OBJECTIVES OF THE STUDY

How the tool of education helps in women empowerment

Education is the most important and indispensable tool for women empowerment. It makes women aware of all their rights and responsibilities. Educational achievements of a women can ripple effects for the family and across generations.

What is women empowerment?

Empowerment is a process that gives a person freedom in decision making. Conceptually the term empowerment has multi-dimensional focus and can be described as a process where in a group or individuals are able to enhance their status in the society on the hand and overall participation and growth in the other. Empowerment is an active multi-dimensional process which enables women to realize their dignity, position and power in all sizes and spheres of life.

P.K.B Nayar - Empowerment is an aid to help women to achieve equality with men or at least to reduce gender gap considerably.

Kofi Annan - There is no tool for development more effective than the empowerment of women.

Some more detail view on women empowerment

Women empowerment is a much raised and discussed topic around the global? But why is it necessary? Why are we trying to fill this gender gap? Why are women not given that on the society! It



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is 21 century and women still have to fight for their rights? If we ourselves could try to get the balance then there would be no need for this whole campaign for women empowerment. A house maker can any time become a corporate leader! And we have a plenty of example in our country itself!

HISTORY OF WOMEN EDUCATION IN INDIA

Although in the vedic period women had access to educate in India, they had gradually lost this right, however, in the women's education in India. During this period, various socio religious movements led by eminent persons like Raja Ram Mohan Roy, Iswar Chandra Vidya sagar emphasized on women's education in India.

Mahatma Jyothiphule, Periyar and Baba saheb Ambedkar were leaders of the lower castes in India who took various initiatives to make education available to the women of India. However women's education got a fillip after the country got independence in 1947 and the government has taken various measures to provide education to all the Indian women.

As a result of women's literacy rate has grown over the three decades and the growth of female literacy has in fact been higher than that of male literacy rate. While in 1971 only 22% of Indian women were literate, by the end of 2001, 54.16% female literacy rate is 14.87% as compared to 11.72%. 10 of that are male literacy rate.

IMPORTANCE OF WOMEN EDUCATION IN INDIA

Women education in India plays a very important role in the overall development of the country. It not only helps in development of half of the human resources, but in improving the quality of life at home and outside. Educated women not only tend to promote education of their girl children, but also can provide better guidance to all their children, moreover educated women can also help in the reduction of infant mortality rate and growth of the population.

TOP 10 REASONS WHY FEMALE EDUCATION IS IMPORTANT

Increased literacy, Human trafficking, political representation, Thriving babies, safe sex, later marriage, smaller families, Income potential, Thriving GDP (Gross Domestic Product), Poverty reduction.

PROBLEMS FACED BY WOMEN

- Domestic violence
- Custodial violence
- Acid burning and Dowry Deaths
- Rape
- Sexual Harassment
- Sexual abuse and Gender Discrimination
- Eve teasing, Molestation
- Sati and Abetment of Suicide
- Wife Battering
- Prostitution
- Pornography
- International trafficking in women
- Private sphere
- Female foeticide / Infanticide

Some of them are briefly explained below:-

DOMESTIC VIOLENCE:

Domestic Violence is the one of the gravest and the most pervasive Human Right violation which occurs within the private sphere, between individuals who are related to blood or law. Without any exception, a women's greatest risk of violence is from someone who she knows.

Maya Angelou- People will forget what you said, People will never forget what you did, But people will never forget how you made them feel.



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It offers women victims of such violence civil remedies of a kind not available to them earlier. Till now, women could use section 498A-IPC(Indian penal code),1860 to sue against an abusive spouse.

RAPE:

The sections in IPC related to rape have been undergone substantial changes after the amendment of sections 375 and 376. They implemented new sections 376A, 376B, 376C, 376D in IPC by the criminal law (Amendment) Act, 1983. Insertion of new section 228A, in the IPC and Amendment in Criminal Procedure Code, 1973. Eve teasing and molestation are covered by sections 294 and 354 of IPC.

SATI:

In Indian scenario sati is a criminal peculiar. There is a slight difference between suicide and murder in the context of sati. Roop Kanwar, a young house wife was instigated to burn herself at the pyre of her dead husband at Deorala in Rajasthan in 1985. The people responsible for making sati are charged for abetment of suicide under section.306, IPC punishment with imprisonment for 10 years. As instigator of sati could have been charged for only committing abetment of suicide under section.306, IPC and as there was no ingredient of the offence of committing murder under section.302, IPC shall be punished with death or imprisonment for life and shall also be liable to fine. Parliament enacted a new legislation called the commission of sati (prevention) Act, 1987.

SEXUAL HARASSMENT OF WOMEN:

The supreme court has held that sexual harassment of working violates their rights under Articles 14, 15, 23. Taking cognizance of the wide spread harassment of women at their work place, the court formulated detailed guidelines in the regard of

Vishaka V. State of Rajasthan

AIR 1997 SC 3011

REMEDIES AVAILABLE FOR SEXUAL HARASSMENT IN INDIA

Since a very long period sexual harassment at work place exists in India. But the evolution of rights against sexual harassment is a new phenomenon. Almost all countries provided protection for sexual harassment in legal recourse and thankfully the supreme court of India also reached the stage of awareness. In sexual harassment at work place is recognized as a legally distinct type of prohibited activity.

VARIOUS GOVERNMENT POLICIES AND SCHEMES IN INDIA

The government of India is running various welfare schemes and policies for the empowerment of women both the state and central level. Some of the major programs include swadhar(1995), swayam siddha (2001), support of training and empowerment programme for women (STEP-2003), sable scheme (2010), National mission for empowerment of women(2010) ect. All these such policies and schemes, programmes focus on the welfare of social, economic and educational empowerment of women depending on the different age groups.

Thus, there has been no dearth of social, economic, political, legal and constitutional efforts made for the empowerment of women. However, women in India continue to face atrocities such as Rape, Dowry Killings, acid attacks, human trafficking, prostitution, Domestic violence etc. According to a global poll conducted by Reuters, India is the "4 most dangerous country in the world for women".

The promotional schemes available in the country in order to develop women entrepreneurship are as follows:

- Mahila nidhi
- Priyadarshini yojana
- Mahila Vikas Nidhi
- WIT(Women India trust)
- SWEA(self-employed women association)



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- SHG's(self-help group)
- FTWE(federation of women entrepreneurs)
- KVIC(khadi villages industries commission)
- DIC(District Industrial centers)
- Women cell
- Women Industries fund schemes
- Income generating schemes by department of women and child development
- Trade- related entrepreneurship assistance and development(TREAD)
- Special programs conducted by the SIDO(small Industries development organization)
- CWEi(the constitution of women entrepreneurs of India)

These schemes can finally help the women but she has to take her decisions! Step out motivate each other and let the stars work for you! Government is coming up with such various schemes to make women socially and economically strong. I am sure working for such a huge crowds development will make our country reach new highs of development.

CONCLUSION

"We shall have to learn how to refrain from doing things we know how to do them".

-Sri Theodore Fox, 1899.

This is a beautiful quotation saying that the every human need indulge in every activity which we know. Human need to refrain themselves from doing some acts that which are against nature, law, and Human.

Women are sources and resources of the Nation. Both women and men are the two pillars of the society initiated by God. Empowering women socially, economically, educationally and legally is going to be Herculean task. It is not going to be easy to change the culture and traditions of disregard for women which are so deep-rooted in Indian society. But it does not mean that it implausible. Only revolutions bring changes in a day, but reforms take their time. This one, in particular, will take its time as well. The idea of women empowerment might sound hard by the yard, but by the inch, it is just a cinch. All we need is a concentrated effort focused in the right direction that would rest in the right direction that would rest only with the liberation of women from all forms of evil.

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AN OUTLINE ON GENDER JUSTICE AND EMPOWERMENT OF WOMEN IN INDIA

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Introduction

The issue of gender justice and women empowerment has been a concern in many nations and in many countries for some centuries. Women still face all kinds of indignity and prejudice. The recent incident in the capital of the nation not only exhibits how such treatment basically an anathema to the concept of gender justice the days when women were treated as dependent, feeble, subordinate, to men, should be a matter of history. The gender equality and women empowerment are the call of the day and attempts are to be made to achieve satisfactory results.

Fight for the rights of women may be difficult to trace in history but it can be stated with certitude that there were lone and vocal voices at many a time raising battles for the rights of women and equal treatment.

In the west, it was a fight to get the right to vote and the debate was absolutely infective.

- ❖ In 1992 in England, Mary Wollstonecraft in "A vindication of the Rights of women" advanced for claiming equaling for "the oppressed half the species".
- ❖ In 1869 "In subjection of women: John Stuart Mill stated" the subordination of one sex to the other ought to be replaced by a principle of perfect equality, admitting no power or privilege on the one side, nor disability on the other".
- ❖ 1869 on March 18 - Susan B, Antony proclaimed "Join the union girls, and together say, Equal pay for Equal work".
- ❖ 1897 on July 1871 - Susan B, Antony said again "Women must not depend upon the protection of man but must be taught to protect themselves".
- ❖ Lord opening - "One process of Law" has observed that woman feels as keenly think as clearly, as a man, has personality to the full - as a man, when she marries, she does not become the husband's servant but his equal partners. "They are equals".
- ❖ The V.N. Secretary General, "Kofi Annan", has started "Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.
- ❖ Gender Justice on the constitutions understructure : -

The preamble of our constitution is a key to open the mind of the makers of the constitution which may show the general purpose to make the constitution. The preamble begins with the words "WE, THE PEOPLE OF INDIA," which includes men and women of all castes, religions, etc. It wishes render "EQUALITY" of status and or opportunity" to every man and women the preamble again assures "dignity of individuals" which includes the dignity of women. The constitution of India not only grants equality to women but also empowers the state to adopt measures of positive discrimination in favor of women. In constitutional provisions which are significant in this regard.



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- (i) Equality before law¹
- (ii) The state not to discriminate against any citizen on grounds only of religion, race caste, sex, place of birth or any of them²
- (iii) The state to make any special provision in favor of women and children³
- (iv) The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood⁴; and equal pay for equal work for both men and women⁵.
- (v) The state of make provision for securing just and humane conditions of work and for maternity relief⁶
- (vi) The state to promote with special care the educational and economic interests of the weaker section of the people and to protect them from social injustice and all forms of exploitation⁷.
- (vii) The promote harmony and the spirit of common brotherhood amongst all the people of India and the renounce practices derogatory to the dignity of women⁸.
- (viii) Not less than one - third (including the number of seats reserved for women belong to the SC and ST) of the total number of seats to be filled by direct election in every panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a panchayat⁹.
- (ix) Not less than one - third of the total number of offices of chairperson in the panchayats at each level to be reserved for women.
- (x) Not less than one - third of the total number of seats reserved for women belonging to SC and ST every municipality to be reserved for women and such seats to be allotted to rotation to different constitution in a municipality.
- (xi) Reservation of officers and chairpersons in municipalities for the SC and ST and women in such manner as the legislature of a state may be by law provide.
- ❖ Reservation policy emphasized under the Indian Constitution are meant to empower the women politically.

FUNDAMENTAL DUTIES TOWARDS WOMEN IN CONSTITUTION :-

Article 51-A under part IV-A of the constitution of India lays down certain fundamental duties upon every citizen of India which are added by the forty second Amendment of the constitution in 1976. The later part of Clause (e) of Article 51-A, which relates to men, given a mandate and imposes a duty on Indian citizens to renounce practices derogatory to the dignity of women. The duties under 51-A are obligatory on citizens.

Equal Treatment in Employment and Protection of Property Rights :-

Economic empowerment is a necessary fulcrum of empowerment. The constitutional courts in many an authority have laid emphases on said conception and interpreted the provisions to elevate the status of women and to empower them.

¹ Article 14, The constitution of India

² Article 15(1), The Constitution of India

³Article 15(3), The Constitution of India

⁴ Article 39(a), The Constitution of India

⁵ Article 39(d), The Constitution of India

⁶ Article 42, The Constitution of India

⁷ Article 46, The Constitution of India

⁸Article 51(a)(e),The Constitution of India.

⁹ Article 243(d),The Constitution of India



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In Thota Manikayamma case¹⁰ the court, while interpreting section 14 of the Hindu Succession Act, 1956 converting the women's limited ownership of property into full ownership, has observed as follows : -

Article 15(3) relieves from the rigour of Article 15(1) and charges the state to make special provision to accord to women Socio - Economic Quality It would mean that the court would endeavor to give full effect to legislature and constitutional vision of Socio - Economic equality to female citizen by granting full ownership or property to a Hindu female.

❖ In Gayatri Devi Pansari Case¹¹. The court has also upheld on Orissa Government orders reserving 30% quota for women in the allotment of 24 hours medical stores as part of self - employment scheme. Thus the language of Article 15(3) is in absolute terms and does not appear to restrict in any way the nature of special provisions which of state may make in favor of women or children.

FIGHT FREQUENT INJUSTICE THAT TAKE PLACE ESPECIALLY AGAINST WOMEN, AND THE LAW AGAINST THEM: -

- Eve Teasing
- Child marriage
- Improper Police procedure
- Minimum wage
- Succession of property
- Dowry
- Domestic Violence
- Offensive propaganda

(i) Eve Teasing : -

Section 294 and 509 of the Indian Penal Code (IPC) prohibits any individual or group of people pass any kind of offensive comment or execute any such gesture towards a girl of any age.

(ii) Child Marriage : -

This is not just for girls. However the incidents reported indicate towards the underage girls. The child marriage Act, 1929, prohibits a girl who is not 18 to get married.

(iii) Improper police procedure: -

By high court directive, every police station must have a lady officer, not of a post below that of head constable, available round the clock and the police shall also help the victim of sexual assault of any degree with counseling assistance and further aid towards. The treatment of the victim. Before, a woman can only be searched by a lady officer and can be arrested before sunrise or after sunset however, exceptions can be made under the directive of the magistrate.

❖ Minimum wage:-

According to the minimum wages Act, 1948 the Government of India has set minimum wages for every section of profession that must be paid to any skilled semi-skilled and unskilled workers. The Minimum wage for skilled workers in Delhi is Rs.423 be it a man or a woman.

❖ Succession of Property:-

Under the clause of Hindu succession Act, 1956, any person who is entitled to be the heir of a property of ancestor, should get the property regardless of gender.

❖ Dowry:-

The Dowry prohibition Act, 1961. Says that if any one gives or receives or even helps the exchange, he or she will face a Jail term five years or more and a fine of Rs.15,000 or the sum of dowry, whichever is more.

¹⁰ (1991) 4 SCC 312

¹¹ AIR 2000 SCC 1531



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Domestic violence:-

This falls under section 498 A of the IPG. According to this law, any person can complain about any incident where a family member has offended him or her cruelly or with the intention of cruelty. This law is applicable for or against any member regardless of gender.

Offensive propaganda :-

The Indecent Representation of women (prohibition) Act, 1986 prohibits any individual or organization to publish or help post, Public, exhibit or advertise -Online or offline-any kind of representation of woman that can be considered to be indecent.

Court's concern in eve-teasing cases:-

In a Samuthiram¹² "the court observed that every citizen in this country has right to live with dignity and honour which is a fundamental right guaranteed under article 21 of constitution of India sexual harassment like eve-teasing of women amounts to violation of rights guaranteed under Article 14 and 15 as well. Eve-teasing today has become pernicious, harried and disgusting practice. There are many instances where girls of young age are being harassed, which sometimes may lead to serious psychological problems and even committing suicide. The said directions include to depute plain-clothed female police officers in Bus-stands, Stops railway stations, Metro station, Cinema theatre, Shopping malls, Park, beaches, etc.

Future protection:

The violation of pre-conception and pre-Natal Diagnostic Techniques (Prohibition on sex-selection) Act, 1994, apart from giving series of females foeticide in voluntary Health Association of Punjab¹³. In the said case it has been said that female foeticide has its roots in the social thinking traditions. All involved in female foeticide deliberately forget to realize that when the foetus of a girl child of a girl child is destroyed a woman of future is crucified. The present generation invites the suffering on its own and also sows the seeds of suffering for the future generation.

"It is about encouraging and allowing every girl to know that there are opportunities and possibilities available to her beyond the units of her imagination and that within her lies the power to claim and work towards what she truly wants for herself".

Conclusion:

It is common knowledge that despite constitutional safe guards, to support the cause of equality of women, changes in social attitudes and institutions have not occurred laws written in black and white are not enough to concert the will. A socially sensitive judge is indeed a better statutory armor in cases of crimes against women than penal statutes.

Awakening of the collective consciousness is the need of the day. A problem as multifaceted as women's self-actualization is too important to be left to a single selection of societies. The other laws to give a stimulator to the legal reform of gender justice and new dawn of freedom, dignity, opportunity for both sexes equally.

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FORCED STERILIZATION; DISABLE WOMEN AND THEIR REPRODUCTIVE RIGHTS

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Introduction:

Women and girl across the country are subject to discrimination and multiple form of human rights violation on the twin ground that their woman and disable. Discrimination against women and girls with disabilities continues to result in widespread denial of their right to experience their sexuality, to have sexual relationships and to found and maintain families. In Indian women with disabilities are highly looked as asexually and sexually inactivate and being suitable for a role stereotypical of wife and mother sterilization. Sterilization is not choice for them but forced on them without their knowledge and consent. Women has a right to make her own reproductive choices it is her basic human right which is denied and infringed through the practice of forced sterilization. Mostly violated but rarely addressed is their violation of sexual and reproductive rights through forced sterilization. Forced sterilization is an act of violence to attain the highest standard of sexual and reproductive health. It is performed on disable young girls and women for various purposes, like eugenics-based practices of population control, menstrual management and personal care, and pregnancy prevention (including pregnancy that results from sexual abuse). This dehumanizes practice is wrongfully is justified as being a best interest in women and girls with different abilities. Whereas the truth is that it has often have little to do with the their best interest but more to do with social factor such as avoiding inconvenience to care givers, the lack of adequate measures to protect them against sexual abuse and exploitation and it lacks in it

OBJECTIVE OF STUDY

- 1) Do women with disability have right to motherhood?
- 2) Is forced sterilization on disable women an offence?
- 3) What are the steps been undertaken through government to protect women with disabilities, with regards to motherhood?

- 1) Forced sterilization on disable women is an offence?

Yes it's an offence mostly violated but rarely addressed.

Violation of their sexual and reproductive rights through forced sterilization.

Forced sterilization is a crime but it was never been addressed by anyone because the victim to this offence are suffering due their decision taken by their own family members

- 2) Do women with disability have right to motherhood?

It's a question whether they really have any such sort of right!!

According to The Convention of Human Rights, the Rights of Persons with Disabilities reinforce the right to found and maintain a family and to retain fertility on an equal basis with others.

- 3) What are the steps been undertaken through government to protect women with disabilities, with regards to motherhood?

There are many steps taken with regard to disable women but no steps toward their rights to motherhood.

There are no steps taken towards forced sterilization. All though there are many implementation been made but this issue was never been addressed nor was given much important, just because of their state body.



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INTRODUCTION

Imagine if your right to have a family was taken away from you, without your knowledge or consent, or with "consent" obtained through deceit or coercion. The right to marry and have a family, on the basis of free and full consent, is a right enshrined in international human rights law UN treaties to which India is a signatory for an action towards an inclusive, barrier-free and rights-based society to Protect and Promote the Rights and Dignity of Persons with Disabilities. India as a signatory has full responsibility to ensure that persons with disabilities are not excluded from this right but unfortunately there are always been denied. The women's movement has always maintained that marriage and motherhood are overvalued notions and women all over the world have fought for the right to remain single, to say no to motherhood as well as to seek an abortion. Unfortunately women with disabilities have always been denied these traditional roles of wife and mother. The disability movement has actually fought for the rights of women with disabilities to marriage, family and to become mothers. It's hard to think of many decisions more personal and life-altering than whether and when to have children. Of course, it isn't always a decision. Even now, with modern family planning methods, becoming a parent is often unplanned, and sometimes unwanted, but for disable women it is never an unplanned or unwanted to become a parent. One needs to understand that persons with disabilities are mostly denied their sexual rights. But their biological needs are same as others. Sometimes, they do not know where and how to behave, it is just that we have to take a step to help them out.

FORCED STERILIZATION

What is sterilization? Sterilization is a medical technique which intentionally leaves a person unable to reproduce. It is a method of birth control. Sterilization methods include both surgical and non-surgical, and exist for both males and females. 'Sterilization procedures are intended to be permanent and it's irrevocable. Sterilization is used all over the world. There are multiple ways of sterilization done but there are two kinds that are used most frequently, tubal sterilization and vasectomy is one of the options a man has and a tubal sterilization is an option for women.'¹⁻¹ Tubal sterilization is a method of surgery. Women that chose a tubal sterilization may have a higher risk of serious side effects, more than a man has with a vasectomy. Sterilization, in either man or woman, is a simple, safe and almost painless operation which does not disable the individual for more than a few hours. It does not impair sexual vigor. It does permanently and irrevocably bar reproduction. In women, the usual operation consists of tying off the Fallopian tubes so that male sperm cannot reach the ovum to fertilize it. In men, the usual operation consists of tying off a tiny duct called the vas deferens so that the male sperm does not join the rest of the ejaculate and therefore does not enter the female genital track.

Origin of sterilization in India;

India with overpopulation problem and due to medical advances in the past fifty years has lowered the death rate, resulting in large population density and overcrowding. This Overcrowding is also due to the fact that poor families had no access to birth control. In the 'mid of 1900s they lack access to sterilization, in the 1960s, the governments of three Indian states and one large private company offered free vasectomies to some employees.

In 1959, the second Five-Year Plan offered medical practitioners who performed vasectomies on low-income men monetary compensation. As the fertility rate began to decrease (but not quickly enough), more incentives were offered, such as land and fertilizer.

In 1976, compulsory sterilization policies were put in place and some disincentive programs were created to encourage more people to become sterilized. However, these disincentive policies, along with "sterilization camps" (where large amounts of sterilizations were performed quickly and

¹ [https://en.wikipedia.org/wiki/sterilization\(mediceen\)](https://en.wikipedia.org/wiki/sterilization(mediceen))



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often unsafely), were not received well by the population and gave people less incentive to participate in sterilization.

The compulsory laws were removed.

Further problems arose and by 1981, there was a noticeable problem in the preference for sons. Since families were encouraged to keep the number of children to a minimum, son preference meant that female foetuses or young girls were killed at a rapid rate.

The government is more concerned with empowering women only and protecting them from violence, and providing basic necessities to families. Sterilization efforts are still in existence and still target poor families.

