

Gender Discrimination and Role of the Legislation in India

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Abstract: “The Hand that Rocks the Cradle Rules the World” This old adage praises motherhood, women in general who have a decisive influence on the future direction of the society as they raise and nurture the future generations to come. It is rightly said where women are worshipped God resides. The paper explores the place of women in society all through the different phases of her life right from the womb to the tomb. It speaks about the recognition of women and their place in the society in the past, present and how changes are evolving; reformations are taking place to build a better future. This is essential to establish a universal imperative of equality for women who are the anchors not only of the smaller unit ‘family’ but also the entire society. The paper critically analyses the role of women, the injustice done to them, the bias system made by the male dominated world and suggests the methods of bringing about change through realisation. It highlights the injustice done to women and how to bring about change in our Indian Society.

Keywords: gender discrimination legislation exploitation discrimination oppression mockery subjugation dominated atrocities confinement idolised amendment solemnised emancipation patriarchal remuneration deterrent empowerment obligation.

1. INTRODUCTION

As the old adage goes “The Hand that Rocks the Cradle Rules the world” Has this really been true in the case of females over the past years in India?

After all the exploitation, discrimination and oppression the status of Indian women is definitely undergoing a significant change in India. Slowly, but steadily women are triumphantly overcoming man-made subjugation and emancipation who are now facing the outside world with vigour and zeal, leaving far behind the age-old tradition of confinement and torture. Nevertheless, gender-based discrimination still persists and represents the ugly face of society by and large which is a harsh reality. It is a male dominated society where women are always seen as subordinate and inferior to men. The irony is that though a woman is worshipped as Shakti the atrocities are committed against her in all the sections of life. Today women embody half of the world’s population and though they put in two thirds of the world’s working hours earn just one tenth of the world’s income which is a mockery of all canons of social justice and equity. The subservient position of women is portrayed very clearly in this statistics. Discrimination still prevails in the rural and urban areas.

Women in the past were deprived of economic resources and were purely dependent on men for their living as they were denied of all the privileges that men enjoyed be it social or economic. They were confined to domestic spheres, had to accomplish all household chores, which was never recognized nor were they paid for as they were made to realize that it was mandatory and were not doing any favour. In today’s world one can see women multitasking, balancing both household chores, family and their career in a very organised and professional manner leaving no stone unturned, who yet at times is not considered and first to be laid off if ever she is less productive than her counterpart. The status of women in the family, in the society at work has been low and unrecognised in the past, but over the years this mind set is diminishing.

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From the cradle to the grave and the womb to the tomb, females have been the real scape goats and in the clutches of innumerable evil acts of discrimination, oppression, violence, within the family, in the society and not forgetting the work places.

At a very tender age females are made to believe that they are inferior whereas sons might be idolized and celebrated, daughters are made to feel they are unable to cope with life without the males, they have no significance and that makes a rule. She is made to feel that her existence is always dependent on a man and in no way she can handle things independently. During her childhood she is under the supervision of her father, she is restricted from what she wishes to do but has to calmly adhere to the norms of her father, she could never voice her opinion, after she is married her husband takes over the right of dominating her and in her old age she is at the mercy of her sons. The patriarchal system has been a custom that are centuries old which are in the very crux of Indian Society. Under this system women have survived at the mercy of men who exercise unlimited powers over them. In order to meliorate the condition of women in India, the Indian Constitution has granted women equal rights to men. Much legislation was enacted in the colonial period which is as follows:

- Abolition of Sati 1829
- Widow Remarriage made Legal 1856
- Female infanticide banned 1870
- Inter caste, Intercommunity Marriages made Legal 1872
- Age of Consent raised to 12 Years for Girls 1891
- Women get the Rights to Vote in the Madras Province 1921
- Child Marriage Restraint Act passed 1929
- Women get Special Rights to Property 1937
- Special Marriage Act was Passed 1954
- Hindu Marriage Act was passed 1955
- Suppression of Immoral Traffic in Women and Girls Act passed 1956
- Dowry Prohibition Act passed 1961
- Maternity Benefits Act 1961
- Medical Termination of Pregnancy Act 1971
- Factories Amendment Act establishing crèches where 30 or more women are employed 1976
- Equal Remuneration Act 1976
- Criminal Law Amendment Act 1981
- Family Court Act 1986
- Prevention of Immoral Traffic Act 1986
- The Indecent Representation of Women (Prohibition) Act 1986
- Commission of Sati (Prevention) Act 1987
- National Commission for Women Act 1990
- Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act 1992
- 73rd and 74th Constitutional Amendment of 1992 added articles 243 D and 243 T to the constitution which provided reservation of not less than one third of the total seats for women in the constitution of the Panchayat and Municipalities respectively.
- Criminal Law Amendment act, 1983 added Section 498 A in the Indian Penal Code to combat the menace of dowry deaths providing cruelty of husbands and his relatives against the women would be deemed to be an offence.