Forced sterilization on disable women in India;

Sterilization is method for birth control; it was for people to prevent unplanned or unwanted pregnancies. It's just optional for every woman but there are women- disable women who are forced to sterilize by their own parents just after they reach their puberty. Imagine if girl or woman is been sterilized just because she is disabled. Family members felt it was easier way than teaching them about effective but less permanent methods of contraception - including intrauterine devices or hormonal implants or to avoid the inconvenience of your menstruation.

In many parts of the world, women rely on sterilization voluntarily as one of a range of methods for family planning. However, for other women, including women and girls with disabilities, sterilization is not a choice but is forced. Forced or coerced sterilization is often justified by claiming that it is in the "best interests" of women and girls with disabilities. But how are those interests defined, and who is defining them? Why isn't there greater attention in protecting women and girls with disabilities against sexual abuse and exploitation? Why are there so few services to support and empower women with disabilities in decisions about becoming parents? Parents worry that her daughters were not being protected from sexual abuse at home, school and other public places due to this reason they contemplate sterilizing her daughters to prevent pregnancy but decided against it concerned about the trauma of the medical procedure for their daughters.

But sterilization can place women and girls with disabilities at even greater risk of sexual violence once it is known in the community that they cannot get pregnant this other sort of discrimination for them. The 'blanking out' of gender and sexuality related concerns and needs of disabled women is part of a prevalent narrative that prioritises their disability as the main 'problem' that needs to be addressed. The double or triple marginalisation a woman with disability faces because of her gender and sexuality is rarely given any importance. This is not unusual; after all in India addressing sexuality, in general, remains contested and controversial and for disabled women - seen to be asexual, burdens, victims - this issue like disabled women themselves remains completely marginalised.

The disability rights movement too ignores this issue and wants to keep the disability rights discourse 'non-political' and non-controversial. Most disabled people's organisations are happy to trade off between greater access and other economic entitlements for the disabled at the cost of sexual and reproductive rights and related issues. This is justified as part of an incremental approach that some argue will eventually result in broad-based rights for disabled people, including disabled women. Women and girls with disabilities are part of a wider group of the vulnerable, the marginalized and the unpopular, who suffer when those with power - and with surgical instruments - feel that a decision can be made "in the best interests" of others. The family planning summit must include the concerns of those who are seeking to avoid pregnancy but it should also address those who have the right to seek to become pregnant taken away from them without their consent. This dehumanizes practice is wrongfully is justified as being a best interest in women and girls with different abilities.



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The Human Rights Committee addresses the prohibition of forced sterilization in the *International Covenant on Civil and Political Rights*

- ⇒ Article 7, prohibiting torture, cruel, inhuman or degrading treatment
- ⇒ Article 17, ensuring the right to privacy; and
- ⇒ Article 24, mandating special protection for children.

The Committee Against Torture has recommended that States take urgent measures to investigate promptly, impartially, thoroughly, and effectively all allegations of involuntary sterilization of women, prosecute and punish the perpetrators, and provide the victims with fair and adequate compensation.

LEGAL FRAME WORK

- 1) 'The right to bodily integrity and the right of a woman to make her own reproductive choices are enshrined in many international human rights treaties.'²
- 2) 'The Convention on the Rights of Persons with Disabilities reinforces the right to found and maintain a family and to retain fertility on an equal basis with others. There is a specific article of relevance to the issue of involuntary sterilization.
 - ⇒ Article 23 reinforces the right of people with disabilities to found and maintain a family and to retain their fertility on an equal basis with others.
 - ⇒ Article 12 reaffirms the right of persons with disabilities to recognition everywhere as persons before the law and to enjoy legal capacity on an equal basis with others, including access to the support they may require to exercise their legal capacity.
 - ⇒ Article 25 clearly articulates that free and informed consent should be the basis for providing health care to persons with disabilities.

- 1) UN Committee on Economic, Social and Cultural Rights (CESCRCommittee)³
<https://www.canada.ca/en/canadian-heritage/services/canada-united-nations-system/reports-united-nations-treaties/commitments-economic-social-cultural-rights/canada-appearance.html>)

The Committee on the Rights of Persons with Disabilities recommended "the abolition of surgery and treatment without the full and informed consent of the patient" in one of its first recommendations to a state party.

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² <http://www.ohchr.org/EN/HRBodies/Pages/TreatyBodies.aspx>

UN Committee on Economic, Social and Cultural Rights (CESCRCommittee)(
<https://www.canada.ca/en/canadian-heritage/services/canada-united-nations-system/reports-united-nations-treaties/commitments-economic-social-cultural-rights/canada-appearance.html>)

The Committee on the Rights of Persons with Disabilities recommended "the abolition of surgery and treatment without the full and informed consent of the patient" in one of its first recommendations to a state party.

UN Committee Against Torture (CAT Committee)
(<http://www.refworld.org/publisher/CAT,,CUB,,0.html>)

Human Rights Committee (2000), International Covenant on Civil and Political Rights (CCPR)(
https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-4&chapter=4&lang=en)

<http://www.ohchr.org/Documents/HRBodies/CRPD/GC/Women/CRPD-C-GC-3.doc>



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- 3) The Committee Against Torture has recommended that States take urgent measures to investigate promptly, impartially, thoroughly, and effectively all allegations of involuntary sterilization of women, prosecute and punish the perpetrators, and provide the victims with fair and adequate compensation.

- 4) UN Convention on the rights of persons with Disabilities

⇒ Article 23 where it is mentioned that 'States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others'. This article has been welcomed by disability activists in India, where information about hysterectomy of disabled women within institutions as well as families.'

"There is no legislation with regard to this issue (reproductive right of disable women/ with regard to forced sterilization) in India"

Unfortunately women with disabilities have always been denied these traditional roles of wife and mother. The women with disability are actually fighting for the right to marriage, family and to become mothers. Forced sterilization is crime which infringes basic human rights, right to privacy and many more. There are many bills been passed in parliament with regard to disable person many rights like reservation, employments and many more but this issue is always been ignored. What if there are disable even there are also like other women and they too must equal opportunity to live life like other.

Recommendations

In June 2011 the International Federation of Gynaecology and Obstetrics (FIGO) issued new guidelines on female contraceptive sterilization and informed consent. The following recommendations expand on these guidelines with specific considerations for women and girls with disabilities. These recommendations should be reflected in laws and policies governing sterilization practices as well as in other professional guidelines and ethical standards.

- 1) The free and informed consent of the woman herself is a requirement for sterilization.

(a) Only women with disabilities themselves can give legally and ethically valid consent to their own sterilization. Family members (including spouses and parents), legal guardians, carers, medical practitioners, and/or government or other public officers, cannot consent to sterilization on any woman's behalf.

(b) Perceived mental incapacity, including medically or judicially determined mental incapacity, does not invalidate the requirement of free and informed consent of the woman herself as the sole justification for the sterilization.

Sterilization for prevention of future pregnancy does not constitute a medical emergency and does not justify departure from the general principles of free and informed consent. This is the case even if a future pregnancy may endanger a woman's life or health

- 2) Sterilization should not be performed on a child.

3) Women and girls with disabilities, including through their representative organizations and networks, must be included in the evaluation and development of legislation and other measures designed to ensure the enjoyment of all their rights, including sexual and reproductive rights and the right to found a family, on an equal basis with other women and girls⁴.

⁴ FIGO Contraceptive Sterilization Guidelines, 7th Principle; (<https://cdn2.sph.harvard.edu/wp-content/uploads/sites/125/2017/12/Albert.pdf> 2)

FIGO Contraceptive Sterilization Guidelines, Principle

1.(<https://int.search.tb.ask.com/search/GGmain.jhtml?searchfor=FIGO+Contraceptive+Sterilization+Guidelines%2C+Principle+1&n=781bd682&p2=^BXM^xmd004^YYA^in&ptb=A07D2309-C10B-4DE7-AF35-EFB0128FAB8F&q&si=-&ss=sub&st=hp&trs=wtt&tpr=sbt&ts=1515658210117>)



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SUGGESTION

- 1) It is important, women and girls with disabilities should be invited to participate in evaluating and developing legislation, programs and policies to ensure that their rights regarding to have a family, are respected and fulfilled.
Forced and coerced sterilization of women and girls with disabilities must be penalized
- 2) Money pledged at the meeting should support sexual education and parenting programs that are available and accessible to women and girls with disabilities.
This means setting up programs in buildings with ramps, and providing information about reproductive and family rights in appropriate and accessible formats, such as Braille or easy-to-understand text designed for women and girls with intellectual disabilities.
Women and girls need to be clearly informed when discussing sterilization that it is irreversible, but that reversible alternatives exist. They need to have access to alternative contraception methods.
- 2 Governments and donors should also focus on ensuring that women and girls with disabilities have access to training in self-defence and assertiveness, developing personal assistance and support services in the community, and monitoring closed settings in which women and girls with disabilities are often placed -- orphanages, psychiatric hospitals, and institutions.

CONCLUSION

Women has a right to make her own reproductive choices it is her basic human right which is denied and infringed through the practice of forced sterilization. Mostly violated but rarely addressed, is their violation of sexual and reproductive rights through forced sterilization. In many countries including India, the practice of forced sterilization continues to be debated and justified by governments, legal, medical and other professionals, and family members and carers as being in the "best interests" of women and girls with disabilities.

However, arguments for their "best interests" often have little to do with the rights of women and girls with disabilities and more to do with social factors, such as avoiding inconvenience to caregivers, the lack of adequate measures to protect against the sexual abuse and exploitation of women and girls with disabilities, and the lack of adequate and appropriate services to support women with disabilities in their decision to become parents. Such measures include making sexual education and parenting programs available and accessible, training in self defence and assertiveness, providing the necessary personal assistance and support services in the community that will reduce the risk of sexual abuse, monitoring closed settings in which women and girls with disabilities are often placed (such as orphanages, psychiatric hospitals, and institutions), and providing alternative methods of contraception which are not irreversible or as intrusive as sterilization.

Safeguards to prevent forced sterilization should not infringe the rights of women with disabilities to choose sterilization voluntarily and be provided with the necessary supports to ensure that they can make and communicate a choice based on free and informed consent.



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PRISON CELL ALLOTMENT: SPECIAL CONSIDERATION FOR TRANSGENDER COMMUNITY IN INDIA

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Introduction:

In recent times, the Transgender community has made significant inroads toward gaining societal acceptance and legal protections. The most striking example of this is the Supreme Court's landmark judgement of *National Legal Services Authority v. Union of India*¹ in which the Supreme Court declared transgender people to be a 'third gender', thereby affirming that the fundamental rights granted under the Constitution of India will be equally applicable to transgender people. Though the legal recognition is a reality, the societal construct is still lagging behind in accepting the transgender community as normal citizens of the country. The community needs to be provided with the same alienable rights² and special provisions need be made to protect them from being abused. This marginalized community faces such harassment and abuse even in the Indian prisons due to the ignorance, discrimination and violence from guards and other prisoners. In addition to being incarcerated, transgender prisoners are drastically and disproportionately marginalized along other dimensions of social status and health.

It has been reported that the instances of violence by police, marginalization by public officers, rape and harassment in jails inter alia is on a rapid rise³. Apart from a chasm of disintegration of the transgender community from mainstream society, another cause for such violence and discrimination could be procedural loopholes and inefficiency on part of authorities in creating a safe environment and allotment of prison cells. A lot of transgender people are placed in male facilities against their will, even if a female facility would be more consistent with their gender identity and thereby would expose them to less danger of violence. Some of them are placed in female facilities against their will even if a male facility would be better.

However, the courts have said that the prison officials have the power to decide where these people should be placed but they should also take care and keep the transgender prisoners safe from substantial risk of harm, whether they are placed in male or female facilities. In real practice, these people are usually placed in male or female facilities based on their genitals, called the Genitalia-based placement, regardless of what would be the best for them. Genital surgery alone usually determines whether a transgender prisoner will be classified as male or female, for the purposes of prison housing or prison cell allotment. Individuals who have not opted for this surgery are housed according to their biological sex, even if they identify differently and have had other surgeries in order to appear more masculine or feminine, as the case may be. Genitalia-based classification puts MTF transgender prisoners at special risk for physical injury, sexual harassment, sexual battery, rape,

¹*National Legal Services Authority v. Union of India*, (2014) 5 SCC 438

²Justice Verma & Committee, Report on Amendments to Criminal Law (2013) 41

³PUCCL-Karnataka, Human Rights Violations against the Transgender Community (2005) 49



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and death, because the prison hierarchy subjugates the weak to the strong and equates femininity with weakness.⁴

Another way of classification of transgender prisoners is Identity-based placement in which the transgender inmates are housed in a prison facility based on the gender with which he or she self-identifies, regardless of whether the inmate has undergone sex reassignment surgery. This type of placement is used considerably less than Genitalia-based placement.

One of the biggest obstacles transgender people face in prison is obtaining access to gender-confirming health care, which may include hormone therapy or sex-reassignment surgery. Not all transgender prisoners request or require such medical treatment, but for some prisoners, denial of hormone therapy or sex-reassignment surgery can lead to serious mental health problems, such as depression or anxiety, and even attempts at suicide and self-castration. There are many ways to segregate the transgender prisoners from the other inmates such as protective custody, administrative segregation, administrative detention or administrative confinement. Segregation is a form of confinement prisons use to separate an inmate from the prison's general population. But as a result of being segregated, the transgender inmates are cut off from any recreational, educational and occupational ventures which the prison provides, as well as the chance to socialize with other inmates. So, regardless of the placements, whether Genitalia-based or Identity-based, prison administrations must provide transgender prisoners the required medical treatment and care, in an attempt to make their life a little more bearable.

Research Methodology:

The research methodology is primarily qualitative and draws from both primary and secondary sources. It majorly follows doctrinal method of research with occasional interactions with the members of the marginalized community and people who work closely with them. The authors admit that it was extremely difficult to stand upright on the threshold of objectivity, for the victimized lacked voices, as the prison system has been quite unwelcoming for a majority of them. Some of the key informants included members of the transgender community (primarily Male to Female), media people, representatives from the civil society and lawyers. The major academic reliance was on the Constitution of India, case laws, reports on human rights and other law books. The analysis focused on both the current situation of transgender people in prison and the lacunae in cell allotment, as well as the probable solutions to such problem based on the general wishes of the community.

Prison Allotment-Validity of Classification:

Article 14 of the Constitution of India reads, "Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth." This implies that essentially all prisoners should be treated equal by the law; but an exception to this is the doctrine of reasonable classification which allows for positive discrimination among individuals and groups so as to even the platform for the weaker class. In the case of segregation of prisoners on the basis of their gender, though prima facie seems to be against the provision of the Article, it, in its entirety is not so. The test for reasonable classification is two-fold, firstly, intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, secondly, the differentia must have a rational relation to the object sought to be achieved by the act. The differentia which is the basis of the classification and the object of the act are two distinct things.

As according to the current scenario, the prisoners are divided on the basis of the offence, on the basis of gender, inter alia. The division on the basis of offence is obviously valid as the same

⁴Christine Peek, *Breaking out of the Prison Hierarchy: Transgender Prisoners, Rape, and the Eighth Amendment*, 44 Santa Clara Law Review (2004)1220.



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treatment cannot be given to people who have committed different degrees of crime. Also, the classification on the basis of gender is usually either for cell allocation or other occasions where despite similar offences women are given preferential treatment. Furthermore, as of now in most prisons the blocks created are separate for men and women and based on the genitalia the transgender persons are also divided as men and women and the cells are allotted on the basis of the same. Another observation regarding the prisons is that even though the transgender community is now legally recognized, most records and online data bases hold information regarding only male and female prisoners thereby include transgender prisoners in the same binary⁵.

The allotment of cells for the prisoners in the Indian central and state prisons is backed by statutory compliance as per the Prisons Act, 1894⁶ (hereinafter referred to as 'the act'). Section 59 (8) of the act confers power on the state governments to make rules for the classification of prisons, and description and construction of wards, cells and other places of detention. This delegates the control of cell allotment to states separately and warrants the non-existence of a centralized system of classification. Further, the criteria for classification given as per the rules made by the states are very ambiguous and this can lead to a variety of conflicts. The Prison rules in Maharashtra classify prisoners into Class I and Class II and the benefits provided as based on the same classification. Such classification is inconsistent with the act as well as violates the Article 14; therefore it was discontinued by Government resolution dated January 1, 1971 and the same was stated in the case of *Madhukar Bhagwan Jambhale v. State of Maharashtra*⁷, where it was held that all convicts are entitled to the same facilities and the first issue regarding classification of such prisoners in Maharashtra would not stand.

The aforementioned goes to show that the classification on the basis of gender is a valid classification is falling under the purview of reasonable classification and thereby is not violative of the provisions of Article 14.

Segregation as a Solution:

The Prisons Act, 1894, Section 28 reads as follows- "Association and segregation of prisoners. — Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other."⁸ This section talks about in what way the prisoners should be segregated and allowed to associate; including segregation of individuals in cells. Apart from this, there is no other reference in the law books regarding issues of cell allotment, which leaves a gaping hole as to where the transgender prisoners should be assigned. All permutations and combinations, whether it is males and FTM transgender prisoners or females and MTF transgender prisoners won't be possible due to safety of either one of the parties. If all the transgender prisoners are kept together, this would also be an issue as transgender includes several sub-communities and keeping MTF and FTM transgender prisoners together will again bring up the questions of security.

Creation of a separate block for transgender prisoners, as proposed by the Kerala Government, among others, would bring up a twofold problem. Firstly, the separate block would further disintegrate the status of the transgender persons in the society, and the problem of discrimination of the community will not be solved by this step. Further, this move will not be of financial feasibility as the added expense would be an investment with no returns and would lack any significant socio-cultural interests. Secondly, the transgender community is not a single block but a collection of several groups of people, who though fall under the umbrella of transgender, aren't all the same. Two

⁵Government of Delhi, Central Jail records (last accessed on 10.01.18) http://www.delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/Prisoner+Profile

⁶ The Prisons Act, 1894, No. 9, Acts of Parliament, 1894 (India).

⁷*Madhukar Bhagwan Jambhale v. State of Maharashtra* 1984 (2) BomCR 709

⁸ The Prisons Act, 1894, No. 9, Acts of Parliament, 1894 (India).



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of the major groups are the Male-to-female (MTF) and Female-to-male (FTM); if examined closely, MTF are people recognizing as females and FTM are people recognizing as males. These two groups kept together would create the same problem which is present with keeping male and female inmates together.

Conclusion:

In the case of *Maneka Gandhi v Union of India*⁹ it was discussed that all individuals have the right to live with dignity under article 21 of the Constitution of India, this right also extends to the treatment of the transgender persons in the prisons with a level of dignity. This right must extend to getting equal benefits as the other inmates and assignment of cells as per the gender identity of the person and not the biological sex. Being identified by the persons, preferred gender is a sign of respect towards the individual and entails a sense of acceptance in the persons mind. Ideally cell allotment shouldn't be segregated, but this is a utopian concept which cannot be feasible due to security and implementation issues among other things. The best method available is to have only two segmentations, one for male and the other for female. The transgender prisoners, thought should be separately identified as such, should be allotted cells within the male-female classification of prisons according to their registered gender and not by stripping their dignity and utilizing genitalia as the criterion for divide. Due to the varying risks of security of inmates, implementation loopholes as well as in the interest of the prisoners, within the prisons, separate bathrooms and sleeping cells may be provided but the common area should remain same for all. This would to a great extent lessen the currently present executive gap.

By classifying the prisoners, the legal status as per the constitution is not violated. This is on account of the classification being reasonable and only promoting positive discrimination. The creation of a separate block for the transgender prisoners, on the other hand, is not the most viable solution as it would focus on the symptom and not cure the root cause of the problem. A separate block would only further deepen the divide among the societal construct, instead the aforementioned integrated system looking at the benefit of all parties would stand to be the most apt solution.

⁹*Maneka Gandhi v Union of India* 1978 AIR 597, 1978 SCR (2) 621



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U (and) I form Society: A research on Uniform Civil Code and Gender Justice in India

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Introduction:

One of the major question that arises in India after being the world's largest democracy is that how far has freedom through equality been achieved and what is the true sense of freedom? Is it being free from a government where there was no say for rights and dignity or is it a matter of having recognition in the society or is it something simple yet complex? India being a multi-cultural, multi-religious country still deals with various justice related issues even after close to 67 years since the Constitution has been adopted for the people and the various laws that govern the people. One of the most powerful laws that is being left out from the ambit of responsibility and discussion, is the Uniform Civil Code (hereinafter referred to as the UCC) which is mentioned in The Constitution of India (hereinafter referred to as The Constitution) under Article(hereinafter referred to as Art.) 44¹. One of the major questions that always arise with the applicability of The UCC in India is whether it would violate Art.14-'Equality before the Law'², Art.15³-'Prohibition of discrimination' and if the UCC is enforced, would it go against the fundamental constitutional freedoms of religion mentioned under Art.25⁴ and Art.26⁵.

The issue of the UCC in nexus with an issue that has raised a lot of voices regarding to 'Gender just laws', mostly revolving around the rights and freedom that is being provided but not practiced and guaranteed to women in society. How far have the provisions made under the various laws in India been applied and fulfilled and how successful are they in achieving gender justice? True freedom, equality and justice can be achieved when the society frees itself from its mindset, various forms of social evils that revolve around the lives of women and act as a barrier between them and freedom, equality, opportunities, status in society and human dignity. The discussion about the UCC and women rights and gender justice complement each other and addressing these issues is to be considered as the need of the hour. Hence, we would analyze if the UCC can act to provide gender justice by providing equal rights to women and how it can be achieved by analyzing the merits and de-merits.

What is the Uniform Civil Code and why do we need it?

The name itself, Uniform Civil Code explains what it ought to be. It is a set of equal laws that are to be applied uniformly to all the citizens in the country relating to civil actions like marriage, divorce, succession to property, adoption of children, inheritance etc. The UCC, would deal with the personal laws of all religious communities relating to the above matters which are all secular in

¹Article 44: The State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India

² Article 14: Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

³Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

⁴Article 25: Freedom of conscience and free profession, practice and propagation of religion.

⁵ Article 26: Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right



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character of Indian state by providing them with a set of personal laws which incorporates the basic values of humanism. In the contemporary society in India, the enforcement and scope of certain personal and individual laws like The Hindu Marriage Act (1955), The Indian Succession Act (1925), The Muslim Women (Protection of Rights on Divorce) Act (1986), The Indian Divorce Act (1869) have been noticed to interfere and hinder with the basic right to equality, especially towards women. One can easily notice that these laws are very old and the society that it evolved from was of a different mindset when compared to the current society and these laws have gone very little change over the past few years.

The UCC also aims to overcome the particularistic and often reactionary aspects of personal laws of various religious communities. The objective thus is also to bring a social reform and uplifting the status of women⁶. But the challenge which would arise, would question the fundamentals of the constitution by imposing two very serious questions. The first would be that if the UCC wouldn't be enforced and followed would violate the fundamental right of equality before the law mentioned under Art. 14 of The Constitution especially towards women. The second would be that whether UCC would prevent people to practice and profess what their religion says as the personal laws have mostly taken existence through various religious ideals and practices and doing this would go against what has been mentioned under Art. 26⁷ of The Constitution. It is now up to the country to either uplift the lives of women and seek complete equality amongst its citizens, or to stay behind and protect the religious practices that are violative of equality and dignity by targeting the rights of women.

A step towards the Uniform Civil Code and Muslim women rights through the concept of Marriage:

Art. 25⁸ and Art. 26⁹ of the Constitution deals with the 'Right to Freedom of Religion' which has helped in maintaining societal harmony between the various religious groups of India. Both the articles provide the right to practice, profess and teach religious affairs and teachings 'subjected to public order, morality and health'. Moral, according to Black's Law dictionary means the general principles of right conduct¹⁰. But are personal laws that are laid through these religious practices, teachings and procedure moral in their functions?

Certain practices exist under every religion and subjugate women to unequal and harsh practices which are violative of human rights. We are no longer the patriarchal society and there is a strong need to bring in the feeling of an equally run and represented society. Acts like Sati which was considered as a Hindu cultural and traditional practice was placed at a high level amongst customs, was prevented and abolished through various acts like the Bengal Sati Regulation (1829) and the Commission of Sati (Prevention) Act (1987). This was a major shift towards providing rights and dignity towards Hindu women.

India is also influenced by the cultures and practices of its largest minority, the Muslims. The constitution enshrines upon them with certain reservations, provisions, freedom to practice their own customs and protection of their interests¹¹. Any religious custom or personal law must adhere to morality that is to be maintained in society which in turn would help to ensure that the basic human rights and dignity of any individual is protected.

There have been various cases focusing on one major issue that the Muslim women face, Triple Talaq- whether it is unconstitutional or not. This practice of triple talaq denies the Muslim

⁶Shabbeer Ahmed and annr., UNIFORM CIVIL CODE (ARTICLE 44 OF THE CONSTITUTION) A DEAD LETTER, The Indian Journal of Political Science, Vol. 67, No. 3 (JULY - SEPT. 2006), pp. 545-552

⁷Ibid. 5

⁸Ibid. 4

⁹Ibid. 5

¹⁰ Black's Law Dictionary Online Legal Dictionary 2nd Ed., (Jan 2, 2018, 3:32pm) <https://thelawdictionary.org/moral>

¹¹Art. 29 of the Indian Constitution provides with protection of interests of minorities



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women their fundamental right of equality and violates their personal liberty as the customary practice of triple talaq gives an upper hand to the Muslim men regarding pronouncing divorce to their wives. This was felt to be violative as the Muslim women had issues like that of getting maintenance, not having the right to stand up for their marriage, want to save the marriage.

The issues related to triple talaq and its relationship with the UCC can be seen through three landmark cases. The first being that of in Mohd. Ahmed Khan v. Shah Bano Begum¹², the Supreme Court held that the Muslim husband was liable to provide maintenance to his helpless divorced wife under Sec. 125 of the Code of Criminal Procedure 1973¹³, and its plea for a uniform civil code had raised a storm of controversy throughout the country. Justice Y V Chandrachud, Judge of the Supreme Court during the trial also stated that "It is a matter of regret that Article 44 of our Constitution has remained a dead letter... It provides that the state shall endeavor to secure a uniform civil code for the citizens throughout the territory of India. There is no evidence of any official activity for framing a uniform civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reforms of their personal law. A common Civil Code will help the cause of national integration by removing disparate loyalties to laws, which have conflict ideologies. No community is likely to bell the cat by making gratuitous concessions on the issue."

The second case was that of the Sarla Mudgal Case (1995)¹⁴ where the Supreme Court reiterated what was delivered in the Shah Bano Begum¹⁵ Case. The third being the latest which has resulted in the passing of a bill in the Lok Sabha in India regarding the protection of interests of Muslim women in cases of divorce. In the case of Shayara Bano v. Union Of India and Ors. (2016)¹⁶, the Supreme Court set aside the practice of triple talaq and this was eventually declared to be as 'Unconstitutional'. Islamic jurisprudence has not developed even a bit and is unable to meet requirements of modern times and adapt to pervasive outside influence¹⁸. This case paved way for the consideration and passing of The Muslim Women (Protection of Rights on Marriage) Bill, 2017 in the Lok Sabha. By doing so, the country can be seen slowly moving towards a uniform code and a women-just society by addressing their needs to ensure a sense of belonging to the society and ensuring them the rights that are guaranteed to all the citizens equally by the Indian Constitution. Achieving the goal of Uniform Civil Code and gender equal laws through pre-existing bills, acts and laws:

In a multi-cultural and multi-religious country, India, there is a need to analyze the older personal laws which were constructed and made keeping in mind the society that existed during their drafting. When going through certain laws, acts and bills we can see how certain provisions that were made focused on one gender or a group. India is no longer is what it was when these personal laws were being drafted and the vision of the leaders in-charge of doing so can be noticed as a short-term vision and their thoughts were restricted because of the society that was existing. Law is made to ensure that the society functions harmoniously. In today's contemporary society, there is a need to bring about amendments and changes to certain laws ensuring equal rights to both men and women irrespective of their background and construct.

To cope up with the changing mindsets and way of life of the people, customs must be changed so that it religious practices can work in a way that is preferred by the people in the society. In the case

¹²1985 2 SCC 556

¹³Sec. 125 of Code of Criminal Procedure 1973: Order for maintenance of wives, children and parents.

¹⁴1995 3 SCC 635

¹⁵*Ibid.* 11

¹⁶MANU/SC/1031/2017

¹⁷Writ Petition (C) No. 118 of 2016 SC

¹⁸K I Vibhute, Secularism: Socio-legal issues



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of Muslim customs and practices, there is still a need to pay a certain amount during marriage and that marriage is to be considered as a contract for them and marriage for Hindus and Christians is a sacrament. Dowry is an issue that has still not been solved and certain practices in order of 'religious customs' exist as a social evil. Amongst marriage itself there are different laws that are laid down for Hindus, Christians, Parsis and Muslims like the Hindu Marriage Act (1955), The Muslim Personal Law (Shariat) Application Act (1937) and the Special Marriage Act (1954). All these acts, even though they deal with the same concept of marriage, the guidelines, rules and procedures are different for women and men. In the case of Muslims under the Quran, polygamy is allowed and whereas in the case of other religions, it's not so. Also, the procedure for divorces too is different with different laws for women and men and they vary from religion to religion. Maintenance laws are different and are unequal for Muslim women and non-Muslim women.

In the case of *Srinivasa Aiyer v. Saraswathi Ammal*¹⁹, the petitioner had contentions with an Act²⁰ that existed by mentioning that prohibiting polygamy amongst Hindu only and leaving Muslim men free to be polygamous, deprived Hindus equality before law. While examining gender bias within laws, the courts have always explicitly commented that oneness of the nation as well as loyalty would be at stake if different minority groups follow different personal laws.²¹

Laws regarding succession and inheritance can be seen not in favor of the women as still the men inherit the bigger portion of the property and hardly it's given to the daughters or the wives. There is still an ambiguity as to who as what can inherit their family's heirloom. With regards to adoption, Muslims, Christians, Parsis and Jews are governed by the Guardians and Wards Act (1890), as formal adoption is not allowed in these religions. Hindus, Sikhs, Buddhists and Jains follow the Hindu Adoption and Maintenance Act, (1956). These adoption laws can one way seen as a law which doesn't favor both the genders equally as there are certain restrictions put on single fathers regarding the possession and adoption criteria for children. Hence, on a deeper analysis of these laws and acts, one can see that there must be a uniform set of laws that can come into existence in order to meet the changing society which would also ensure that women get their necessary rights wherever denied.

Conclusion:

Keeping in mind the provisions laid down in the articles of the Constitution, a need arises to provide gender just laws that would lead to the formation and implementation of the UCC in India to ensure that the provisions that are mentioned in the Constitution are met and morally maintained ensuring justice and equality to all. Ignorance to providing equal laws and protection to women and men would be a strict violation of human rights.

Efforts towards UCC can be seen before Independence also. In 1940, the National Planning Committee which along with focusing upon the economic dimension of women's rights, resolved that in a society, women's place shall be equal to that of men and achieve this, recommended the enactment of UCC.²² Under Art. 372²³, the courts have taken stance when issues related to UCC and personal laws come up and this has safeguarded the personal laws.

India, being a member of the United Nations, could also seek help from the UN in order to formulate such laws that would yield to the formation of the UCC by ensuring gender just laws. Being a dualist country, India has adopted, and incorporated provisions mentioned under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 into

¹⁹ AIR 1952 Mad 193

²⁰ Madras Hindu (Bigamy Prevention and Divorce) Act 1949

²¹ Flavia Agnes, *Law and Gender Inequality- The politics of women's rights in India* at p.193(2nd impression 2000)

²² Lateef S., 'Defining women through Legislation', p.48, 1994

²³ Art. 372 The Indian Constitution 1950: Continuance in force of existing laws and their adaptation



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The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 post the landmark Vishaka Case²⁴.

Along with the above-mentioned Act and The Muslim Women (Protection of Rights on Marriage) Bill, 2017, we can see that India is slowly drafting laws to protect the women and this would help in formation of the UCC which would ensure that everyone in India has the same rights guaranteed by following the same laws. The Common Civil Code would bring all the personal laws governing matters like marriage, divorce, adoption, inheritance, succession to property etc. under a single roof; and the non-implementation of Art. 44 would be a violation of Art.14 and Art.18 which deals with Right to equality and prohibition of discrimination based on sex and religion.

All the personal civil codes have unjust laws pertaining to women and children which has to be changed, not on the principle of uniformity, but on equality and justice. Also, one while drafting laws in the direction of achieving UCC, the courts and the parliament has to be careful not to hurt the sentiments of the religious groups and any step that has to be taken should be done with thinking about the welfare for all and must be backed with proper justifications ensuring that the goals can be met without any hinderance or problems caused. Creation of the UCC would also be a very risky political move.

The Indian Constitution envisages a secular state by guaranteeing religious freedom to all under the umbrella of a religion free state (this is apparent from an examination of articles 25 to 30). The religious freedom is however subject to certain limitations based on equality and morality and the legislature must start moving to ensure a gender just society and the formation of the UCC.

²⁴(1997) 6 SCC 241



GENDER JUSTICE BETRAYED BY INDIAN ADULTERY LAWS

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Introduction

The term adultery is derived from the Latin words 'ad' that means towards and 'alter' that means other that was combined in the word 'adulterium'. According to the Black's Law Dictionary 2nd Ed Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.¹

During the 16th Century in France², the husbands could not kill their cheating wives even if they caught them in the act. Also, common punishment for adulterous women at that time was whipping, head shaving, and parading the adulteress through the streets resembles the entry procedure before enclosure. The husband could take her back or leave her perpetually enclosed. In Muslim countries following Sharia law, the punishment for adultery in the recent years was stoning. In the ancient Greek era, there were stringent laws against adultery done by women, but if the adulterer was caught in the act, the protector could kill him on the spot and, if charged with murder, could plead that he had acted lawfully; the wife was automatically divorced.

The Bible too forbids adultery and the seventh commandment clearly states this. In customary Judaism, both the parties were equally responsible for adultery but it applied only if the female partner was married. Lord Jesus also abhorred adultery and considered that even looking at a female lustfully is equivalent to adultery. In India, the laws of Manu never punished an adulterous husband but it however stressed on the fact that women should remain reverent to their masters³

According to ancient Hindu laws, only the felonious female was punished and killed while the husbands were considered equal to god and were left off with warnings only.

According to Section 497, Chapter XX-A of the Indian Penal Code, "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."

Reasons behind Inclusion of Section 497

Marriage is considered to be a bond so strong and sacred and a belief which is reinforced by religion and supported by laws where any act that desecrates this bond is rebuked and looked down upon. Section 497 of the Indian Penal Code ensures that the unethical practice of Adultery is considered a crime. The main focus of the provision is to ensure that the sanctity of marriage is preserved by punishing the third party or the 'outsider' who disrupts and disturbs this sacred institution. Like all other provisions of the IPC section 497 has several reasons behind its implementation. It's interesting to note that the first law commission of India headed by Lord

¹ [https://thelawdictionary.org/adultery\(08/01/2018\)](https://thelawdictionary.org/adultery(08/01/2018))

² [http://www.medievalists.net/2012/08/adultery-in-late-medieval-northern-france\(08/01/2018\)](http://www.medievalists.net/2012/08/adultery-in-late-medieval-northern-france(08/01/2018))

³ Charles Jean Marie Letourneau, The Evolution of Marriage 220-222(Havelock Ellis Ed) 1911



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Macaulay did not consider it essential to include infidelity in the IPC and this belief was reflected in his first draft where after considering facts and opinions from the presidencies determined that the inclusion of Adultery showed little to no benefit. ⁴However this view was challenged by Sir John Romily who was the head of the second law commission and recommended including the provision and argued that women must be exempted from liability as the condition of women at the time wasn't on par with that of women from other developed countries like France or England and that that even though marriage is a sacred practice, there existed certain peculiar practices like Child Marriage and polygamy where young brides were neglected by their husband and that this negligence caused them to compete with the other women for their husband's attention and it would be wrong to punish women who were actually victims in this instance and thus it would be fit to punish the men who had indulged in this evil practice. ⁵

Another important reason was that the ancient Hindu religious texts laid very harsh punishments on the wife while in most cases left the husband off with a warning as husbands were considered to be Gods and this ensured that they escaped liability and wasn't held accountable for their actions. The framers of the IPC felt that the punishments that the society would impose on erring wives would be much harsher than what the husband would endure and by punishing them would worsen their condition.

Lacunae in the provision

A) Unjust practices affecting men

There is a lot of ambiguity in the Section-497(Adultery Laws) of the Indian Penal Code. There are various provisions in this section that affect directly the men and not the women. According to this section women cannot be punished for the crime of adultery and it is only a man who can be punished for this crime. The judgment in the case of Sowmithri Vishnu V. Union of India ⁶ and V. Revathi V. Union of India⁷ disables a wife from suing her husband for adultery. But in Section 497 of the IPC it is also mentioned that a husband cannot prosecute his wife for defiling the sanctity of the marriage of the marriage by committing adultery. Therefore, both the husband and the wife are disabled from prosecuting each other with the weapon of the criminal law. In the case of Yusuf Aziz ⁸the Court ruled that the immunity granted to women from being prosecuted under section 497 was not discriminatory but valid under Article 15 (3) of the Constitution. In this case the Court also stated that it is man who is the seducer and not the women. This rationality of the court is not at all accepted as it is totally against men and suggests no equality in the law. The judgment in the case of W. Kalyani v. State Tr. Inspector of Police & Anr⁹ the gender bias in the Section 497 of the IPC was heavily criticised. Malimath committee on reforms in the criminal justice system suggested that the provision should be retained in the IPC but the immunity to married women should be done away with. The Law Commission recommended retention of the provision in its 42nd report in 1971 but its relevance has to be seen in the context of social realities. The Central Government accordingly has sought the views of all the 30 states in the country regarding the implementation of taking away the immunity from married women committing adultery¹⁰. However, no decision has been taken formally on punishing the women for adultery. In fact, the peculiarities of our society at the time of the drafting of the IPC was the driving force for the introduction of the offence to our penal code.

⁴ Macaulay's Draft Penal Code (1837), Notes, pp. 90-93, Law Commission of India, Forty-Second Report: Indian Penal Code (Government of India, 1971), para 20.13.

⁵ Ratanlal & Dhirajlal "The Indian Penal Code" (33rd edn 2012 LexisNexis Butterworths, India) 1011

⁶ AIR 1985 SC 1618

⁷ AIR 1988 SC 835

⁸ Yusuf Aziz v. State of Bombay AIR 1954 SC 321

⁹ [(2012) 1 SCC 358]

¹⁰ [http://www.legalserviceindia.com/article/I291-Adultery.html\(08/01/2018\)](http://www.legalserviceindia.com/article/I291-Adultery.html(08/01/2018))



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Initially, it was decided not to make adultery an offence like in England but this was given a second thought in view of the position of women in Indian society¹¹.

b) *Effect of the provision on women*

The Indian Penal Code is notoriously famous for being extremely patronizing and while its objective may be considered noble, it has become essential to notice the change in the society. Women have come a long way since 1860 and have been able to shatter stereotypes imposed by the society although the goal of an egalitarian society is still a dream, much progress has been achieved. Women were considered to be the property of men, initially 'owned' by her father then her husband and finally her sons, a mere object which was passed onto different people, a mute spectator to her own life. Fortunately, there have been several significant changes such as the abolishment of sati, dowry, child marriage and polygamy (except for Islamic law where polygamy is still practiced) but these changes have not been reflected in the provisions of the IPC. While section 497 discriminates against men it continues to reinforce the idea that women are objects in the hands of their husbands and this is especially reflected in sec 497 and 498 as the only person that can bring a suit of Adultery is the husband hence the wife cannot file a case against her erring husband. ¹² This provision is also a reflection of a stereotype where the sole function of a married woman is to give birth to children and nurture and serve her family and by failing to recognize that women like men have sexual desires and by acting oblivious to this fact, restricts the freedom that women are entitled to. In *Sowmithri Vishnu vs Union of India*¹³, the Supreme Court in its judgment had stated that "It is commonly accepted that it is the man who is the seducer and not the woman" and clearly reflects the extremely dangerous belief that women can't be as powerful and as assertive as men and that they don't possess the ability to make their own independent choices and face the repercussions of their actions. In the case of *In re shankar Tulshiram navle*¹⁴ it was held that "*adultery is an infringement of the rights of the husband towards his wife*", In *Alamgiri vs State of Bihar*¹⁵ the Supreme Court held that the 'gist of the offence under section 498 appears to be the deprivation of the husband of his custody and his proper control over his wife with the object of having illicit intercourse with her' hence while section 497 does place men at a disadvantaged position it also has drastic effects on the rights of women and validates the archaic belief that women need to be protected and looked after by a man and also takes away their accountability for their actions.

The Judicial Perspective

Section 497 of the IPC has always been under scrutiny, a Public Interest Litigation was recently filed referred to as *Joseph Shine v. Union of India*, it challenges the constitutional validity of the provision and the case has been referred to a constitutional bench of the Supreme Court. The judiciary has from time and again tried to answer this question and the various judicial precedents act as a representation of the same. Perhaps one of the earliest case that dealt with section 497 was that of *Yusuf Abdul Aziz vs State of Bombay*¹⁶ where the court had held that section 497 does not contravene or violate articles 14 and 15 of the Indian constitution and had even stated that the provision is protected under article 15(3) of the constitution which allows for the adoption of special practices with regards to protecting women and children. Another important judgment was delivered in *Sowmithri Vishnu vs Union of India*¹⁷, the Supreme Court upheld the verdict of the previous case

¹¹[http://indiatoday.intoday.in/story/consider-scrapping-adultery-from-indian-penal-code/1/163101.html\(08/01/2018\)](http://indiatoday.intoday.in/story/consider-scrapping-adultery-from-indian-penal-code/1/163101.html(08/01/2018))

¹² *W. Kalyani v State Tr. Inspector of Police & Anr* (2012) 1 MLJ (Crl) 546 (SC)

¹³ AIR 1985 SC 1618

¹⁴ (1928) 30 BOMLR 1435

¹⁵ 1959 AIR 436

¹⁶ 1954 AIR 321

¹⁷ AIR 1985 SC 1618



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and had stated that women could only be considered as victims in a situation in which she maintains an illicit relationship with another man and cannot be an author of the crime. In the case of *V Revathi vs Union of India*¹⁸, the court had held that the neither the husband of the adulteress nor the wife of the adulterer can initiate a suit against each other, this helps preserve the sanctity of marriage by eliminating its use as a tool against each other. In the case of *W Kalyani v state Tr Inspector of police & anr*¹⁹ it was held that the mere fact that appellant is a woman makes her completely immune from the charge of adultery and that she cannot be prosecuted against for that offence thus upholding the views expressed by the previous cases where the woman cannot sue nor can she be sued.

While section 497 criminalizes Adultery, Adultery also serves as a ground for divorce under section 10 of the Indian Divorce Act of 1869 but there are a few controversies that can be noticed, for instance according to section 497, the only person that can be held liable will be the husband while the wife faces no repercussion however several judgments have stated that in matters with regards to divorce under section 10 of the Act, both the husband and the wife can be accused of adultery and either party can bring forth a suit of divorce against the other. This anomaly was observed in the case of *Olga Thelma Gomes v Mark Gomes*²⁰ wherein the court held that the narrow interpretation given under section 497 cannot be observed while considering it as a ground for divorce, a sentiment which was further expressed in *MT Carunya v. S Joseph Chellappa*²¹. Thus, there exists a situation in which the law examines the same circumstance in different manners which could lead to complications later on.

The recent judgement of Justice K.S. Puttaswamy(Retd) ... vs Union Of India And Ors²² has opened up a new area of debate; decriminalization of adultery. While this debate is one that has been going on for quite some time, most countries like France, United Kingdom, etc having already decriminalized adultery one of the reasons behind this move is the fact that these countries have recognized the right to privacy which was what was upheld in this case. The other reasons include the harsh punishments meted out to the criminals for instance pelting of stones, fines, severe imprisonment, etc and in some cases women have a tougher punishment than the men. This judgement has brought out a new interpretation to section 497 primarily because the right to privacy ensures that individuals have the right to bodily integrity, bodily autonomy, etc and while the ideal situation may be to decriminalize adultery, the lack of awareness and education, poverty, religious beliefs and traditions will stop such a principle from coming into fruition.

Conclusion

Gender neutral laws will ensure that the rights of every person will be protected and safeguarded regardless of their gender. The need for such laws arises out of the strong desire to establish an inclusive and egalitarian society which would benefit of the society as a whole. Gender neutral laws can be achieved only when gender inequality ceases to exist or its presence is reduced significantly and this can be done only by amending or repealing certain archaic and worn out laws that hamper the growth of this goal. Section 497 is one such provision, as mentioned above, this provision in its own way deepens the divide between genders. Section 497 of the IPC must be amended and must hold both participants equally liable under the section, it must allow either spouse to bring forth a suit against the spouse and must include any and all persons regardless of their marital status as an accessory.