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- Section 113 A in the Indian Evidence Act, 1872, provided for a presumption regarding abetment of suicide be a married woman within a period of seven years from the date of marriage by a husband or his relative. Piece-meal measures have also been taken by the state government to address specific problems faced by women. The State Government enacted a law against eve-teasing in 1998. The Government of Maharashtra issued a notification in 1994 exempting women from paying court-fees in case of maintenance, property disputes, violence and divorce.

Apart from these above mentioned laws, there are some enactments pertaining to industry which contain special provisions for women such as: The Workmen Compensation Act, 1992; Payment of Wages Act, 1936; Factories Act, 1948; Maternity Benefit Act, 1961; Minimum wages Act, 1948; Employees State Insurance Act 1948 and Pensions Act, 1987.

In addition to this, the Constitution of India which is regarded as the Supreme Law of the land, too give women special protection.

The provision that deals with women's rights are as follows:

- Article 14 expresses that the State shall not deny any person the equality before the law and equal protection of laws within the territory.
- Article 14(1) prohibits the state to discriminate against any citizens on the bases of religion, race, caste, sex, ethnicity, etc. Article 15(3) permits the state to make special provisions for women and children.
- Article 16 provides that there should be equal opportunities or all citizens and they should not be discriminated on the bases of religion, race, caste or sex.
- Article 39(a) of the Constitution provides that the state in particular directs its policy in securing that male and female equally have the right to an adequate means of livelihood.
- Article 39(e) of the Constitution provides that the health and strength of male, female as well as the tender age of children are not abused and not forced by economic necessity to enter avocation not suited to their age or strength.
- Article 51(A) of the constitution provides that it will be the duty of every citizen to pronounce practices derogatory to the dignity of women.

Further, Indian Penal Code, Criminal Procedure Code and Indian Evidence Act too have some provisions which provide protection and a sense of security to women. Recently the government's 'piece-meal' approach to protect women has taken a step forward enacting a law providing protecting women from domestic violence With the establishment of National and state Human Right Commission and National Commission for Women, gender issues are receiving greater attention.

The Indian Judicial System has independently and effectively intervened on the issues of women emancipation and have given a new meaning to the laws already passed and a clear direction which was earlier lacking in clarity.

For instance, in *C.B. Muthamma V. Union of India*^[1], the validity of the Indian Foreign Service (Conduct and Discipline) Rules of 1961 was challenged which provided that a female employee could obtain a written permission from the government before her marriage is solemnized and any time after her marriage would be required to resign. The Supreme Court held that such provision is discriminatory against women and hence unconstitutional. The supreme Court clarified that it does not mean to universalize or dogmatise that men and women are equal in all occupation and 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 *Air India V Nargesh Mirza*^[2], The Supreme Court struck down the provision of rules which stipulated termination of service of an airhostess on her first pregnancy as its arbitrary and abhorrent to the notions of a civilized society. In *Pratibha Rani V Suraj Kumar*^[3], the Supreme Court held that the shridhan - property of a married women has to be placed in her custody, and she has the benefit of having complete control over it. The mere fact that she is living with her husband and using the dowry items jointly does not make any difference and affect her right of absolute ownership over

them. Another landmark judgement was given by the Apex Court in the case of Gita Hariharan V Reserve Bank of India^[4]. In this case, the court 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 Vishakha and Ors vs. states of Rajasthan^[5], Supreme Court held that sexual harassment of 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 article 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 quality including prevention of sexual harassment or abuse. Further Supreme Court in this case said that, there is no law relating to sexual harassment in India, Therefore the provision of International Conventions and norms are taken into consideration, and charted certain guidelines to be observed at all work places until a legislation is enacted for the purpose.