In order to ensure that the law benefits the citizens, the government must initiate awareness programmes whose primary focus must be on the people living in rural areas where illiteracy and

¹⁸AIR1988SC835

¹⁹(2012) 1 SCC 358

²⁰ AIR 1959 Cal 451

²¹ (1996) 1 MLJ 409

²²WRIT PETITION (CIVIL) NO 494 OF 2012



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poverty among other factors play a major role in inhibiting the adequate use of the law. Another important factor with regards to its improper application is the societal repercussions that would arise from such an action. The Indian society deals with such matters with either contempt or ridicule hence the government must provide for a mechanism whereby women who have been cheated by their husband can not only find recourse under the law but can also find a means for sustenance if necessary, and this mechanism must be made available in a special way to women in the rural areas.



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A STUDY OF THE LAWS AND RIGHTS RELATING TO THE TRANSGENDER COMMUNITY AND SEX REASSIGNMENT SURGERIES IN INDIA

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INTRODUCTION

'Transgender' is an umbrella term for those whose gender identity or expression differs in some way from the gender assigned to them at birth and conflicts with the 'norms' expected by the society they live in. Transsexual people, non-binary gender identities, cross-dressing people, gender queer people etc. are included in the transgender umbrella.¹ The issues faced by transgender individuals in India are multifaceted. The transgender communities of India have been excluded from effectively participating in social and cultural life, economy, politics and decision-making processes. A primary reason and consequence of the exclusion is the ambiguity in legal recognition of the gender status of the transgender people. It is a key barrier that often prevents them in exercising their civil rights in their desired gender. So far, there is no single comprehensive source on the basis of which an evidence-based advocacy action plan can be prepared by transgender activists or possible legal solutions can be arrived at by policymakers.² Thus, there is a pressing need to deal with the issues relating to the legal and social position of the transgender community in India, as their issues can be resolved only if the transgender community is brought within the ambit of law.

THE LAWS CONCERNING THE TRANSGENDER COMMUNITY IN INDIA.

India is a host of socio-cultural groups of transgender people like Hijras/ Kinnars, and other transgender identities like - Shiv-shaktis, Jogtas, Jogappas, Aradhis, Sakhi, etc. However, these socio-cultural groups are not the only transgender people, but there may be those who do not belong to any of the groups but are transgender persons individually.³ The Laws relating to the protection of individuals of the transgender community in India are ambiguous and due to its dearth nature, the individuals of this community face a lot of oppression and are deprecated from the society. There are various judgements of the Supreme Court of India namely Suresh Kumar Koushal v Naz Foundation⁴, NALSA v Union of India⁵, Anuj Garg v Hotel Association of India⁶ etc. which have dealt with the issue of discrimination based on gender and oppression of the transgender community.

¹Understanding Transgender Identities & The Transgender Umbrella, LGBT YOUTH SCOTLAND, (Dec 30, 2017, 10:23 a.m.), <https://www.lgbtyouth.org.uk/Understanding-trans>.

²Venkatesan Chakrapani & Arvind Narrain, *Legal Recognition Of Gender Identity Of Transgender People In India: Current Situation And Potential Options*, UNDP INDIA (Jan. 2, 2018, 11:53 a.m.) http://www.undp.org/content/dam/india/docs/HIV_and_development/legal-recognition-of-gender-identity-of-transgender-people-in-in.pdf.

³Manoj K. Jha, *Transgender Rights in India*, IAS SCORE, (Dec.20. 2017, 3:00 p.m.), <http://iascore.in/national-issues/transgender-rights-in-india>.

⁴Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors. AIR 2014 SC 563 (India).

⁵National Legal Services Authority v. Union of India (2014) 5 SCC 438 (India).

⁶Anuj Garg & Ors. v. Hotel Association Of India & Ors. AIR 2008 SC 663 (India).



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After the famous NALSA v. Union of India⁷ case, the court held that individuals of the transgender community have the same rights and constitutional protection as other citizens of India. The NALSA judgment contradicts the findings of the Supreme Court in Suresh Kumar Koushal v Naz foundation⁸. The NALSA judgement notes that Section 377 of the Indian Penal Code though associated with specific sexual acts, highlighted certain identities, including Hijras. It also recognises that Section 377 of Indian Penal Code has been used as an instrument of harassment and physical abuse against Hijras and transgender persons. The NALSA judgment only says that this amounts to a misuse of the Section 377 of the Indian Penal Code as opposed to what it actually dictates, thus refusing to meaningfully apply a fundamental rights analysis to it.

Subsequent to NALSA v. Union of India judgement the Transgender Persons (Protection of Rights) Bill, 2016 (Bill No.10 of 2016)⁹ was introduced in the Parliament which is pending in the Lok Sabha. The Bill has many shortcomings. Section 2(i) of the Bill provides the definition of a 'transgender'. The definition is restricted as it does not cover all the people of the transgender community who fall under the ambit of the umbrella term 'transgender'. Further, the terms man and woman used in academics are used to refer to the gender of an individual. 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. The concept of gender varies across the globe as various social, economic, cultural, psychological, political factors influence it. The term 'Gender' varies greatly from the sex of an individual. Ann Oakley (1972) was one the first social scientists to distinguish the concept of gender from the concept of sex. Sex signifies differences between female and male bodies, such as external genitalia, hormonal production, ovaries and sperm. These differences define the binary categories male and female and act as signs that people belong to either of these groups. While most people are born either male or female, they are taught appropriate norms and behaviours – including how they should interact with others of the same or opposite sex within households, communities and work places. When individuals or groups do not “fit” into established gender norms they often face stigma, discriminatory practices or social exclusion – all of which adversely affect their health. In a traditional and multicultural society like India, Individuals who do not conform to societal expectations of gender face a lot of criticism and marginalization due the parochial mindset of the populace. This is also the current scenario with regard to the transgender community in India. It is important to be sensitive to different identities that do not necessarily fit into binary male or female sex categories.¹⁰ Since the Bill mentions the terms Male and Female, there is ambiguity regarding the applicability of the provisions of the Bill.

The Transgender Persons (Protection of Rights) Bill, 2016 also provides for penalties for discrimination of transgender individuals. However, the Bill fails to define what amounts to discrimination. Chapter three of the Bill goes on to provide a mechanism for the recognition of identity. A transgender person may apply for a certificate of identity to the district magistrate, who will then refer the application to a district screening committee, which will issue a certificate of identity to the person. This certificate will then be used as the basis for recording gender in all official documents and will be the basis for conferral of rights as a transgender person.¹¹ The Bill fails to address the issue regarding the position of individuals who consider themselves as transgender but are denied an identity certificate by the screening committee. The legislations of the country also fail

⁷ National Legal Services Authority v. Union of India.

⁸ Suresh Kumar Koushal & Anr. v. Naz Foundation & Ors.

⁹ Transgender Persons (Protection of Rights) Bill, 2016 (Bill No.10 of 2016).

¹⁰ Gender, Equity and Human Rights, WORLD HEALTH ORGANIZATION, (Jan. 2, 2017, 7:00 p.m.), <http://www.who.int/gender-equity-rights/understanding/gender-definition/en/>.

¹¹ Danish Sheikh, *The New Transgender Bill Fails the Community*, THE WIRE, (Dec.20,2017, 5:16 p.m.), <https://thewire.in/56299/failures-of-the-new-transgender-bill/>.



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to include the individuals of the transgender community. Hence, even though the NALSA judgement and Transgender Persons (Protection of Rights) Bill, 2016 intends to create an inclusive environment for the Transgender Community, the position of transgender individuals in the current scenario remains vague and ambiguous. Therefore, there is an exigent need to hasten the process of ascertaining the social, political and legal position of the transgender community in India.

SEX REASSIGNMENT SURGERIES AND THE INDIAN LAW

The sexual identity of a person has been an important factor in granting various legal and civil rights to an individual. In India, the law determines the sex of an individual based on prima facie factors like genitalia and secondary sexual characteristics. It has over-looked the psychological sex of an individual and this is the primary reason of conflict of the law with the transgender community. A transgender is a person who belongs to a particular sex anatomically but psychologically is obsessed with a desire to change to the other sex, which according to him, is the right gender.¹² To conform to the psychological identity of them, transgender individuals opt for Sex reassignment surgeries. Albeit, the landmark judgment NALSA v. Union of India¹³ in 2014 formally recognized the fundamental rights of the transgender community and did not make it mandatory for such people to first under-go sex reassignment surgeries to enforce their fundamental rights, the transgender community prefers to under-go sex reassignment surgeries to be socially accepted and recognized in the gender that they psychologically consider themselves to belong to.

As highlighted in the NALSA judgment, sex reassignment surgeries are complicated procedures and involve a 6-month long hormone therapy prior to the surgery. There is no law that prohibits such a procedure nor is there any exhaustive regulation that over-looks the issues related with sex reassignment surgeries. The recently introduced Transgender Persons (Protection of Rights) Bill, 2016 merely states that the government must ensure separate facilities for sex reassignment surgeries as well as post-sex reassignment surgeries counselling.¹⁴ The Bill fails to provide for any steps to be adhered to, to perform sex reassignment surgeries. Due to a lack of any legal embargo related to sex reassignment surgeries, there are various issues that lead to the ill-treatment and exploitation of the already side-lined transgender community.

The first main issue associated with sex reassignment surgeries is the permissibility of the operation and the general criminal law of consent to surgical treatment.¹⁵ Under Section 88 of the Indian Penal Code the criminal liability of either party has been made very clear. As per the Section, a doctor can perform surgery on a patient only after attaining the patients consent provided that the surgery is done for the benefit of the patient and is done in good faith.¹⁶ sex reassignment surgeries being a new advancement in medicine is very different from other surgeries. Many a time, the patient might give his consent, but the doctors prefer not to operate unless an affidavit is submitted in the court of law, along with a witness and a doctor to affirm that such a procedure is permanent.¹⁷ Such a long-drawn process only furthers the misery of the transgender community.

¹²Kusum, *The legal implications of Sex change surgery*, VOL. 25 NO. 1, JOURNAL OF THE INDIAN LAW INSTITUTE, 73-89, (1983).

¹³ National Legal Services Authority v. Union of India.

¹⁴*Transgender Persons (Protection of Rights) Bill, 2016*, PRS LEGISLATIVE RESEARCH, (Dec.20, 2017,7:57 p.m.), <http://www.prsindia.org/uploads/media/Transgender/Transgender%20Persons%20Bill,%202016.pdf>.

¹⁵ Kusum, *supra* note 12.

¹⁶The Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India).

¹⁷Ramya Jawahar Kudekallu, *Why transgender community is struggling in spite of NALSA judgement*, DAILY O,(Dec.20, 2017, 7:00 p.m.) <https://www.dailyo.in/politics/transgender-nalsa-judgment-aadhar-card-gender-rights-self-identification/story/1/15462.html>.



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The second issue associated with sex reassignment surgeries is that the law treats transgender individuals as having a mental disorder. As a result of which, persons opting for such surgeries need to be declared as 'suffering' from a "gender identity disorder"¹⁸ by a psychologist before they can avail hormone therapy for the surgery. The law must change its conservative attitude with regard to transgender individuals and accept them as any other normal human being in light of The Right to Equality¹⁹ under the constitution. Treating transgender individuals as having a "gender identity disorder" would be morally wrong and against their right to self-identification²⁰ as promised in the NALSA judgment. Instead, the law can replace gender identity disorder with "gender incongruence"²¹. This is a more suitable term and doesn't classify transgender individuals as having a mental disorder. The term disorder itself suggests that such people are 'abnormal' and gives reason for the society to treat them differently than 'normal' people. Furthermore, by not considering it as a disorder, it would not be necessary for people opting for sex reassignment surgeries to under-go a psychological test to avail the hormone therapy.

The third major issue associated with sex reassignment surgeries is that it is a very expensive procedure and not easily accessible to the transgender community who are mostly not economically well-off.²² Even though the government has been providing options of free surgeries at government hospitals, safety, quality and rehabilitation are a major concern among the transgender community. A database of approved doctors and remedial centres for post-surgery recovery maybe created in all government hospitals to assure this. The law must ensure that post sex reassignment surgeries the patients are given free counselling sessions as well.²³

LEGAL CONSEQUENCES OF SEX REASSIGNMENT SURGERIES

Sex reassignment surgeries enable a transgender to finally have their psychological sex in harmony with their anatomical sex. However, the main issues arise post-sex reassignment surgeries. Issues vary from psychological or health to legal issues. The primary legal issue is for the government to formally recognize the new gender of the trans-individual. Various documents of identity, passports, and birth-certificates have to be changed in accordance with the new gender of the trans-individual. The Transgender Persons (Protection of Rights) Bill, 2016 provides for a procedure of procuring a certificate to be identified as a transgender on the advice of a "screening committee"²⁴. Therefore, the committee is at power to decide the authenticity of an individual's identity. There is no mention as to the grounds upon which the committee decides the authenticity of the individuals' identity. The Bill is silent about the situations when the "screening committee" rejects the application of procuring a certificate of identity. India is a nation which basis the legal rights primarily on the sex of the individual, confirmation of the identity of the transgender is absolutely essential in granting them various civil rights. If the committee fails to recognize the identity of the transgender individual, they would be left helpless with no civil rights, which is a gross human right violation.²⁵

Post sex reassignment surgeries, several issues arise with regard to personal laws. With regards to Hindu law, marriage and succession are directly affected. In Hindu law, marriage is a

¹⁸Anonymous, *Perform sex reassignment surgeries for free in all govt. hospitals*, THE HINDU, Dec. 23, 2017, at 4.

¹⁹INDIA CONST. art. 14.

²⁰National Legal Services Authority v. Union of India.

²¹ Anonymous, *supra* note 18.

²²Shambavi Saxena, *What sex reassignment surgeries are like in India*, YKA, (Dec. 27, 2017, 11:28 A.M.). <https://www.youthkiawaaz.com/2017/01/sex-reassignment-surgeries-in-india/>

²³Anonymous, *supra* note at 18.

²⁴*Supra* note 14.

²⁵The Universal Declaration of Human Rights, Art. 2 & 6. (Dec. 25, 2017, 1:20 p.m.) <http://www.un.org/en/universal-declaration-human-rights/>.



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sacred union of a man and a woman having pious duties and obligations towards each other.²⁶ The issue arises when one of the parties to the marriage changes their sex. Does the marriage remain valid as per the Hindu Marriage Act, 1955? In the landmark judgment of *Corbett v. Corbett*²⁷, an English case, the court invalidated the marriage between two biological males on the grounds that despite sex reassignment surgeries, the biological sex of the person remains the same. Sex reassignment surgeries only changes the gonads and the secondary sexual characteristic of the individual but as per their chromosomes are concerned, it is fixed and cannot be changed whatsoever. In view of this judgment, does the Indian law validate the marriage on the grounds that the biological sex of the person remains unaltered despite sex reassignment surgeries or does it consider it to be against the Hindu law being a marriage between the same sex? In such a situation, will the transgender come under the garb of Section 377 of the Indian Penal Code which criminalizes sex among homosexuals? These issues are yet to be clarified by the law and often lead to the transgender community being harassed by the police under Section 377 of the Indian Penal Code.²⁸ Similarly, succession under the Hindu Succession Act, 1956 is directly affected by sex reassignment surgeries. Section 8 and 14 of the Hindu Succession Act²⁹ which deal with the succession of property among the male and female members respectively would be affected after sex reassignment surgeries as to the degree of succession. As per the NALSA judgment of 2014, the Supreme Court recognized the 'third gender' for transgender individuals. The question arises as to whether succession laws have to be amended to incorporate the third gender or whether the law takes in to regard the new gender of the transgender post sex reassignment surgeries in devolving property under succession law?

CONCLUSION

In a conventional society like India with increasing trans-phobic violence, it becomes imperative to tend to the multifaceted problems faced by the transgender community in the contemporary world. *NALSA v. Union of India*³⁰ judgment affirms constitutional protection as other citizens to the individuals of the transgender community but has not been implemented because of a lack of legal embargo. Moreover, the Transgender Persons (Protection of Rights) Bill proposed in the Lok Sabha has a restricted scope of the term 'transgender'. The Welfare Schemes mentioned in the NALSA judgment have not been addressed in the Bill. A Drafting committee must be constituted, comprising of members of the trans-Community to elaborate and to address the shortcomings of the current bill. The provisions of the Bill do not conform to the international standards and regulations to protect the rights of the trans-community. It has also failed to provide stringent punishment to offenders for offences mentioned in the Bill. An initiative must be taken to amend the bill to sensitize the offenders in prison regarding the trans-community. There are speculations regarding the re-drafting of the bill due to the above mentioned issues. This makes the transgender community vulnerable as they do not have any legal protection. Hence the process of drafting and implementation of laws protecting the transgender community must be expedited. Sex reassignment surgeries pose several legal challenges, which currently, lack any legal embargo to regulate these challenges. To prevent the further marginalization of the transgender community, the Government of India must take active steps to legislate on these issues and assert the legal status of the transgender community post sex reassignment surgeries. The law must try to reduce unnecessary procedures to cater to the needs and interests of the transgender community. It has to take into regard the psychology of the transgender who is desperate to change their gender in order to be socially

²⁶WERNER MENSKI, *HINDU LAW: BEYOND TRADITION AND MODERNITY*, 25 (Oxford University Press, 2008).

²⁷*Corbett v. Corbett* (1970) 2 All E.R 33.

²⁸Rohit. U. Erande, *Sex change operation and its legal consequences*, MANUPATRA, (Dec. 27, 2017, 1:17 p.m.) http://www.supremecourtcases.com/index2.php?option=com_content&itemid=54&do_pdf=1&id=7932.

²⁹Hindu Succession Act, No.30, Act of Parliament, 1956.

³⁰ *National Legal Services Authority v. Union of India*.



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recognized in that gender. The law can replace gender identity disorder with “gender incongruence”³¹. A database of approved doctors and remedial centres for post-surgery recovery maybe created in all government hospitals. The law must ensure that post sex reassignment surgeries the patients are given free counselling sessions as well. ³² The state must include transgender as third genders in all legislations to include them in the society.

³¹ Anonymous, *supra* note at 18.

³²*Id.*



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INHERITANCE RIGHTS OF WOMEN UNDER CUSTOMARY LAWS FOR THE TANGKHUL NAGA TRIBE OF MANIPUR, INDIA

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I. INTRODUCTION

The Tangkhuls are one of the Naga tribes situated in the contiguous frontier areas of North-east India and North-west Myanmar. They belong to the Mongoloid ethnic stock. Linguistically, they have been classified under Tibeto-Burman branch of the Sino-Tibetan language family (cff. Grierson 1903; Guha 1949)¹. Although the total figure of population of Tangkhul is not exactly known (not recorded yet), it is currently estimated at over 3 lakh. The bulk of Tangkhuls are situated on the Indian side of Indo-Myanmar border. The Tangkhuls on the Indian side are concentrated in Ukhrul district of present Manipur state. The Tangkhuls are also found in contiguous areas of Senapati district and Thoubal district. In Myanmar, the Tangkhuls are located mainly in the Somra (Somrah) tract.²

Ukhrul district, the main concentrated homeland of the Tangkhuls is bounded by North Western Myanmar in the east, Senapati district in the west, Imphal east district in the North West, Chandel district in the South and Phek district of Nagaland state in the North. The district lies between the latitude 24°N – 25.41°N and longitude 94°E – 94.47°E respectively. It is a hilly region with an area of 4544 sq.km. comprising 232 villages. The population of the district as per 2011 census is 183,998 of which 85.22% are in rural area and the remaining being largely confined to the urban area of Ukhrul, the district headquarters. The literacy rate is 81.25% (Male: 85.52%; Female: 76.95% as per 2011 census).

District-wise population of Manipur state

District	Population	Increase	Sex ratio	Literacy	Density
Imphal West	517,992	16.56%	1031	86.08%	998
Senapati	479148	68.94%	937	63.60%	146
Imphal East	456113	15.51%	1017	81.95%	643
Thoubal	42168	15.94%	1002	74.47%	821
Churachandpur	274143	20.29%	975	82.78%	60
Bishnupur	237399	13.93%	999	75.85%	479
Ukhrul	183998	30.70%	943	81.35%	40
Chandel	144182	21.85%	933	71.11%	44
Tamenglong	140651	26.15%	943	70.05%	32
Total	2855794	24.50%	985	76.94%	128

Source: census of India 2011

¹Vashum, R. (editor-in-chief), *encountering Modernity: Situating the Tangkhul Naga in perspectives*, Chicken neck, New Delhi, 2014, p.11

²ibid



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British India paid respect to the customary laws, traditions and cultures of the Indian tribals and more particularly that of the North East tribals. The Frontier Regulation - II of 1880 excluded the tribal peoples including the Nagas from coming under the purview of ordinary laws (usual laws) as it may be unsuitable and complex to them. The British Government throughout their reign in India actively pursued the policy of "non-interference" thereby giving simultaneously maximum autonomy to the tribals like the Nagas. The earliest move of the British Government in this direction found reflection in the Scheduled District Act of 1874³. The Act recognised that the "underdeveloped tracts" which among others included the Naga (Hills) District, the Lushai (Hills) District, The Garo (hills) District etc. as a part of the erstwhile province of Assam created in the same year, needs to be treated differently with regard to enforcement of the procedures of ordinary laws.⁴

Section 52 A(2) of the Government of India Act, 1935 provides that the Governor-General in Council may by notification direct that any Act or legislation shall not apply to the territory in question or any part thereof or shall apply to the territory or any part thereof subject to such exceptions or modifications as the Governor-General thinks fit. This provision directly enabled the North East tribals to be governed by their own customary laws and systems without much interference from the British regime. Section 92 of the Act further provides that no Act of the Central or Provincial legislatures could apply to the Naga Hills District unless the Governor so directed. This is another positive measure the British Indian Government had taken to safeguard and promote the various traditions, cultures and customary laws of the Nagas⁵. The late Pandit Jawaharlal Nehru as the first Prime Minister of India, while announcing the government of India's decision in the Lok Sabha on the 1st of August, 1960 to create the state of Nagaland, said, "We have not the slightest desire to interfere in the tribal customs and usages of the Nagas or in their distinctive ways of life."⁶

Tangkhuls are deeply rooted to democracy. Even though the seat of village headman known as Awunga in native is hereditary, all decisions of the village are taken democratically. The social life of the Tangkhul Nagas was based on socialistic pattern of society. Elwin Verrier supported this position when he says, "Every Naga follows the dictates of his own will, a form of the purest democracy which it is very difficult indeed to conceive as existing even for a day; and yet that it does exist here is an undeniable fact". A high order of social welfare system was practised by the Tangkhul Nagas in their village states. There was no class system in Tangkhul society. Everyone was equal in the eyes of law and customs. There has been no oppression and suppression to the poor and needy by the rich and wealthy people. Instead, the poor and needy people received the support of rich and well to do people.⁷

II. THE NATURE OF INHERITANCE AND SUCCESSION

Societies are mostly regulated by a body of norms, customs, taboos, traditions, values and moral standards which undergo changes with the passing of time. However, Tribal societies differ in terms of their functioning as they are mostly governed by the traditional customs and taboos which are often resistant to change.⁸

³ Pathak Manjushree., Crimes, Customs & Justice in Tribal India, A Teleological Study of Adis, Published by Mittal Publications, New Delhi, 1st edition, 1991, p.3

⁴ Ningshen, Vareso, the Tangkhul Naga customary law: a critical legal study, pp, 2&4, <http://shodhganga.inflibnet.ac.in/handle/10603/67537>

⁵ Ningshen, Vareso, the Tangkhul Naga customary law: a critical legal study, p. 6,

⁶ Government of Nagaland and Thinkers Forum of Nagaland(1974), the Seminar on Naga Customary Laws, organised by Directorate of Art and Culture, , Introduction Part IX, Kohima, Government of Nagaland.

⁷ Ningshen, Vareso, the Tangkhul Naga customary law: a critical legal study, p. 20,

⁸ Retrieved from <http://igsss.org/blog/customary-rights-of-tribal-women-with-reference-to-property-and-land-rights-in-northeast>.



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The Tangkhul women are not conferred with the right to inherit property including landed property. The father is the absolute owner of all the property in his possession. After his death, sons inherit the property left by him. The widow succeeds to the property of her husband as long as she is alive without any legal authority.⁹ Among the sons, the eldest one always received the lion share and the reason being that he has to shoulder the responsibility of looking after the rest of his siblings and his aged parents.¹⁰ Also, if there was any debt or loan being taken by father during his lifetime, the repayment are usually done by the eldest son.¹¹ All the properties presented to her by her parents, relatives and friends during marriage are ultimately owned in the name of the husband. This is particularly true on landed properties. She neither has right to transfer nor dispose it as she wishes. Section 2(d) of the Tangkhul Naga Longshiyen-chikan (customary law) still debars a Tangkhul women from inheriting of properties. This clause strictly means to ancestral properties and not so on self-acquired properties. The parents, now-a-days, gifted away their daughters with acquired landed properties during marriage or sometimes after marriages. But this is purely optional and executed at the will of the parents. The divorced daughter has a right of abode at her father's residence as long as she does not remarry.¹² It is opined that Tangkhul women should be given the rights to inherit self-acquired properties of parents rather than simply get it as a gift. It may be mentioned that Hindu women are now entitled to inherit parental properties both the ancestral and the self-acquired ones. To confer the inheritance rights of ancestral properties upon the Tangkhul women would still take some more time.¹³ Moveable properties mainly of the women ornaments and other elated item particularly the assets of mother such as earring, kachao (bracelets), Har (armlets), Huishon (a ring like chain hang from head till knee with belt at both ends), Kongsang (necklace made of shell and beads), Zeithing (sceptre made of steel used by women), etc. can be inherited by their daughter.¹⁴

If we looked at the other prominent tribes of Northeast, the condition and the nature of inheritance still remain the same. For example, the Angami woman cannot inherit clan property but her parents can gift her acquired land and she can inherit what belongs to her mother. If the man dies without a son the inheritance passes on to the closest male relative. The Adibasis too have male inheritance. Such acts are justified by citing that after marriage the girl goes to her husband's house and the husband is already the natural heir to his ancestral property. Though only men inherit property, it does not result in the deterioration of women's status.¹⁵



Figure: Tangkhul's bride in traditional dress.

Source: <https://in.pinterest.com/pin/377317275014448208/>

⁹Jaminidevi, CH, Land rights of indigenous in NE India, www.zougam.com

¹⁰Pheirei. P, Tangkhulwunghao customary law, Imphal, 2004, p.100

¹¹Horam, ringkahao, Customary laws of the Naga of Manipur, Sunmarg, New Delhi, 2004, p.82

¹² Ibid Jaminidevi,, CH,

¹³Ningshen,Vareso, the Tangkhul Naga customary law: a critical legal study, p.283

¹⁴Horam, Ringkahao, Customary laws of the Naga of Manipur, Sunmarg, New Delhi, 2004, p.79,80

¹⁵ Retrieved from <http://igsss.org/blog/customary-rights-of-tribal-women-with-reference-to-property-and-land-rights-in-northeast>



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However, the concepts on the inheritance rights of properties by Women have been gradually changing since the dawn of modernity in Tangkhul society. The properties brought from parental house or any self-acquired ones could be owned in her own name. The customary practice of owning such properties in husband name is unreasonable and discriminatory in nature. Mutual consent of the parents should be obtained while transferring any family property.

III. CUSTOMARY LAW AND HUMAN RIGHTS

The incorporation of human rights to the tribal customary laws possessed a huge challenge. One of the many challenges is the rigid societal system under the patriarchal leadership of men. One must understand that any form of demonizing culture against women springs its source from culture and tradition. Change must be initiated from a grassroots level. The culture and tradition must change to uphold the integrity of the basic principle of universal Human rights. We must value the positive aspect of culture and custom and at the same time disallow traditional practices that are harmful to women. Women should be allowed to participate at all levels in the determination of cultural policies and state parties should also take all appropriate measures to enhance the participation of women in the formulation of cultural policies at all levels.

From the given nature of inheritance and distribution of properties, Tangkhul Naga tribe stands against the very basic principle of human rights. Though the custom and traditional practices of Tangkhul society correlates the basic rights of human being in many ways, it simply stands against directly opposite in the case of inheritance. Unless there is an amendment of customary laws for Tangkhul Naga tribe, there is little room for improvement. The Declaration of Human rights by the United Nations in 1948 has added another dimension by granting equal rights to both men and women. But in many parts of India the social reality is somewhat different. Majority of women especially in rural areas still remain traditional and continues to endure subordinate and inferior position in the patriarchal society.¹⁶

Internationally, the law is quite clear on two things: first that indigenous peoples have a right to maintain and most importantly strengthen their own legal regimes (Wiesner, 1999)¹⁷ and second, that's rights to practice customary law must be carried out in a manner that conforms with and does not lead to a breach of universal human rights (ILO convention 169).¹⁸ Article 34 of the United Nations Declaration on the Rights of Indigenous People entitles indigenous people to 'promote, develop and maintain their institutional structure and in the cases where they exist, juridical system or customs, in accordance with international human rights standards.'

We must also take note that the complete neglect of one right in order to secure realization of the other would violate the principles of necessity (Xanthaki, 2011)¹⁹. If we looked at the national level, the balanced has not been achieved. Though the constitution of India guaranteed equality, human dignity and prohibiting discrimination based on genders well as provision recognising customary laws without resolving the conflict between customary norms and human rights provision. Even more problematic are situations where constitutional provision exclude a range of cultural practices from the ambit of anti-discrimination provisions. It would be a genuine move for every indigenous people to interpret their customary laws by courts in accordance with human rights norms.

IV. CONCLUSION

The traits required for all legal regimes that wish to maintain their legitimacy and effectiveness as tools for social regulation must have the capacity for reflection and modification to

¹⁶Jaminidevi, CH, Land rights of indigenous in NE India, www.zougam.com

¹⁷ Tobin Brandon, Indigenous people, customary law and human rights - why living law matters, Routledge, New York 2016, p. 181

¹⁸ibid

¹⁹ ibid p. 183



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meet new challenges and respond to changing spiritual, moral, cultural, social, economic and environmental condition. The continuing relevance of customary law regimes across the centuries is a testament to their inherent capacity for such reflection and modification.²⁰ Even though it is a true fact that customary law finds wide acceptance among the community members, certain changes need to be brought forth one and for all. Since it is a law which was practised by the forefather from time immemorial, the relevancy of such law in 21st century has to be debated and discussed extensively. As Saint Augustine rightly said, "An unjust law is no law at all." However, the harmonisation of customary laws and human rights need to come from both direction. The process of change is not merely within customary legal regimes but involves changes to human rights and national law as well. Vermeulen sees it 'For law to work it has to be a living law, and in order for it to find the space to live, it will have to find more flexibility in its practice.'²¹ Even if there is provision or laws from the state, without the initiative or willingness of the community for change, no changes will ever happen and change must come from within the community.

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²⁰ Ibid p. 207

²¹ Ibid p. 184



ROLE OF NGO IN PROMOTING GIRLS RIGHTS

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Introduction:

Women Rights issue is most topic across the world. But, still the achievements of those rights by Women are below the average level. In case of India, since its independence it has grown tremendously in social and economic front. Despite of this growth, the human development of the country has not reached a satisfied level; it is clear from the Human Development Index rank released by the UNDP. For the past five years, India's performance in HDI is very poor when was compared to other Asian countries (Refer Table 1). In the human development, three important factors have given more stress by the UNDP i.e. life expectancy, education and per capita income. It is a measuring indicator of the human development of any nation. Hence, it impacts the rights issue of an individual directly or indirectly.

Table 1: India's Rank at Gender Related Indicators

	Gender Inequity Index (GII)	Gender Development Index(GDI)
Rank in 2016	127	132
Value in 2016	0.563	0.591

Source: UNDP, GII & GDI reports.

Crime against women in India is serious problem against women safety and security. The recent trend in increase in the number of crimes against women directly affects the gender rights and questioning the gender safety issues. Crime against women are more prevalent across the states of India clearly depicts the bad state of women's rights in all aspects. It can be clearly identified by the comparison of two years of crime records against women (Refer Table 3).

Table 2: Crime against women in 2015&2016

Year	Incidence	Rate (in percentage)
2015	2,44,270	41.7 %
2016	3,09,546	52.2%

Source: National crime Record Bureau report

Nearly 10.5% of crime against was increased in a year and proportion of IPC cases has increased during last five years from 9.2% in 2009 to 11.2% during 2016. The cases like rape, dowry related deaths, trafficking and torture of women are often happening women related crimes because of male chauvinism and domination subjected to suppression of women's rights. The trends of women related crimes are shown below in Table 4.

NGO and Empowerment:

To empower the women and ensure their rights state is the agency formulates various programmes and schemes. Government acts a sole protector and promoter of gender rights in their respective nations. It is a formal organization in formulating policies on gender sensitive issues. Even though, these aspects are taken into account, Government is either failed or slow in addressing the issue of gender rights and promoting their welfare. This paves the way for Non-Governmental Organization (NGO's) to act as key player in women empowerment and access towards their rights.



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The concept of NGO's "non-governmental organization" or NGO came into use in 1945 because of the need for the UN to differentiate in its Charter between participation rights for intergovernmental specialized agencies and those for international private organizations. At the UN, virtually all types of private bodies can be recognized as NGOs. They only have to be independent from government control, not seeking to challenge governments either as a political party or by a narrow focus on human rights, non-profit-making and non-criminal. Various terms such as 'civil society', 'voluntary organisation' and 'non-profit organisation' are used as an alternative for Non-Governmental organization (NGO's). NGO's are mainly concentrates on human development, human rights, humanitarian action, environment protection and other issues impacting human.

NGO's are given much priority to the development of human being in the field of poverty eradication, health issues, employment generation and getting access to civil rights. It focuses mainly on the marginalized section of the society such as women rights, child rights, disabled rights and oppressed people rights. In this connection, being half of the human population are women, it is essential to promote their rights through empowerment activities by NGO's to create an ideal society. NGO's are naturally divided into two types (i) operational NGO's (ii) Advocacy NGO's.

Operational NGO's: This type of NGO's do field projects and programmes and act as an alternative agent to the government in providing public service delivery mechanism. It has to mobilize resources through fund raising and have to field the operational staff in the field.

Advocacy NGO's: This type of carries out the same function. But, the level of fund raising will be on small scale. It mainly focuses on influencing the government policy and decision making.

Above mentioned both type of NGO's are equally presented in India and working in various issues of the human development. Most of the NGO's working for the women empowerment and the projects are created for the health, education, employment opportunities and economic empowerment. The term 'empowerment' means to give power or authority. As Max weber stated, "Power is one's capacity to have control over another and as this capacity is legitimized it becomes authority". Generally women empowerment takes place at three levels:

- Individual
- Group
- Societal

Individual level of empowerment associated with capacity of women individual, whereas group and societal level needs team action with participation of female gender. This team action can be created through various steps and initiatives by Women based NGO's.

Women based NGOs take it shape from the beginning 1960's and strongly influenced by the feminist theories. Most of the women NGO's are pioneered by Women itself and made huge work for including women Rights as Human Rights. In India, Women based NGO's are being in the existence from the Colonial era and during independence struggle. Movements like Raja Ram Mohan Roy's Arya Samaj, Dayanand Saraswathi's Brahma Samaj are fought for the issue of women rights. Various women movements are used by the national leaders for the struggle for the Indian Independence. From the beginning of mid-1970's to 1980's women based NGO's came to the platform and started their work for women education, health, livelihood and protecting women against various form of violence. Most of the women leaders were on the background of the women based NGO's and it strongly inculcates the feminist perspectives. In the Indian type of society, the women based NGO's are differentiated into various typologies

- Grassroots women Self-help group NGO's
- Women's Rights advocacy NGO's
- Women's economic development NGO's
- International Empowerment NGO's

Grassroots women Self-help group NGO's:



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These types of NGO's are the community development and started by the women leader from the local community to promote the welfare and economic development for their community women population. Self-help group (SHG) is a unique form of micro financing in India with an approach of financial intermediation. The concept of SHG is evolved from Grameen bank of Bangladesh in 1975. In India, this concept was popularized in the year 1992 by linking SHG's with the banks. This Self Help e NGO's are concentrating on small and micro scale industries so that it is more viable to generate income. It also has limited intervention from outsiders which helps them to work independently. It only seeks technical advice and information from Well-established Women NGO's.

Women's Right Advocacy NGO's:

This type of NGO's is addressing the issue of women's rights abuse. This type of NGO does organize public campaign, workshops and seminars for creating awareness regarding women's rights abuse. They also organize public protest for the gender sensitive issues and influence the Government decision in women empowerment policies and laws. They act as a watch dog of women's rights and protect the rights of women from various forms of oppression in the name of caste, sex, religion and tradition.

Women's Economic Development NGO's:

It is promise to be a life changer of women gender through economic development. It has a mission and vision to address the gender development factors such as education, health care and income generation. It helps in transforming the status of women through economically which assure a respected place in the society.

International Women Empowerment NGO's:

International NGO's discuss the gender inequity issues, genderinjustice issues, gender sensitive issues at global level. It especially focuses on women related issues faced by women in developing nation. It provides technical and financial resources to address the issue of gender inequality and inequity. It also has partnership with national and local NGO's to address issues affecting the women gender.

Various Women Based NGO's in India:

CARE INDIA:

CARE has been working in India for over 60 years, focusing on ending poverty and social injustice. CARE does this through well planned and comprehensive programmes in health, education, livelihoods and disaster preparedness and response. Its overall goal is the empowerment of women and girls from poor and marginalised communities leading to improvement in their lives and livelihoods.

In India, CARE focuses on the empowerment of women and girls because they are disproportionately affected by poverty and discriminations; and suffers abuse and violations in the realization of their rights, entitlements and access and control over resources. Also, experience shows that, when equipped with the proper resources, women have the power to help whole families and entire communities overcome poverty, marginalization and social injustice.

SAPNA:

SAPNA was registered in Delhi under the Societies Registration Act (XXI) of 1860 on October 21, 2004, by a group of professionals who shared a dream to work on a people-centric model of development in areas of public health, education, women empowerment, community development and social welfare. Inspired by Gandhian ideals of social change, SAPNA's primary objective is to

- Empower the poor and marginalised;
- Provide shelter to the sick and destitute;
- Promote community health programmes and services;
- Support literacy centres and e-learning;
- Work towards empowerment of women;



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- Facilitate livelihood programmes;

Sakshi

Sakshi's work is concentrated in the fields of Education, Health and Community Development. It work for the upliftment of the poor and destitute by helping them achieves socio-economic independence, self-sustainability and health. It does everything from providing educational and health services to the needy, mainstreaming marginalized street children, making low-literate youth employable and empowering women. We help those in need with full respect, love and commitment, with the aim to not deliver charity but to empower them to better their own lot.

Sakshi was based in Andhra Pradesh is the only full-spectrum grassroots NGO in India providing services spanning the development trifecta of Education, Health and Community Development and thus able to provide a comprehensive path from poverty to prosperity and fully empower the destitute to tread it successfully.

SNEHA: Society for Nutrition, Education & Health Action (SNEHA) is a 350+ person strong and progressive organization that works closely with the Municipal Corporation of Greater Mumbai. It does innovative work in the urban slums to reduce maternal mortality, newborn mortality, malnutrition and domestic violence. And at our core remains the belief that the cycle of ill health can and must be broken by creating an urban society whose foundation is built on a healthy and empowered population. At SNEHA, they chase the dream of "Healthy Women and Children populating a Healthy Urban World".

Self-employed Women's Association (SEWA)

SEWA is a trade union registered in 1972. It is an organisation of poor, self-employed women workers. These are women who earn a living through their own labour or small businesses. They do not obtain regular salaried employment with welfare benefits like workers in the organised sector. They are the unprotected labour force of our country. Constituting 93% of the labour force, these are workers of the unorganised sector. Of the female labour force in India, more than 94% are in the unorganised sector.

SEWA's main goals are to organise women workers for full employment. Full employment means employment whereby workers obtain work security, income security, food security and social security (at least health care, child care and shelter). SEWA organises women to ensure that every family obtains full employment. By self-reliance it means that women should be autonomous and self-reliant, individually and collectively, both economically and in terms of their decision-making ability. SEWA is both an organisation and a movement. The SEWA movement is enhanced by its being a confluence of three movements: the labour movement, the cooperative movement and the women's movement. But it is also a movement of self-employed workers: their own, home-grown movement with women as the leaders. Through their own movement women become strong and visible. Their tremendous economic and social contributions become recognised. With globalization, liberalization and other economic changes, there are both new opportunities as well as threats to some traditional areas of employment.

MYRADA:

MYRADA through its various programs reaches out to people in various districts of Karnataka, Tamil Nadu and Andhra Pradesh. While the objective is to help the poor help themselves, MYRADA achieves this by forming Self Help Affinity Groups (SAGs) and through partnerships with NGOs and other organisations.

CONCLUSION:

In order to really bring women empowerment in the Indian society. It needs to understand and eliminate the main cause of the ill practices against women which are patriarchal and male dominated system of the society. It needs to be open-minded and change the old mind set against women together with the constitutional and other legal provisions. In this Context, the role of NGO's is more



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important and vigil in educating women rights and creating aware about gender justice issues. When a girl child is educated and understands her rights in the society, it is the real empowerment. These NGO's should create more ambience in incorporating education and rights to the girl children, which will make them more independent and empowered being in the society.

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“THE ALIENATED CITIZENS” – TRIBULATIONS FACED BY NORTHEAST WOMEN IN MAJOR CITIES

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Introduction

India being a multifarious country with community contravention of human rights and abuse at all altitudes it dictates the beginning of human rights education from schools to university levels. The principles of human rights have to be put in the young minds so that a new society is created; a society which has understanding and respect of the rights of one another and the one which will show the way to sustainable progress.

The term “Human Right” is a dynamic concept and it endeavors to adapt itself to the needs of the countries and their people. These rights are sometimes known as fundamental rights, natural rights or inherent rights. The protection of human personality and its fundamental rights is the ultimate purpose of all the national and international laws.¹ Human rights like fundamental rights are paramount sacrosanct, eternal and transcendental in nature and ought to be treated as inalienable and inviolable for preserving the dignity of the people. These rights, however, cannot be imagined without the security and existence of a well regulated society.¹ Human rights education includes the kind of learning process which widens the awareness, proficiency, and principles of human rights. Human rights are the basic freedoms and protections that all people are entitled.

They are rights that we all have whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, sexual orientation or any other status. We are all equally entitled to our human rights without discrimination. These rights are all related to one another, dependent upon one another and indivisible from one another.¹

HUMAN RIGHTS VIOLATION

The refutation of human rights and basic liberty to every human being or faction of persons is the reason for calamity and generates circumstances for societal and political turbulence; disseminate the kernel of hostility and divergence inside and involving societies and state. India being a country having a multicultural and multilingual society conflicts and discriminations has developed into a habitual concern.

Infringement and violations of human rights is also a universal phenomenon. In India, though there are a range of legitimate safeguard, breach of human rights in a array of structure such as contravene of civil and political rights, discrimination against minority, women and weaker fragment of the general public. Many a times the people at the authority level and who hold the key of power violate human rights. The danger is that once you permit the human rights violation to be taken place under certain circumstances, either on the ground of security and morality or culture you are laying down a very big trap.¹

WOMEN’S RIGHTS

Women have become the major stakeholders of the economic development of the country and the social progress but they are still given a second-class treatment even today. Though the constitution states that women should be given equal rights in all matters and offers positive discrimination so as to empower them, the women are deprived of equal social, political and economic status. Another



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important fact to be noted is that majority of women do not have knowledge of their fundamental rights and those who are aware are not able to implement them due to personal and political reasons. The word "empowerment" does not have a permanent or dependable meaning. Generally it is used to express a progression in which authority is set to certain under privileged segment. Empowerment is undoubtedly apprehensive with influence and principally with varying relationships of control its redeployment. Empowerment in the context of gender and development is defined as the process rather than the end product.¹

The fortitude of domination agreement is dependent on the response and participation of all these partition jointly with the powerless. In the course of supremacy can be responsible for initial control and power through coercive methods. Ideology of patriarchy is one the main reasons for the power is one of the key reasons for rise of the kind of power or control. According to Sharma women empowerment is a process aimed at changing the nature and direction of systematic forces which marginalize women.¹

AMBIGUOUS NATURE OF MIGRATION

Northeast region is politically hemmed in by the China in the North, Bhutan in the West, Bangladesh in the East and Burma in the South. Northeast India is comprised of eight states namely Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura.

The Northeast region is a hodgepodge of two races merge, the brown and the yellow; it is a junction of collaboration of different tribes coming from different ethnicity following different culture and traditions. It is on the whole a multi-ethnic society.