In Apparel Export Promotion Council V A.K. Chopra^[6], again Supreme Court reiterated Vishka ruling and said that attempts of sexual harassment of female results in violation of fundamental rights to gender equality enshrined under Article 14 and 21 of the Constitution. The Court further stated that international instrument such as the Convention on the Elimination of All Forms of Discrimination against Women and the Beijing Declaration casts obligation on the States to take appropriate measures to prevent gender inequalities and protect the honour and dignity of women.

Apart from these cases, there are many other cases in which the Apex Court had given the judgments, helping to give a dignified status to women and these include cases like Madhu Kishtwar V State of Bihar^[7], Gaurav Jain V Union of India, Delhi Domestic Working Women Forum V Union of India, Bodhisathwa Gautam V Subhra Chakraborty^[8].

In spite of having so many enactments dealing with women and judgments of the Supreme Court protecting women, the downtrodden and poor conditions of women has not improved and she still faces atrocities, despite the efforts of the Legislature and Judiciary, who have, somehow, failed to provide respect to women in the Indian society.

After independence, the Founder Fathers of the nation wanted to reform the society and were keen to establish an egalitarian society. To achieve this end, they used Law as an instrument to check the gender discrimination and numbers of laws were enacted to meet this end but due to strong patriarchal mentality and unfavourable social environment, they failed to accomplish their goal. The social engineering through law was not fully achieved while some rights enshrined under the enactments were enjoyed and accepted by the society most of them remained only in papers due to lack of public support. Many evils are still practiced on women such as bigamy. Child marriages are still in practice, dowry demands are still on rise, and women are still harassed for dowry. Malnutrition and illiteracy is growing at an alarming rate, rape and molestation have become daily phenomenon, and moreover still we see women as commodity as one of the songs of the movie depicts her as "Tu cheez badi hai mast mast"

It is said that the Law without the public opinion is nothing but a bundle of papers. The gap between men and women cannot be bridged by just enacting laws without any public support and opinion as social engineering laws are different from penal laws which are just related to injuries and punishment and are deterrent in nature but social engineering laws enacted to uplift the norms of the society are progressive in nature and therefore it should be backed by the will of the people for whom it is enacted. It is also clear that centuries old practices cannot be eliminated overnight, it would take time. When laws are enacted to bring radical change in society and are not backed by the will of the people or laws are ahead of public opinion, it has to face great resistance and opposition from the conservative thinking of the society and they are like dead laws, which have no effect on society.

In India, majority of the laws were not effective as they were ahead of public opinion and willingness of the people to change the society and give the women the status of equality in society too lacked. So in order to give women their respective position in the society, strong public opinion should be created through awareness, education, advocacy and capacity building, seminars and by taking the help of various other instruments of the society such as Media, NGO, INGO and Civil society etc, so that the people of the society should come forward to be part of this movement of bringing change in their centuries old thinking and willingly implement the laws enacted for the emancipation for women.

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To improve the status of the women in the society, the need of the hour is that Laws should be enacted but they should be backed by strong public willingness and public opinion because so long as conservative social thinking remain deep rooted in the society, Laws will not be able to achieve their end. It must be asserted that social reforms is in social thinking and the behaviour and law would be effective only if they are backed by major section of the society.

Wendell Phillips has rightly said: Law is nothing unless close behind it stands a warm living public opinion.

These are some of the areas where legislation has still much to do in bringing about equality between men and women to fulfil the obligation not only of the International Conventions but also at the Constitution of India. Let us not think that the Law can remedy the inequalities and bring about justice, development and empowerment. It can act as a springboard no doubt but much executive initiative, change in social mindset and involvement of all sections of society is required to achieve the end. When will commodification of women end? How long will they be exploited in the name of virtue and honour?

Justice S. Rajendra Babu in one of his speeches commenting upon society's attitude to women said.

"Sita was not born, but found, and after marriage, exile agnipariksha and abandonment was her lot. Yet there is not a single temple of Sita, and Rama is adored as the ideal Man- Maryada Purushottama Adarsha Purusha."

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