According to a survey conducted by Jamia Millia Islamia, women from the eight Northeastern states who stay in Delhi, Mumbai, Kolkata and Bengaluru have admitted to facing discrimination and harassment due to their skin colour, language and the way they dress.¹

India is known for its multi-dimensional features and multi-cultural aspects. Discrimination and violence against the people from Northeast, more specifically the women, is prevalent almost in all the States and major cities in the country. It is not a specific region or community restricted and the irony is that the so-called educated class is also the assailants of this crime.

Urbanisation has brought about tremendous developments in India and transformation of towns to cities and cities to metropolitans. Some of the biggest metropolitans in India are Mumbai, Delhi, Kolkata, Hyderabad, Bengaluru, Chennai and Ahmedabad. This transformation is an outcome not only of technological advancement, but also primarily due to migration. Though the purpose of migration varies from State to State and community to community, movement of people has been one of the important factors contributing to the economic progress. Among the people who migrate to other states, the people from Northeast are a major section. This has increased in the last two decades according to Centre for North East Studies and Research, Jamia Milia Islamia, New Delhi; there are over 200,000 populations of Northeast states living in Delhi. Most the Northeast states' migrants hardly return to their respective states after completing their studies.¹

THRUST FACTOR FOR MIGRATION

The Northeast states have always faced many continuous socio-political problems from the government side as well as anti-social elements. Recurrent public strikes result in unsmooth everyday life with the closing of shops, schools, colleges, offices, transport and many a times witness fake police encounters and violence from the insurgents. The youth and women especially found it difficult to lead their life. But globalization and liberation in India in 1990s was ventilation for the suffocated population. The people in the Northeast found an escape from the problems and made their way to the cities which were in the threshold of economic liberalization and privatization.

States of Northeast do not enjoy proper education and employment opportunities when compared to the other States. This is also a push factor which drives the youth to other states to continue their education. The metropolitan cities had better setting of educational prospects with numerous



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preferences of branches and this attracted young people from Northeast. This is an important reason for women to migrate. Globalisation on the other hand did not make an imprint on the Northeast. Hence private investments were not possible and so were employment opportunities.

People leave this region to pursue livelihood. Unemployment in the Northeast is high and the civil service jobs are difficult to access for those without connections.¹ Poverty is also another key reason for the young Northeast women to leave their towns into move into the cities. Most of these women seek jobs with more salary mainly to take care of their family, especially siblings who have not left their hometown. On the other hand the employers deprive the migrated Northeast women of their economic rights and equal rights in the workplaces.

PROBLEMS AT PUBLIC SPACE

Northeast women confront constrictions that encumber their movement and are victims of harassment, in different public spaces. They are persistently faced with little unpleasant incidents and there is no particular doer, there are many men who make use of odious language, who stare in an offensive way, whistle, etc. We have to differentiate between sexual assault and sexual harassment by a massive amount of small assault, which result in making the lives of Northeast women excruciating. Northeast women undergo insecurity in public space; they feel the fear of not being able to walk peacefully on the lane with no disturbance. Majority of men bestow themselves the right "flirt" and harass the women, encouraged by the ambiguity in the public space. Some of the men even go to the extent of verbally and physically assault Northeast women because they believe these women were simply craving the attention of the men. There are the chief victims in public space and due to the language problem the men often exercise the power of domination.

The Northeast women are often victims of verbal and psychological abuse in the public space; it is a way for them to exercise their fantasy of power and domination. Northeast women endure spiteful invective and disparaging remarks about their physical appearance and body structure, their clothes and language. These verbal assaults are a violation of human rights and women's privacy. The Northeast women also complain of stalking, which is a key impediment towards their movement. They face harassment on the streets every day like verbal acerbic, continuous stalking, groping, molestation and even awkward ogling.

When these women share their experience with their friends or acquaintances belonging to other communities, they are advised to dress respectable, not to go out for parties especially late night and with boys and forced to behave differently (not too foreign). If the Northeast women do not know the local language they face other woes which include charging of higher rates (on par with foreigners) by auto rickshaw drivers and street vendors to denial of equal rights.¹

This kind of ethical policing and scrutiny happens because a single Northeast woman is viewed as a glitch by the society. Many hostels have certain regulations and rules against women returning back to the hostels after dark. There is complete contradiction – on one side we can notice that a huge fraction of the Northeast women come out of their towns and villages to the other States exploring better educational opportunities, lifestyles and new jobs, but the society in which they start to lead their everyday life has not changed its mindset, hence many Northeast women face extreme difficulty and discrimination in finding a suitable place to stay.

Many women have and are still facing intervention of their landlords and hostel wardens in their lifestyle. Their every move is most of the times monitored, due to the general notion among the people that the lifestyle of these Northeast women is not "Indian" and hence not appropriate. There are exceptions in some cases that the people are willing or prefer to rent out their homes to the Northeast women, but with a condition that they stay as a group, avoid cooking certain meat and dishes, do not "bring home boys/men" from their community and also not to stay out in the night. Another risk is overcharge of the rent amount as they do not follow any kind of regulation; the landlords take advantage of the fact that the Northeast women do not have enough knowledge and



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awareness about housing and rent policies of the Government. The middlemen and property dealers also demand more money from the Northeast people.¹ Apart from the high rent rates and advance amounts, in several instances, the landlord refuse to ensure continued support in terms of ensuring basic facilities (such as water supply) and to take care of basic maintenance and repair of the living space.¹

PROBLEMS AT WORKPLACE

These results in the migrated women from Northeast are forced to work for lesser salary than the amount agreed or promised upon during the time of their recruitment. After their recruitment they also faced discrimination from their employers and co-workers and in many cases do not find a progress in the vertical growth in their career. They overlook or comprise on these tribulations mainly due to the fear of losing their job which is the main factor for their migration. Due to lack of knowledge of technology, not having high educational qualifications and language problem these women face lot of problems at workplace. The discrimination against the working women of Northeast region is a worst formed that occurs in many working places. The following discrimination points may be mentioned:

1. The number of women employed is less than men.
2. Women are forced to agree upon less salary when compared to men for the same nature of jobs.
3. The kind of job security is relatively low for Northeast women than men and do not find much progress in their career ladder.

Many young men and women have migrated to the major cities in search of better job opportunities. Large populations of Northeast women migrate to the cities for better jobs apart from the reason of education; many of them are employed in un-organised sectors like BPOs, hotels, restaurants, clothing outlets, beauty parlours and Spas.

Sexual harassment, molestations, stalking and rape are the chief crisis that Northeast women face at work places. Northeast women are regarded as feeble and defenseless and the employers as well as co-workers attempt to take sexual advantage from these women employees in response of additional remuneration and promotions. The Northeast women who are employed in IT and BPO sectors, which usually offer night shift jobs, face the security issue. These women also face milder forms of sexual harassments (coloured remarks/jokes, touching, staring and so on).¹

PROBLEM OF HUMAN TRAFFICKING

Human trafficking is one of the biggest problems which guzzle the women who hail from the Northeastern states. These Northeast women are involved in the business of flesh trade, willingly and unwillingly, in their own respective States, in other States of the country as well as the neighbouring countries like Myanmar, Bangladesh and Nepal. Majority of them are into this trade due to poverty and redundancy, moribund conventional or native economy, insurgency, urbanization, migration, dislocation, propinquity to the intercontinental boundary and incursion of defense workforce and businessmen.

Populaces who are under the line of poverty, who have inadequate job opportunities are the mainly exposed to human trafficking. The current observations can be slightly different; it shows that even the educated young girls from Northeast get entangled in the web of deceit and find themselves in the commercial trade. This also includes some section of the working Northeast girls and women who are intimidate into getting into the flesh trade. Seven Naga girls were rescued from the clutches of flesh trade in Chennai in July 2011 and sent home in November by members of the Miqlat Ministry which was assigned the task by the Directorate of Women Development and the Nagaland Government.¹

The sex trade and human trafficking is ever increasing and the when the NGOs and the Government agencies try to analyse and resolve it they find the documentation to be insufficient ; the difficultly in



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collecting the data was due to the fact that large number of cases were not reported when compared to the actual incidents taking place. Even the ones registered are exclusively result of the survivors who were rescued either by the police or by the NGOs. Hence the total number of human trafficking cases registered is not accurate.

The issue of human trafficking of the Northeast girls and women cannot and should be ignored as more as the blind eye attitude of towards this issue has so far resulted in the increase of the women population to be engulfed by the sex trade sector.

ROLE OF NGOs AND WELFARE GROUPS

Though the violence inflicted on Northeast women in all major cities are on the rise, official statistics do not reflect this as the aggregate figures rarely shown up in these reports.¹ Due the failure of the governments in the Northeast to tackle the problems of the people especially women and to bring about social and economic progress for its people, moved the responsibility on the shoulders of the activists and common people who had a sense of social awakening. The NGOs and Welfare associations were thus started in all the Northeastern States. This awakening came about after 1980s when the political environment in these States became gradually relaxed. Some of the predominant NGOs working for their betterment in their respective States as well as other States are Kuki Students' Organisation, Meghalaya Students' Representative, Assam Association, North East Development Welfare Society, India Northeast Tribal Community Welfare Society and the North East Welfare Association (Karnataka, Chennai and Gurgaon).

Among these the Northeast Students' Welfare Association has set up 24-hour emergency helplines.¹ The Mizo Students' Union, Kuki Students' Organisation, Manipur Students' Union, Arunachal Students' Welfare Association and three others have also started separate helplines to connect with students from the region. Awareness about the helpline numbers is created through social networking sites so that as many students get to know about it. They have also planned to put up notices on college notice boards mentioning the numbers.

The main objectives of these Welfare Groups and the NGOs is to strengthen, educate, offer support be it substantial, material, monetary, funding students for higher education and professional trainings, drive awareness on the importance and problems in health and employment. Some the other activities carried out by these welfare groups are free career -oriented seminars, career counseling, admission counseling, counseling for women and Job counseling.

SUGGESTIONS AND RECOMMENDATIONS

The current position of Northeast women who migrate to other States is a very big concern. This has been so long unattended to and ignored. The steps which need to be taken include not only the input and action from the Government but it majorly include the society as a whole. The author has tried to suggest few actions and changes to be concentrated for ending all kinds of discrimination of migrant Northeast women and to bring about holistic empowerment. They are as follows:

- Special programmes can be initiated by the Government for improving the job opportunities of the Northeast women.
- The Government must organise training the Northeast women in entrepreneurial skills so that they can be independent without economically depending on others.
- The educational standard should be improved in the Northeastern States in order to increase the number of young women who pursue higher education within the comforts of their respective States.
- Legislative awareness should be given to the Northeast women and proper implementation of such laws. Information on the "know how" of filing a complaint against any harassments and violations must be given in order to sensitize the public along with the local communities.



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- Public awareness should be given on topics such as sexual violence, human trafficking, and stalking, racial discrimination at domestic, public and workplaces. Student bodies, NGOs, community groups and social welfare communities should be involved in such awareness programs.
- The NGOs in the Northeastern States should involve in uplifting their women by organising awareness programs and workshops. This will help the women who migrate to other States to face the challenges at public and personal circles and to fight against any kind of discriminations. The NGOs and Welfare groups which are in other States should also not ignore the condition of the Northeast women. They should guide the migrant women to lead their lives in a safe and secure manner.

CONCLUSION

Human Rights, though as a phenomenon is something very modern, but as an idea has been crystallized in the very value and morals of mankind from its beginning. The concentration of HR in India for the west has been kindled and promoted only through the introduction of western education and western ideals.

The principles of social justice, social evils, social customs, discriminations, rights and duties are infused in almost all the courses or subjects offered in all schools, colleges and universities. But a complete transformation of the society into a values inculcated one is possible only when the youth are awakened.

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GENDER INEQUALITY: AN IRONIC SITUATION OF WOMEN

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Introduction:

Gender inequality persists worldwide, depriving women and girls of their basic rights and opportunities. Achieving gender equality and the empowerment of women and girls will require more vigorous efforts, including legal frameworks, to counter deeply rooted gender-based discrimination that often results from patriarchal attitudes and related social norms.

On the basis of data from 2005 to 2016 for 87 countries, 19 per cent of women between 15 and 49 years of age said they had experienced physical and/or sexual violence by an intimate partner. ¹In the most extreme cases, such violence can lead to death. In 2012, almost half of all women who were victims of intentional homicide worldwide were killed by an intimate partner or family member, compared to 6 per cent of male victims.¹

Unequal rights mean women are more likely than men to face poverty and be vulnerable to environmental disasters. Without social security safety nets, they are then exposed to gender-based violence and human trafficking. In Nepal, 12-20,000 women are abducted into forced labour and brothel-based sex work each year, with the poor at particular risk.¹ An added benefit of women's empowerment may be that it stems rural exodus. Women are less likely to down tools in rural areas and seek work in cities. In the *Hunza* region of Pakistan for example, 76% of households surveyed in 2014 showed had members leaving the valley, with 99% of these migrants being men.

With the right encouragement and funding, women's contribution to environmental protection can be huge. In turn, greater ownership of natural resources by women can improve their economic and political situation. To a great extent, social and cultural contexts determine gender relations: patriarchal values instilled from childhood influence the attitudes of both men and women throughout their lives. Laws prejudicial to women's rights and claims often enshrine those values, and many current trends further feed the gap. These include globalization, skewed economic development, social problems (including poverty, insecurity, lack of access to basic assets, fragmentation, fundamentalism, violence, wars and HIV/AIDS) and environmental issues (such as environmental degradation, pollution, disasters and ecological change). All of these pose specific challenges for Governments and institutions, from better information-collection and awareness-raising to proactive policies and development efforts.

A comprehensive perception of the underlying societal structures is required for effectively ensuring women's human rights and power relations that outlie and influence women's capability to relish their human rights. these power structures therefore have an impact on all aspects of life, from law and politics, to economic and social policy, family and community of life.

Violation of women's property rights:

There are various forms of human rights violations, especially, violation of property rights. It has been identified, since after independence also, many traditional societies in India don't accept the property right for women which is a very fundamental human right. This is because of the acceptance as the norm due to the prevalent attitude of male dominance and female subordination. Some of the cultural attitudes and practices in India that violate women's property rights both in paternal and matrimonial families. Further, there is gender discrimination in the form of non-inheritance of property, loss of matrimonial property due to issues like divorce, disinheritance of widow and it goes



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on. This biased cultural attitude against females lead to violations of human rights which is been guaranteed under Article 17 of UDHR.

As a consequence of women's insecure property rights hinder development by contributing to agricultural production at a very low rate and prevailing of rural poverty. Women's property rights violations are not only prejudiced or biased, they may prove fatal. As far as India is concerned, a complex mix of cultural, legal, and societal factors underlies women's property rights violation.

The CEDAW, under Article 5(a) obligates States "to modify the social and cultural patters of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women."

Violations faced in the sports field:

Universally gender ratios in sports field remain highly unequal. It not only found Athlete Santhi Soundarajan, whose silver medal which was won in the Asia 800 m in 2006 was taken off by the Olympic Council of Asia for the reason of failing a 'gender test' during the Doha Asian Games, 2006. It can be considered as one of the human right violations when she was made to run between pillar to post to get the test reports and where she was disgraced by making her to wait for hours without mentioning the reason why and what test is made to her.¹

On the other hand, the Beijing Platform for Action, calls for the States to take action for eliminating discrimination against girls in education, skills development and training which includes to encourage equal participation of girls in extracurricular activities like cultural activities, drama and sports¹

Persisting gender inequality in negotiations:

Statistics on peace processes indicates that 93% of participants in peace negotiations and 98% of signatories to peace agreements are men (UNIFEM, 2010). Besides, the UN Security Council Resolution 1325 recognises the importance of a gender perspective on peace and security including the role that women play in sustainable peace and security. There is most of the times a divergent view by the executing agencies.

Violation of Human Rights at the time of Conflict:

It's the duty of the state to protect its citizens at the time of conflict both of international and non international character. The 1949 Geneva Convention and its Additional Protocols also affirm the protection of civilians. Further it also provides special protection to women and children at the conflict zone. Despite, both international and nation protection assured, still violations are transpiring world wide. The recent conflicts in Srilanka and Syria, its consequences evidently proves that violations against women are increasing which is against the goals of international community.

The control of men over women's lives becomes even higher in times of conflict because of the symbolic value afforded to women-hood. It is undeniable that women are seen as property of men which renders them vulnerable during conflicts. As understood in historical wars established that rape is a commonly used weapon of war, by the hostile groups to dishonour the community as a whole. It is perceived as a triumph of power and utilized to humiliate the enemy. This leads to restrictions on clothing of women in few communities. In India, specifically in Kashmir women were compelled to cover their head and wear *burkas* (veils). Cases were reported on girls shot dead by 'suspected militants' for wearing jeans.¹ In 2002 in border districts of *Rajouri* and *Poonch* Taliban-style militants have issued deadlines for a *burqa* code threatening the non-complying women with mutilation and death.¹ The social issues faced by women are closely connected with their position in the society in the peacetimes. These kind of unaddressed discriminatory situations will surely pop-up at the time of conflict.

Widowhood is socially stigmatized in South Asia. Isolation, questions over dignity and individual identity as well as autonomy are the problems faced by a widow. Women mostly are



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dependent on their husband or father; sometimes due to the consequence of conflict disappearance or detainment or death of these person create serious consequences on dependent women. The are often refused inheritance, legally assured property rights and are sexually harassed. The worst part is the situation of widows is that of 'half-widows'- wives of men who have disappeared or have gone missing. Association of Parents of Disappeared Person (APDP) in Kashmir more than 10,000 people have been subject to enforced disappearance by state agencies. The women are frequently left without land, homes, inheritance, social assistance and pensions. They are equally vulnerable to harassment from men.¹

CONCLUSION

It's a known fact that the obligations of States to protect and enforce human rights clearly encompass the duty to protect women from violations committed by third party. The international community has framed many conventions protecting the women rights. Specifically, under Article 2(e) The Convention on the Elimination of All Forms of Discrimination against Women specifically addresses the obligation of States to address discrimination against women perpetrated by any person, organization or enterprise. 2(f) of The Convention specifies concerns the modification an abolition not only of discriminatory law and regulations but includes customs and practices which are degrading and discouraging women. Further it is notable that the Convention covers both public and private acts.

Barriers that prevent women from accessing the benefits of the resources, such as low-literacy rates, marginalization and limited mobility need to be addressed.

Governments and the international community to endow women in the political and economic engagement of women in natural resource management and to end the entrenched discrimination that women face in accessing, owning and using critical natural resources in sustainable and productive ways.

Women's leadership in decision-making, including affirmative action measures in political participation at all levels; and in the private sector must be prioritized. In 2000, Security Council Resolution 1325 on women, peace and security recognized the vital roles and contributions of women in building peace. Several resolutions have since elaborated on this theme, including Resolution 2122 (2013), which recognizes that the economic empowerment of women greatly contributes to the stabilization of societies emerging from armed conflict.

This clearly exhibits vigour of women which must not only acclaimed but also recognized by both family and international community. The International community as like encouraging women in education, women empowerment, research in the field of women's sports. Further, guarantee for a safe and healthy environment where various kinds of harassment and violence must be concentrated. Ultimately, programmes educating the importance of sports, notably through schools and colleges will also be essential for the initiation of young women who can be encouraged. Of course the Millennium Development Goals are significant political obligations which has galvanized global appreciation and support for many daunting problems in the world.

Its important to pinpoint at this juncture that Goal 3 of MDG which promote gender equality also has included the women participation in wage employment specifically in national parliaments and non-agricultural sector, but these do not have benchmarks.

Additionally, its important for the international community on the whole to draw attention to the plight of women in conflict situations and urge for conceivable solutions. In 2017, the women's participation in single or lower houses of national parliament has touched 23.4%. its only 10% higher comparatively in 2000.¹ Effective ambitious measures and stronger political commitment in this issue are required to boost women's political participation and empowerment.

In the year 2000, the United Nations General Assembly adopted the Millennium Declaration. India is a signatory to the Declaration. Besides significant progress, with few targets



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having been met ahead of the 2015 deadline, yet progress has been inconsistent. For example, according to India's official national estimates, it has achieved the target for reducing poverty by half but falling short of achieving the target for reducing hunger. Which is a considerable reason for affecting female in general. The country being on progressive path to achieve gender parity at all educational levels, yet female literacy is declining comparatively with male. It is signifying women's poorer learning outcomes and opportunities. Education being a fundamental right in India, which forms a basis of other developments, progress in women education is at a low progress. As on 2015 August, India, one of the world's largest democracy, has only 65 women representatives out of 542 members in Lok Sabha, 31 female representatives in the 242 in Rajya Sabha. Therefore, the proportion of seats in National Parliament held by women is only 12.24% against the target of 50%.¹ It is a clear indicator that India specifically women development is not in achievable progress.

"Equal rights, opportunities and access to resources, equal sharing of responsibilities for the family by men and women, and a harmonious partnership between them are critical to their well-being and that of their families as well as to the consolidation of democracy." It is a genuine expectation of every woman world wide for structuring her own life.



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GENDER JUSTICE AND DEVELOPMENT GOALS IN MODERN ERA

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Introduction

Women have been deemed to as the second best God on earth and praised and respected in literature and religion of Indian Society as Devi and Shakti. Currently their actual position is pathetic, while they are coming out in four walls of home. They are treated as second class citizenry. The human rights of women and of girl child are the inalienable, integral and indivisible part of human rights. Unfortunately there exists a gap between rights and their enjoyment in reality. Human Rights issues which affect women play an important role in maintaining peace in the Society. The world community has recognized Human Rights of women as an integral and indivisible part of universal Human Rights. Human Rights of women gained considerable visibility in recent years.

Concept of Gender Justice and Equality

Gender justice is often used with reference to an emancipate projects that promote women's rights through legal changes and women's interests in social and economic policy. Any concrete definition of gender justice is based on a specific political ideology, a set of convictions about what is 'right' and 'good' in human relationships, and how these desirable outcomes may be Attained. "Gender justice is about more than simply questioning the relationship between men and women. It involves crafting strategies for corrective action toward transforming society as a whole to make it more just and equal and it means 'a place in which women and men can be treated as fully human'. Moreover, it implies moving away from arbitrary to well-reasoned, justifiable and balanced - that is, fair - social relations."

Gender justice is to redress for inequalities between women and men that result in women's subordination to men. Seeing gender justice as outcome and as process helps differentiate between what is to be achieved and how it is to be achieved. As an ongoing process, gender justice brings an additional essential element: accountability, which implies the responsibility and answerability of precisely those social institutions set up to bestow justice.

International Perspective on Women rights

Human rights for women came into sharp focus with the adoption of the Convention on Elimination of All Forms of Discrimination Against Women by the General Assembly of the United Nations on 18th December 1977. This is treated as the Magna Carta of women's human rights. State parties are required by convention to eliminate discrimination in the exercise and enjoyment of all cultural, civil, political, economic and social rights¹.

The charter of the United Nations Organization affirms faith in equal rights of men and women. The Universal Declaration of Human Rights, 1948, professes the principle of non-discrimination and proclaims that all human beings are born free and equal in dignity and rights, without any distinctions including that of sex.

The UN General Assembly unanimously adopted a Declaration of Eliminations of Discrimination against Women in 1967, resolving to abolish sex-discriminatory laws and practices, to grant women equal rights with men in matters of Civil law including absolute interest in property and free choice and consent in marriage.

The Second World Conference on Human Rights held at Vienna in 1993, called for full and equal participation of women in all aspects of public life and various sessions were held by United Nations General Assembly to assess the progress made by state parties in the implementation of their commitment on gender equality.



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The International system has seen great strides towards gender equality and protection against violence in society, community and in the family. In addition, key human rights mechanisms of the United Nations have affirmed State obligation to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity. However, the International response to human rights violation based on sexual orientation and gender identity has been fragmented and inconsistent¹. Many state and societies impose gender and sex orientation norms on individuals through custom, law and violence and seek to control how they experience personal relationship and how they identify themselves. The policing of sexuality remains a major force behind continuing gender-based violence and gender inequality.

National Perspective on Women rights under the Constitution Provisions

The status of women is a benchmark of social process and is a very important part of the human development index in the human rights jurisprudence. The Fundamental Law of the land namely Constitution of India guarantees equality for women. It would be proper to refer some of the most important legislations pertaining to empowerment of women. The Constitution of India not only guarantees equality to women but also empowers the State to adopt measures to positive discrimination in favour of women.

The principle of Gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. Article 14 of the Constitution of India guarantees equality before law. Article 15 prohibits discrimination on the grounds of sex. Article 16 states about equality of opportunity for all citizens in matters relating to employment. The 73rd and 74th amendments to the Constitution of India provided for reservation of seats (at least 1/3) in the local bodies of Panchayats and Municipalities for women. Another Constitution Amendment (84th Constitution amendment) reserving 33 per cent in parliament and State Legislature is in the pipeline. Article 15 prohibits discrimination against any citizen on the grounds of religion, race, caste, sex, etc., Article 15(c) of the Indian Constitution allows the State to make any special provision for women and children. Article 39 (a) mentions that the State will direct its policies towards securing all citizens, men and women, the right to means of livelihood, while Article 39(c) ensures equal pay for equal work. Article 42 directs the State to ensure just and human working conditions.

The Constitution imposes fundamental duty on every citizen through Article 15 (A) (e) to renounce practices derogatory to the dignity of women. Article 243-D of the Constitution contains that not less than 1/3rd of the total number of seats to be filled in direct election in every Panchayat shall be reserved for women. The 73rd and 74th Amendments to the Constitution, effected in 1992, provide for reservations of seats to women in elections in the Panchayats and Municipalities. Same provisions have been made in Article 234-T for reservation of seats to women in the direct elections to every Municipality. Thus, there is a reservation of 33% seats for women in local bodies.

Modern Development through the judicial proceeding

The Supreme Court of India has taken several steps to progress the gender justice and equality through its decisions.

In *Valsamma Paul*¹, it has been ruled that human rights for women comprehends gender equality and it is also traceable to the Convention for Elimination of All Forms of Discrimination against Women. Human rights for women, including girl child are inalienable, integral and an indivisible part of universal human rights. The full development of personality, fundamental freedoms and equal participation by women in political, social, economic and cultural life are held to be concomitants for national development, social and family stability and growth—cultural, social and economical. All forms of discrimination on grounds of gender are violation of fundamental freedoms and human rights. Conferment of equal status on women apart from being a constitutional right has been recognized as a human right.



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In *Bodhisattwa Gautam*¹, the Court observed that women have the right to be respected and treated as equal citizens. Accentuating on the concept, it proceeded to state thus: -

“ Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. Women, in them, have many personalities combined. They are mother, daughter, sister and wife and not playthings for centre spreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and, of course, independence to live the roles assigned to them by nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of men anywhere and in every part of the world.”

In *Kharak Singh*¹, the Court has recognized that a person has complete rights of control over his body organs and his ‘person’ under Article 21. It can also said to be including the complete right of a woman over her reproductive organs.

In *Chandrima Das*¹, - it was case of gang-rape of a Bangladeshi national by the employees of the Indian Railway in a room at Yatriniwas at Howrah Station. These employees managed the Yatriniwas, the Government contended that it could not be held liable under the law of torts as the offence was not committed during the course of official duty. However, the Court did not accept this argument and stated that the employees of Union of India, who are deputed to run the railways and to manage the establishment, including the Railway Stations and Yatriniwas are essential components of the government machinery which carries on the commercial activity. If any such employee commits an act of tort, the Union Government of which they are the employees can, subject to other legal requirement being satisfied be held vicariously liable in damages to the person wronged by those employees. The victim was awarded by the Court with a compensation of Rs.10 lakhs for being gang raped in Yatriniwas of Railways. Since the right is available to non-citizens also, the reach of the right is very wide.

In *Vishakha*¹, the Court took a serious note of the increasing menace of sexual harassment at workplace and elsewhere. Considering the inadequacy of legislation on the point, the Court defined sexual harassment and laid down instruction for the employers and thereafter the Court observed that

“Each incident of sexual harassment of woman at workplace results in violation of fundamental rights of “Gender Equality” and the “Right to Life and Liberty”.

In *Nargesh Meerza*¹ the Air India and Indian Airlines Regulations were challenged as violative of Article 14. Regulation 47 empowered the Managing Director, at a time beyond the age of retirement, upto the age of 45 years, if an air hostess was found medically fit. The Court struck down the Regulation providing for retirement of the air hostess on her first pregnancy, as unconstitutional, void and violative of Article 14. Court also said that it was not only manifestly unreasonable and arbitrary but contained the equality of unfairness and exhibited naked despotism and was, therefore, clearly violative of Article 14.

Personal laws relating to Gender Equality

In *Thota Manikayamma*¹ case the court, while interpreting section 14 of Hindu Succession Act, 1956 converting the women’s limited ownership of property into full ownership has observed “Article 15 (3) relieves from the rigour of Article 15(1) and charges the State to make special provision to accord to women socio-economic quality...As a fact Article 15(3) as a forerunner to common code does animate to make law to accord socio-economic equality to every citizen of India irrespective of religion, race, caste or religion”.

The mother cannot be natural guardian of her children during the lifetime of her husband¹. When the matter relating to mother as natural guardian was questioned, the court held that relegation of mother to inferior position to act as natural guardian is violation of Articles 14 and 15.



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The guardianship right of women has undergone sea change by this interpretation by the Court in *Gita Hariharan*¹ case. Despite the codification there are some discriminatory provisions.

In maintenance gender and communal biasness exists, a non-Hindu wife cannot claim maintenance from her Hindu husband whereas a Hindu wife enjoys right to live separately from her husband on his conversion without forsaking her right of maintenance. The conversion of spouse furnishes ground for divorce to non-covert spouse only, thus treats the change of religion as matrimonial offence.¹ The children born to convert Hindu are disqualified from inheriting property of their Hindu relative.¹ A significant judgment of Supreme Court in *Sarla Mudgal*¹ case and *Lily Thomas*¹ case concerning polygamy of Hindu and Christian men respectively after conversion to Islam raised the debate of discrimination and demand of UCC.

The Muslim personal law had incorporated more rigid and unfair usages. The Muslim law permits polygamy (four wives at a time) to Muslim male but wife do not have same option. Though Supreme court has taken progressive step in *Shah Bano*¹ case entitling women for maintenance under criminal code beyond *Iddat* period but the government of India for doing so called justice with male community passed Muslim Women (Protection of Rights on Divorce) Act 1986 (MWA, 1986) to nullify the effects of *Shah Bano* case.

Moreover, recently our apex court has taken yet another progressive step in *Shayara Bano*¹ case 'talaq-e-biddat' – triple talaq is unconstitutional. It is violating the constitutional provisions.

Conclusion

It is general idea that despite constitutional safeguards, statutory provisions and plethora of pronouncements to support the cause of equality of women, changes in social attitudes and institutions have not significantly occurred. But, there has to be total optimism to achieve the requisite goal. It is necessary to accelerate this process of change by deliberate and planned efforts so that the pernicious social evil of gender inequality is buried deep in its grave. Laws written in black and white are not enough to combat the evil. So we want a common law to preserve, protect and promote gender justice and equality in the modern era.

End Notes:

1. ¹Manoj Kumar Sinha- Handbook of Legal Instruments on International Human Rights and Refugees Laws (Edition 2014) LexisNexis p.533.
2. ¹*Ibid*
3. ¹(1996) 3 SCC 545
4. ¹(1996) 1 SCC 490
5. ¹AIR 1963 SC 1295
6. ¹(2000) 2 SCC 465
7. ¹AIR 1997 SC 301
8. ¹AIR 1981 SC 1829
9. ¹(1991) 4 SCC 312
10. ¹Sec 6, Hindu Minority and Guardianship Act, 1956
11. ¹AIR 1999 SC 1149
12. ¹Sec 13 (1)(ii) Hindu Marriage Act 1955
13. ¹Sec 26, Hindu succession Act 1956
14. ¹Sarla Mudgal v. Union of India (1995) 3 SCC 635
15. ¹Lily Thomas v. Union of India SCC 2000 vol. 2, page 224
16. ¹Mohd. Ahmed Khan v. Shah Bano Begum AIR 1985 SC 945
17. ¹Shayara Bano v. Union of India and others Writ Petition (C) No. 118 of 2016



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WOMEN'S RIGHTS UNDER INDIAN LABOUR STATUTES - AN ANALYSIS

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INTRODUCTION

Women make up a vital part of the economic and social fabric that hold their communities together, yet that work is rarely valued at the same level as is men's work. Much of this has to do with what opportunities are available to them. Women are disproportionately likely to be poor, under-educated, employed in low-wage or unpaid work, and subject to dismissal for getting married or having children. In many industries, female workers are systematically denied their rights to regular pay and regular working hours; equal pay for equal work; permanent contracts; safe and non-hazardous work environments; and freedom of association. Egregious abuses, including sexual violence, harassment and forced pregnancy tests, are all too common.

Moreover, the social status of women has not opened up at the same pace at which women have been brought into the workplace. They may have increasing opportunities at work, but they are prone to domestic violence and unequal expectations at home. It has become a mantra at development organizations, including the World Bank and United Nations, that investing in women is the best way to improve a range of societal concerns and that women's full participation in society is a critical factor in economic development. But more importantly, women's rights groups have long recognized that full equality is not possible unless women can speak out for themselves.

WORKING WOMEN LABOUR LAWS

Women are known to work on farms, in road and housing construction, and of late, in factories manufacturing garments and electronic assembly plants. Skilled women workers also have been working in traditional village industries either as self employed or as paid workers. In hill areas, search for forest products including fuel wood engages a fairly large number of women. The majority of women work in the unorganized sector for low wages and at low levels of skills. The number of women workers during the last four decades has more than doubled from 40 million to 90 million. Women constitute a significant part of the workforce in India but they lag behind men in terms of work participation and quality of employment. According to Government sources, out of 407 million total workforce, 90 million are women workers, largely employed (about 87 percent) in the agricultural sector as laborers and cultivators.

EMPLOYMENT OPPORTUNITIES AND WAGE DISPARITY

In India, as in many developing countries, gender inequality persists in terms of women participation in labour force, lower wages and salaries of women and access to resources. The percentage share of female population in total population in India is around 48%, while the work participation rate of females is only 26% as compared to 52% in males. About 24.9% of women in rural areas and about 14.8% of women in urban areas were in the workforce in India during 2004-05 (UNCTAD report).

In urban areas, on an average wage/salary paid to females is only 75% of that paid to males, while in rural areas females are paid 58% of what is paid to the males. This wage disparity differs across sectors and education levels.



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APPLICABILITY OF LABOUR LAWS FOR WOMEN

In addition to the Maternity Benefit Act, 1961 almost all the major central labour laws are applicable to women workers. The Equal Remuneration Act was passed in 1976, providing for the payment of equal remuneration to men and women workers for same or similar nature of work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law. The situation regarding enforcement of the provisions of this law is regularly monitored by the Central Ministry of Labour and the Central Advisory Committee. In respect of occupational hazards concerning the safety of women at workplaces, in 1997 the Supreme Court of India in the case of Vishakha Vs. State of Rajasthan [(1997) 6 SCC 241] held that sexual harassment of working women amounts to violation of rights of gender equality. As a logical consequence it also amounts to violation of the right to practice any profession, occupation, and trade. The judgment also laid down the definition of sexual harassment, the preventive steps, the complaint mechanism, and the need for creating awareness of the rights of women workers. Implementation of these guidelines has already begun by employers by amending the rules under the Industrial Employment (Standing Orders) Act, 1946.

PROVISIONS FOR THE PROTECTION OF WOMEN UNDER LABOUR LAW

Under the Industrial laws the women have been bestowed the special position in the view of their unique characteristics, physically, mentally and biologically. Some of the Acts related to employment were enacted during British period as well as after independence. The main objectives for passing these laws are to enable the women to increase their efficiency, to increase their participation in useful services, to ensure their infant welfare and to provide equal pay for equal work. The important labour legislations covering the women are:

1. The Factories Act, 1948

The Factories Act is a part of labour welfare legislations wherein measures have been laid down to be adopted for the health, safety, welfare, working hours, leave and employment of young persons and women. Exclusive provisions for women have also been incorporated in the Act keeping in view their soft and tender personalities.

Provisions for welfare of women:

- Prohibition of employment of women during night hours
- Prohibition of work in hazardous occupations.
- Prohibition of employment of women in pressing cotton where a cotton opener is at work
- Fixation of daily hours of work at nine.
- Fixation of maximum permissible load.
- Provision for crèche

In every factory where more than 30 women workers are ordinarily employed, there shall be a suitable room for the use of children under the age of six years of such women.

- Provision for washing and bathing facilities. The Act provides for separate and adequately screened washing and bathing facilities for women.
- Provisions for toilets. The factories Act must make it obligatory for any factory owner to maintain an adequate number
 - of latrine and urinals separate for women.
- Provisions for rest rooms and canteens.
- Provisions for mandatory benefits.

All the above provisions are simultaneously provided under The Plantations labour Act 1951, The Mines Act 1952, The Beedi and Cigar workers (conditions of Employment) Act 1966, The Contract Labour (Regulation and Abolition) Act 1970 and The Interstate Migrant Workmen (Regulation of Employment and condition of services) Act 1979.



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2. The Employees' State Insurance Act, 1948

The Employees' State Insurance Act, one of the most important social legislation in India, it has been enacted to provide for various benefits in different contingencies. Under this Act, insured women workers get sickness benefit, disablement benefit, medical benefit and funeral expenses along with insured men workers. However, in addition to these benefits, insured women workers also get maternity benefit in case of certain contingencies arising out of pregnancy, confinement, miscarriage, sickness arising out of pregnancy, premature birth of child or miscarriage and death. The duration of maternity benefit available to insured women in case of confinement is 12 weeks, of which not more than 6 weeks shall precede the expected date of confinement. The maternity benefit is paid subject to the condition that the insured women do not work for remuneration on the days in respect of which the benefit is paid. In the event of the death of an insured woman, the maternity benefit is payable to her nominee or legal representative for the whole period if the child survives, and if the child also dies, until the death of the child.

The Employees' State Insurance Act, 1948 provides a scheme under which the employer and the employee must contribute a certain percentage of the monthly wage to the Insurance Corporation that runs dispensaries and hospitals in working class localities. It facilitates both outpatient and inpatient care and freely dispenses medicines and covers hospitalization needs and costs. Leave certificates for health reasons are forwarded to the employer who is obliged to honour them. Employment injury, including occupational disease is compensated according to a schedule of rates proportionate to the extent of injury and loss of earning capacity. Payment, unlike in the Workmen's Compensation Act, is monthly. Despite the existence of tripartite bodies to supervise the running of the scheme, the entire project has fallen into disrepute due to corruption and inefficiency. Workers in need of genuine medical attention rarely approach this facility though they use it quite liberally to obtain medical leave. There are interesting cases where workers have gone to court seeking exemption from the scheme in order to avail of better facilities available through collective bargaining.

3. The Maternity Benefit Act, 1961

Economic dependence of women is what gives rise to their subordination in society today. Hence to remove such subordination and lay the foundation of equality women too must be made economically independent and must take an active role in all sectors of business today. Problem faced by women in the economic sphere of life are mostly relating to unequal wages and discrimination resulting from their biological role in nature of childbearing. To curb such problems and protect the economic rights of women the legislature introduced the Equal Remuneration Act, 1976 and Maternity Benefit Act, 1961.

A maternity benefit is one that every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the rate of average daily wages for the period of her actual absence. The Maternity Benefit Act aims to regulate of employment of women in certain establishment for certain periods before and after childbirth and provides for maternity and certain benefits.

Women can claim benefits under the act everywhere except in factories and the other establishment where the Employee's State Insurance Act is applicable. Women who are employed, whether directly or through a contractor, have actually worked in the establishment for a period of at least 80 days during the 12 months are eligible to claim the benefits under this act. Cash benefits to women who are absent from work during the maternity leave, are not be less than two-thirds of her previous earnings.

Discharge or dismissal during maternity leave is considered to be void. When pregnant women absents herself from work in accordance with the provision of this act, it shall be unlawful for her employer to discharge or dismiss her during, or on account of, such absence, or give notice of



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discharge or dismissal in such a day that notice will expire during such absence or vary to her disadvantage any of the conditions of her services. Dismissal or discharge of a pregnant woman shall not disentitle her to the maternity benefit or medical bonus allowable under the act except if it was on some other ground.

Failure to pay maternity benefits or discharge or unemployment of woman due to maternity will result in imprisonment of the employer for not less than three months which may extend to one year and a fine of rupees two hundred which may extend to five thousand.

In **Air India v. Nargesh Mirza** [AIR 1981 SC 1829; 1981 (4) SCC 335], the Supreme Court struck down the provision of rules which stipulated termination of service of an air hostess on her first pregnancy as it arbitrary and abhorrent to the notions of a civilized society.

The ongoing argument in some circles is that the wage differential between women and men is caused by the need to compensate the higher labour costs employers incur by hiring women, in accordance with special laws to protect maternity. Employers prefer to hire a male instead of female, without the burden of these additional monetary costs. This is however not enough as many employers do not hire married women or dismiss them before pregnancy. The act provides some protection to women economically especially today in an age where single mothers are becoming more prevalent it gives them stability in their lives to have their wages and the security of returning to a steady job. My personal views are that this act is not enough to guarantee women equality and economic security but it is definitely a starting step and though there are several bridges to cross.

4. The Equal Remuneration Act, 1976

Equal pay for equal work for women and men is a vital subject of great concern to society in general and employees in particular. There was a common belief that women are physically weak and should be paid less than their male counter parts for the same piece of work. Women all over the world, had till recently been very much inarticulate and were prepared to accept lower wages even when they were employed on the same jobs as men. Even in the economically and socially advanced countries where remarkable progress has been made, discrimination still exists. In India, in the initial stages when legislation for the protection of workers was hardly thought of, factory owners taking advantage of the backwardness and poverty, recruited women on a large scale at lower wages and made them work under inhuman condition. International Labour Organization has evolved several conventions to provide protection to employed women. A number of ILO conventions have been ratified by India and some of these though not ratified have been accepted in principle. The principle of ILO has been incorporated in the constitution of India in the form of Article 39, which directs the states to secure equal pay for equal work for both men and women. To give effect to this constitutional provision the parliament enacted the Equal Remuneration Act, 1975.

Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law. The situation regarding enforcement of the provisions of this law is regularly monitored by the Central Ministry of Labour and the Central Advisory Committee.

5. The Workmen Compensation Act, 1923

In any industrial society the problem of labour management relations becomes so important that some sort of social insurance becomes necessary to provide adequate protection from losses caused to the labourers by accidents. With a view to improve the condition of the workmen some social insurance legislations have been enacted. The Workmen's Compensation Act 1923 is one of the earliest pieces of labour legislation, adopted to benefit the labourers. It covers all cases of accident 'arising out of and in the course of employment' and the rate of compensation to be paid in a lump sum, is determined by a schedule proportionate to the extent of injury and the loss of earning capacity. The younger the worker and the higher the wage, the greater is the compensation subject to a limit. The amount of compensation payable depends in case of death on the average monthly wages



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of the deceased workman and in case of an injured workman both on the average monthly wages and the nature of disablement. The Act intended to ensure the rehabilitation of the workman himself or of his dependent. The dependent can claim compensation in both cases i.e. death or injury. This law applies to the unorganised sectors and to those in the organised sectors who are not covered by the Employees State Insurance Act, 1948 which is conceptually considered to be superior to the Workmen's Compensation Act.

6. The Minimum Wages Act, 1948

The minimum wages Act was passed for the welfare of labours. This Act has been enacted to secure the welfare of the workers in a competitive market by providing for a minimum limit of wages in certain employments. The Act provides for fixation by the central government of minimum wages for employments detailed in the schedule of the Act and carried on by or under the authority of the central government, by railway administrative or in relation to a mine, oilfield or major port, or any corporation established by a central Act, and by the state government for other employments covered by the schedule of the Act. The object of this Act is to prevent exploitation of the workers and for this purpose it aims at fixation of minimum wages which employer must pay.

The Act contemplates that minimum wages rates must ensure not only the mere physical need of the worker which would keep him just above starvation but must ensure for him not only his subsistence and that of his family but also preserve his efficiency as a worker. It would therefore, provide not merely for the bare subsistence of his life but the preservation of the workers and so must provide for some measure of education, medical requirements and amenities.

7. National Rural Employment Guarantee Act, 2005

Recently, the Government of India enacted National Rural Employment Guarantee Act whereby anyone who is willing to provide manual unskilled labour will be offered wage employment for 100 days. This Act provides the enhancement of the livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work.

Priority is given to women in the allocation of work. Gender equality is one of the core elements of this poverty reduction plan which stipulates that at least one third of the labour force should be women with equal wages for both men and women. Various gender related objectives such as provision of hygienic work environments, safe drinking water, and childcare facilities at the work-site, distance of work-place not exceeding two miles from home, health care and nutrition are emphasized.

Women engaged in agricultural farming have to spend long hours under the hot sun but are invariably paid less than their male counterparts. Women's participation in the labour force with no wage discrimination and direct control of resources and assets can substantially enhance her health, child welfare and socioeconomic status. This employment policy if properly implemented can certainly bring momentous changes in the lives of women.

The employment scheme undoubtedly has a positive impact on gender equity and power equation within the household. An alternative model of development must focus on the enhancement of living standards of rural India where majority of the population resides.

8. The Contract Labour (Regulation & Abolition) Act, 1970

Provisions of crèches were made where twenty or more women are ordinarily employed as contract labour. Female contract labour is to be employed by any contractor between 6.00 A.M. and 7.00 P.M. only with the exception of mid-wives and nurses in hospitals and dispensaries.

PRESENT STATUS OF WOMEN AT WORK

1) Participation of women in the workforce in 2008 is only:

- 19.7% in the urban sector, and
- 37.6% in the rural sector.



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2) Women's wage rates are, on an average:

- only 75 % of men's wage rates, and
- constitute only 25% of the family income

3) In no Indian State do women and men earn equal wages in agriculture.

ILO Instruments on Labour Standards concerning Women Workers

Elimination of Discrimination

Equal remuneration for work of equal value

The Equal Remuneration Convention (No. 100) and Recommendation (No. 90), 1951 apply to all workers in all economic sectors, private or public. These instruments set out principles for national policy on how to promote and secure equal remuneration for men and women workers for work of equal value. The accompanying Recommendation gives guidelines and sets out special procedures for a step-by-step application of these principles.

Non-discrimination in the employment relationship

The Discrimination (Employment and Occupation) Convention (No.111) and Recommendation (No. 111), 1958 aim at the elimination of discrimination in the employment relationship through effective application of appropriate national policies and measures to implement such policies. They apply to all workers in all sectors of activity. The Convention defines seven specific types of discrimination, including discrimination based on the sex of a worker. States which ratify the Convention are obliged to formulate and apply appropriate policies with the aim of promoting equality of opportunity and treatment and eliminating discrimination. The accompanying Recommendation suggests specific principles for implementing such policies.

Moreover, the Indigenous and Tribal Peoples Convention (No. 169), 1989 stipulates that indigenous men and women shall enjoy equal opportunities and equal treatment in employment, and protection from sexual harassment.

Work and Family Responsibility

Full equality of opportunity and treatment between men and women workers also requires the promotion of equality with regard to workers with family responsibilities.

The Workers with Family Responsibilities Convention (No. 156) and Recommendation (No. 165), 1981 aim at creating equality of opportunity and treatment in employment and occupation between men and women workers with families, and establishing equality of opportunity and treatment in employment and occupation between men and women workers with family responsibilities and those without such responsibilities. The Convention is applicable to all workers with family responsibilities in all sectors of activity. It requires ratifying States to make equality of opportunity and treatment for workers with family responsibilities the objective of national policy, to be promoted by appropriate measures. The supplementing Recommendation stipulates more detailed policies and appropriate measures regarding vocational training, employment and employment conditions, and contains additional provisions on family and childcare services and institutions as well as social security.

Protection of Maternity and the Health of Women

The main instruments for maternity protection are the Maternity Protection Convention (No. 183) and Recommendation (No. 191), 2000.

These instruments apply to all women in all employment relationships. The Convention sets out specific provisions to ensure the health and well-being of a woman and her child during maternity, e.g. by providing health protection at work, maternity leave, social benefits, protection against dismissal and discrimination based on maternity, and breast-feeding breaks. The Convention provides for 14 weeks of maternity leave, while the Recommendation provides for 18 weeks in certain circumstances. Convention No. 183 is considered the most up-to-date instrument on maternity protection. Previous instruments on the subject, the Maternity Protection Convention (Revised), 1952 (No. 103) and the Maternity Protection Convention, 1919 (No. 3), remain in force for States that have



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ratified them, although they are encouraged to consider ratifying the more recent Convention No. 183.

Night Work and Underground Work

The Night Work Convention (No. 171) and Recommendation (No. 178), 1990 apply to men and women. Especially for women workers, the Convention requires alternatives to night work before and after childbirth and during pregnancy, if it is deemed necessary to protect the health of the mother or child. The Night Work (Women) Convention (Revised) (No. 89), 1948 obliges ratifying States to prohibit women from working in industrial undertakings at night. The 1990 Protocol to the Convention permits variations in the duration of night work and exemptions from the prohibition of night work.

The Underground Work (Women) Convention (No. 45), 1935 prohibits the employment of women in mines, which exposes them to specific underground work hazards.

Other ILO Instruments of Relevance to Women Workers

The ILO Declaration on Fundamental Principles and Rights at Work adopted in 1998 contains the principles embodied in the standards on equal remuneration for work of equal value and non-discrimination in the employment relationship.

The Declaration on Equality of Opportunity and Treatment for Women Workers adopted in 1975 sets forth principles for international and national action as targets to be achieved progressively in relation to the overall objective of equality of opportunity and treatment of women, and their integration into economic and social life.

A Resolution and Plan of Action of 1975 of the International Labour Conference laid out more concrete national and international action to be taken with a view to ensuring the implementation of the principles and targets of the 1975 Declaration, specifically emphasizing the importance of ratifying and applying ILO Conventions and Recommendations. The Conference later examined the progress achieved in this regard and adopted a new resolution and plan of action, adopted in 1985.

Conclusion

It can be seen from the multiple special provisions made for the welfare of women that both at the national and international levels, there has been a movement towards the empowerment of women in labour law. There has been a clear move towards making equal pay, equal access to opportunity, prevention and redressal of sexual harassment and provision of maternity benefits a reality in India. In fact a majority of laws in relation to the special provisions for women have been modelled after the ILO conventions.

India being a founding member of the ILO has tried very hard to stick to the standards provided by the ILO in theory at least. The special rights provided to women in various labour laws (i.e. The Factories Act, 1948, The Mines Act, 1952, The Plantation Labour Act, 1951, The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996, The Beedi and Cigar Workers (Conditions of Employment) Act, 1966, The Contract Labour (Regulation and Abolition) Act, 1970, The Inter- State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, The Maternity Benefit Act, 1961, The Employees' State Insurance Act, 1948, The Employees' Provident Funds and Miscellaneous Provisions Act, 1952, The Payment of Gratuity Act, 1972, and The Workmen's Compensation Act, 1923, Minimum Wages Act, 1948, Payment of Wages Act, 1936 and Equal Remuneration Act, 1976) are proof of this.

However it is important to note that some of these protective legislations have backfired and proved to be counterproductive in nature. For instance the prohibition of night work by many legislations has deprived women labourers of the agency of deciding for themselves whether or not they would like to work at a certain time or not. In many instances women workers who are willing to and want to work overtime or night shifts are unable to do so because of these regulations leading to a gross denial of the right equal opportunity of employment to women. The only way to solve such issues in



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socially rather than legally, i.e. by making the work environment safer through social intervention, legal rules that are paternalistic in nature can be relaxed.

The next level of effort that Indian needs to make is to develop effective implementation and redressal mechanisms. The best way to ensure effective implementation of these provisions and redressal of any complaints is to begin implementation at a grassroots level, i.e. at the level of individual enterprises, and employers. This will ensure that the actions are more specific in nature and will bring about more concrete outcomes.

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LEGAL PROVISIONS ENSURING RIGHTS OF INDIAN WOMEN

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INTRODUCTION:

After Independence lots of provisions have been introduced to improve the social condition of women and to give them a platform where they can utilize their potential for their betterment and contribute positively towards the growth of their country. It is fact that the in the present era position and development of any country is dependent on the socio-economic position of its women. The legal provisions which enhanced the value of present women can be divided into two parts:

1. Constitutional provisions
2. Special laws and
3. Indian penal code

Constitutional provisions to ensure dignity of women

Lots of provisions have been introduced through constitution to ensure dignity and self respect to the women at large. As mentioned earlier Dr. B. R. Ambedkar, author of Indian constitution, make sure that constitution of India safeguard the social and legal rights of women. Here i list out some of the provision which favour for women in India-

1. Article 14:- Article 14 of constitution of India ensures equality before the law or the equal protection of the laws within the territory of India¹. Article 14 of the Constitution of India prohibits class legislation but permits reasonable classification. The classification must be based on some "Intelligible differentia" and should have a "rational nexus" with the object sought to be achieved by the act or legislation "women" can be treated as a class and special laws can be made in their favour.

This is a very important provision which provides equal legal protection to women. This provision also paves way for the introduction of various laws and acts to ensure protection and enforcement of legal rights of women in India.

2. Article 15:- Article 15 of constitution of India ensures that no one should create any sort of discrimination only on the grounds of religion, race, caste, sex or place of birth or any of them within the territory of India¹.

At the time of Independence there was lots of discrimination in India against women which gradually abolished after introduction of article 15. As per article 15(3) of the constitution state has the authority to make any special provision for women and children. This is intended to give an initial advantage to women so that they could compete with men in various fields effectively. Since women were suppressed for a very long period, they lost their initiative, confidence in their capacity to face problems and opportunity to equip themselves for various types of professions and avocations. It is because of these facts the Constitution makers considered them weaker sections of the people who required some definite help and initial advantage to compete with men in all spheres of life. Therefore, this provision has been described by various writers as "Protective discrimination".

Article 16:- Article 16 of constitution of India ensures equal employment opportunity to every citizen of India¹. As per article 16 there should not be any discrimination in respect of employment opportunity under the State only on grounds of religion, race, caste, sex, descent, and place of birth, residence or any of them. Equality of opportunity has been demonstrated and emphasized by the supreme court of India in the case of C.B. Muthamma Vs. Union of Indian. Discrimination cannot be



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made on the basis of sex in state services; the principle of equality in matters of employment has been illustrated in the case of *Air India Vs. Nergesh Meerza* also.

Now we can see women are doing really good work in politics and in corporate sector. Presently they are holding responsible positions in Government and Government run institutions. Let me share few good names from political and corporate field. These names are Chanda kochhar, Indira nooyi, Sonia Gandhi, Sushma Swaraj and this never ending list goes on.

3. Article 39:- Article 39 of constitution of India ensures the benefit of the directive principles of state policy to the women. Directive principles of state policy mean **guiding principles** for the framing of laws by the government at state level. Article 39(a) of directive principles of state policy ensures and directs a state to apply policies which focus on a man and women have an equal right of adequate means of livelihood and article 39(c) ensures equal pay for equal work for both men and women¹.

This principle has also been reiterated by the Supreme Court in *Bagwan Das Vs. state of Haryana* 27 and *R.D. Gupta Vs. Lt. Governor, Delhi Administration*.

4. Article 42:- Article 42 of constitution of India casts a duty on every employer to ensure just and humane conditions of work and for maternity relief¹. Article 42 of the Constitution is an important provision of the Constitution, which provides social justice to the women before their pregnancy and after their pregnancy.
5. Article 243:- Article 243 of constitution of India ensures reservation of seats in gram panchayat for women¹. This opportunity of being a part of local level arbitration process has improved the social conditions of women in village areas.

These are few rights which are given by our constitution to the Indian women in order to ensure their dignity and social respect. Further to protect these constitutional rights there are numerous legal steps that have been taken by the state Governments

Legal provision under Indian Penal Code

In our old, great nation a woman is the personification of a goddess, a symbol of respect and devotion to the gods. But today, there is a rape every 29 minutes, a case of molestation every 15 minutes and a dowry death every 4 hours. This is, inhuman for a nation that prides itself for all the dignity it gives to its women as part of its culture and traditions. Therefore, it is only necessary that we look into details of the various offences under the IPC against women and the laws that guard them.

- (1) Rape (Sec. 376 IPC): rape, its definition, elements and punishments have been given under Section 375-376. These sections were substantially amended on the recommendations of the Justice J.S. Verma Committee that was setup in wake of the 16 December 2012 gang rape case. The amendment was made to make the provisions more inclusive and at the same time award a stricter punishment.

A rapist, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to Imprisonment for life, and shall also be liable to fine¹.

- (2) Kidnapping & Abduction for different purposes (Sec. 363-373) :

Any person, who is abducting a minor for purpose of begging or kidnapping minor/women for prostitution or illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine¹.

- (3) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC):

Where the death of a women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her in laws or husband, for or in connection with, any demand of dowry, such death shall be called —dowry death¹. Whoever commits dowry death shall



be punished with imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life.

(4) Torture, both mental and physical (Sec. 498-A IPC):

Matrimonial Cruelty in India is a cognizable, non bailable and non-compoundable offence. It is defined in Chapter XXA of I.P.C. under Section 498A as Husband or relative of husband of a woman subjecting her to cruelty, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine¹.

(5) Molestation (Sec. 354 IPC):

Whoever assaults or uses criminal force to any women with intent or knowledge that it will outrage her modesty, shall be punished with simple or rigorous imprisonment of up to 2 years, or fine, or both¹

(6) Sexual Harassment (Sec. 354-A IPC):

The following acts or behaviour shall constitute the offence of sexual harassment¹-

- (i) Physical contact and advances involving unwelcome and explicit sexual overtures; or
- (ii) A demand or request for sexual favours; or
- (iii) Making sexually coloured remarks; or
- (iv) Forcibly showing pornography; or
- (v) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

Any person who commits the offence specified in above clause shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

(7) Section 354B- Whoever assaults or uses criminal force to any women with intent to disrobing her shall be punishable with either simple or rigorous imprisonment of 3 to 7 years and a fine¹

(8) Section 354C - voyeurism

As a man watching or capturing the image of a woman engaged in a private act in circumstances where she would usually not expect to be observed by the perpetrator or distribution of an image so captured by the perpetrator¹. Punishment for committing this offence is simple or rigorous imprisonment of 1 to 3 years and a fine. In case of repeated offenders are punishable with simple or rigorous imprisonment of 3 to 7 years and a fine

(9) Section 354D-stalking

Continuous following or contacting a women by a man or attempts to contract a women to build a personal relationship with that women even when the women has shown a clear lack of interest¹. Punishment for committing this offence is simple or rigorous imprisonment of 3 years and a fine. In case of repeated offenders are punishable with simple or rigorous imprisonment of 7 years and a fine

(10) Section-370-human trafficking

Transporting people illegal or without their consent across the areas mainly to be used in the labour or commercial sex industry¹. The immoral traffic (prevention) act, 1956 is the law regulating human trafficking in India

We deals with those legislations and decisions of various cases who guaranteed social justice to Indian women and helps in the ongoing schemes and strategies for empowerment of Indian women.....

LEGISLATIONS

1. The Immoral Traffic (Prevention) Act, 1956

The Immoral Traffic (Prevention) Act, 1956 is an Act which provides in pursuance of the International Convention signed at New York on the 9th day of May, 1950, for the prevention of immoral traffic. The Act intends to combat trafficking and sexual exploitation for commercial purposes. The following Act leads to the codification of an Act that law down rules and regulations regarding the sensitive issue of prostitution. It protects women and children from forceful flesh trade.



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This leads to reduction of objectification of women and children. Through this Act, children can be further protected and offenders who force children can be punished for the same.

2. The Dowry Prohibition Act, 1961 (28 of 1961) (Amended in 1986)

To prohibit the demanding, giving and taking of Dowry, the Dowry Prohibition Act, 1961 is in force since 1st July 1961.

To stop the offences of cruelty by husband or his relatives on wife, Section 498-A has been added in the Indian Penal Code, and Section 198-A has been added in the Criminal Procedure Code since the year 1983.

In the case of suicide by a married woman, within 7 years from the date of her marriage, the Court may presume that such suicide has been abetted, encouraged by her husband or his relatives. Provision to this effect has been added in the Indian Evidence Act, by adding Section 113-A since the year 1983.

The object in forming the Dowry Prohibition Act and adding provisions in the Indian Penal Code, the Criminal Procedure Code and the Indian Evidence Act is to remove the evil of dowry system and give protection to women. It discourages the taking or giving of dowry.

3. The Indecent Representation of Women (Prohibition) Act, 1986

An act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for the matters connected herewith or incidental there to.

An amendment bill of this act is pending in Rajya Sabha.

4. The Commission of Sati (Prevention) Act, 1987 (3 of 1988)

An act to provide for the more effective prevention of the commission of sati and its glorification and for matters connected herewith or incidental thereto, whereas sati or the burning or burying alive of widows or women is revolting to the feelings of human nature and is nowhere enjoyed by any of the religions of the India as an imperative duty.

5. Protection of Women from Domestic Violence Act, 2005

Primarily meant to provide protection to the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers. Domestic violence under the act includes actual abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. Harassment by way of unlawful dowry demands to the woman or her relatives would also be covered under this definition.

6. The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013

An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

WHEREAS sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;

AND WHEREAS the protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;



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AND WHEREAS it is expedient to make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

An act to provide protection against sexual harassment of women. the sexual harassment results in violation of the fundamental rights of a woman to equality under article 14 and 15 of the constitution of India and her right to life and to live with dignity under article 21 of the constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to safe environment free from sexual harassment.

7. The Pre-Natal Diagnostic Techniques (Regulation and Prevention of misuse) Act 1994 [3]

An Act to provide for the regulation of the use of pre-natal diagnostic techniques for the purpose of detecting genetic or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorders and for the prevention of the misuse of such techniques for the purpose of pre-natal sex determination leading to female foeticide; and, for matters connected there with or incidental thereto.

8. The criminal law (amendment) Bill, 2013

This legislation is the result of protest against Delhi rape case also known as Nirbhaya case. This legislation provides amendment in Indian penal code, Code of Criminal Procedure and Indian evidence act on laws related to sexual offences. This bill introduces and amended offences like acid attack, act with intent to disrobe a women, voyeurism, stalking & sexual harassment into the Indian penal code.

9. Women's Reservation Bill (The Constitution 108th Amendment Bill)

Commonly known as the Women's Reservation Bill, it seeks to reserve one-third of all seats for women in the Lok Sabha and the state legislative assemblies. Introduced by the UPA-I government in May 2008, it also provides that one third of the total number of seats reserved for Scheduled Castes and Scheduled Tribes shall be reserved for women of those groups. Similar Bills have been introduced thrice before in the late 90's but lapsed with the dissolution of their respective Lok Sabhas. This will be helpful in increasing the political participation of women.

10. The Equal Remuneration Act, 1976

This Act provides for the payment of equal remuneration to men and women workers for same work or of similar nature work and for the prevention of discrimination on the ground of sex against women in the matter of employment.

This major piece of legislation deal with the equal rights in employment for women workers. This act was implemented in the International women's year on the demand for equality in employment voiced by working women.

Landmark case law for women empowerment

1. Air India Vs Nargesh Meerza¹, [(1981) 4 SCC 335]

In case of Air India v. Nargesh Meerza ((1981) 4 SCC 335), Nargesh Meerza filed a writ petition, In this case, the air-hostesses of the Air-India International Corporation had approached the Supreme Court against, again, discriminatory service conditions in the Regulations' of Air-India. The Regulations provided that an air-hostess could not get married before completing four-years of service. Usually an air-hostess was recruited at the age of 19 years and the four-year bar against marriage meant that an air-hostess

could not get married until she reached the age of 23 years. If she married earlier, she had to resign and if after 23 years she got married, she could continue as a married woman but had to resign on becoming pregnant. If an air hostess survived both these filters, she 'continued to serve until she reached the age of 35 years. It was alleged on behalf of the air-hostesses that those provisions were discriminatory on the ground of sex, as similar provisions did not apply to male employees doing similar work



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In this case the Supreme Court struck down the clause of retirement of air hostess on attaining 35 years of age or on marriage within first 4 year of service or on first pregnancy as being arbitrary and unreasonable and clearly violation of article 14 of Indian Constitution.

2. Vishaka Sawhney Vs State of Rajasthan¹, AIR 1997 SC 3011, (1998)

This is the very famous case and the alarm raiser for the need of such act which can prevent the women from sexual harassment at the work place.

In this landmark judgment the supreme case held that sexual harassment at work place is a violation of article 15 and 21 of the constitution and he laid down the exhaustive guidelines to prevent sexual harassment of working women in places of their work until a law is passed for this purpose. Recently in 2013 The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013 was passed by the parliament of India.

3. In Madhu Kishwar v. State of Bihar { (1996) 5 SCC 145}, the Supreme Court dealt with the validity of the Chotanagpur Tenancy Act, 1908 of Bihar which denied the right of succession to Scheduled Tribe women as violation of the right to livelihood. The majority judgment however upheld the validity of legislation on the ground of custom of inheritance/succession of Scheduled Tribes. Dissenting with the majority, Justice K.Ramaswamy felt that the law made a gender-based discrimination and that it violated Articles 15, 16 and 21 of the Constitution.

4. Mohammad Ahmed Khan Vs Shah Bano Begum¹, 1985 AIR 945, 1985 SCR (3) 844

Popularly known as the Shah Bano case, a penurious Muslim woman claimed for maintenance from her husband under section 125 of the code of the criminal procedure after she was given triple talaq from him. The Supreme Court held that the Muslim women have a right to get maintenance from her husband under section 125. After the decision, nationwide discussions, meetings and agitations were held. Then Rajiv Gandhi led government overturned the Shah Bano case decision by way of Muslim women (Right to protection on divorce) act, 1986, which curtailed the right of a Muslim women for maintenance under section 125 of the code of criminal procedure.

5. Tuka Ram And Anr vs. State Of Maharashtra¹, 1979 AIR 185, 1979 SCR (1) 810

Popularly known as the Mathura rape case was an incident of custodial rape. Mathura, a young tribal girl, was allegedly raped by two policemen on the compound of Police Station. But the Supreme Court acquitted the accused, and the decision resulted the big public outcry and protest, which eventually led to amendments in Indian rape law via The Criminal Law (Second Amendment) Act 1983 (No. 46) .

Conclusion

To conclude I would like to say that Women are one of the pillars of the society and it would be very difficult to imagine society without the presence of women. Women play different role in her life such as she acts as daughter, wife, sister and mother at different stages of life. So we must give them due care and respect and understand their efforts towards welfare of the society at large. Even our judiciary and legislature has also accepted the fact that women are one of the most important elements of society and their exploitation would not be accepted at any cost.. The government of India, by passing enactment and implementing rules and regulations trying to empower the women. But the efforts of the government are still inadequate to ensure Gender equality in the society. The Government initiatives alone would not be sufficient to achieve this goal. Society must take initiative to create a climate in which there is no gender discrimination. So men should understand the importance of women and assist them in the process of empowering themselves.

Through this article I tried my best to cover all the constitutional, judiciary and legislative rights of women against the crimes which they are facing in the society. I hope this article will help us to understand that rights of women and Indian law are strong enough to protect her from any kind of harassment and torture.



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