

VIOLENCE ON WOMEN AND THE CONSTITUTIONAL SAFEGUARDS WITH REMEDIES IN INDIA

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ABSTRACT

Women constitute a unique resource of a nation. They are greatest gift to humanity by God. Women are central to the social and economic aspirations of the country. They have been playing a major role in shaping the society by providing the moral force in the home environment. Thus the position of women is the half of the human capital of the country and one of the indices of national development. They are the embodiment of Shakti, the creator and destroyer of human race. It needs recognition that women are builders and molders of nation's destiny. They are the partner and soul of men and behind every successful man, there lays a women. But it is deplorable to treat that they are the most neglected and deprive segment of the society. In most families a daughter is viewed as liabilities and she is conditioned to believe that she is inferior and subordinate to men. Sons are idolized and celebrated. "May you be the mother of hundred sons" is a common Hindu wedding blessing. It is generally viewed empowerment of women is a solution to gender discrimination. It is now widely believed that empowerment of women that is providing equal rights, opportunities and responsibilities in the decision making process will go a long way in removing the existing gender discrimination.

Keywords: Empowerment, Violation, Rights, Atrocities, Harassment, Torture, Dowry, Sati

Women constitute approximately 30 percentage of the World's population. It is estimated that by the year 2020, the total number of women in the world, will be more than 3 billion and they will outnumber men. Now-a-days the position of women in the society has undergone a dramatic change. Compared to the women of the ancient days, the women today enjoy more rights, do more works and demand for opportunities at par with men. The duties, responsibilities, engagements and burdens of the women in these days have been multiplied today. They have put their mark in every sphere of activities like politics, industries, defense, education, social work, medicine etc. This was all possible owing to various steps taken for women empowerment. Equality between women and men is a matter of human rights and a condition of social justice and is also a necessary and fundamental prerequisite for equality, development and peace.

The term women's rights refers to the freedoms inherently possessed by women and girls of all ages, which may be institutionalized, ignored or suppressed by law, custom and behavior in a particular society. These liberties are grouped together and differentiated from broader notions of human rights because they often differ from the freedoms inherently possessed by or recognized for men and boys, because activists for this issue claim an inherent historical and traditional bias against the exercise of rights by women and girls.

Issues commonly associated with notions of women's rights include, though are not limited to, the right: to bodily integrity and autonomy; to vote (universal suffrage); to hold public office, to work, to fair wages or equal pay; to own property; to education; to serve in the military or be summoned for compulsory military service; to enter into legal contracts; and to have marital, parental and religious rights. Women and their supporters have campaigned and in some places continuing their pressure it for the same rights as their male counterparts.

The movement for the protection of women's rights has focused primarily on abuses, where gender is a primary or related factor because these have been the most invisible and offer the greatest challenge to human rights movement.

Much of the abuse of women is part of larger socio-economic and cultural web that entraps women, making them vulnerable to abuses that cannot be delineated as exclusively political or solely caused by states.

The assumption that states are not responsible for violation of women's rights in the private and cultural sphere ignores the fact that such abuses are often condoned or even sanctioned by states even when the immediate perpetrator is a common citizen. Yet human rights activists readily pressure states to prevent other forms of abuse, such as slavery and racial discrimination that also occur in the private sphere

at hands of private actions and have often been proclaimed cultural traditions of matters of national sovereignty.

When women are denied political and democratic rights in private sphere, their human rights in public sphere also suffer as what occurs in their private life, influences to their ability and participation in public life. Such violations are reported regularly, yet there is no outcry in the name of human rights about the denial of these women's rights to political participation to assembly, to free speech and citizenship etc.

Female subordination runs so deep that it is still viewed as inevitable or natural throughout the world. In an effort to focus attention on and ultimately put effort to focus an end to these abuses, the women's Caucus at the UN World Conference on Human Rights in Vienna in June in 1993 demanded that gender based issues should be put on table. The movement for human rights from a feminist perspective is not merely a matter of semantics. It is about the lives and death of individual women everywhere, every day. At the world conference on Human Rights, women put these issues squarely on the world's door step. Yet even as the international human rights community has begun to recognize gender based violations as pervasive and insidious forms of human rights abuse. We must work further to see that concrete action against such practices is taken. Human Rights instruments and mechanisms provide avenues for preventing the systematic abuse, we of women rights. Government can be made to take gender based violations more seriously by being held accountable for the implementation of laws for the sensitivity of handling these issues. Only through the community responsibility and state accountability, day by day, place by place can we counter the massive violation of women's rights.

The movement for equal rights of men and women started growing from strength to strength. The commission on the status of women established in 1946 carried out special studies with respect to the political, educational, economic and social rights of women resulting in the adoption of several conventions such as the Convention on the Political Rights of Women, the Convention for Equal Remuneration for Men and Women Workers for Work of Equal Value adopted by the ILO (International Labour Organization), the Convention on the Nationality of married women etc. (Khanna 1998). Various publications of United Nations Conventions like Convention on the Political Rights of Women, History and of Political Education of Women, Nationality of Married Women etc have helped to increase awareness of the problems and concerns of women and the need to improve their status. The International covenant on Civil and Political Rights 1966 called upon convening states inter alia to ensure equal rights for men and women. The United Nations Convention of Elimination of All Forms of Discrimination against Women was adopted in 1979 which has since been ratified by 90 Governments; require national legislation to give effect to its provisions. If this happens, it would be a great leap forward towards the goal of equality among the two sexes.

Legal Provisions and Women's Rights in India:

Parliament and state legislatures of India have taken several initiatives to make laws for protection and promotion of Women Rights. It may appear strange and anomalous that, on the one hand the constitution of India guarantees equality of rights for women, provides even for protective discrimination in their favour and yet the personal laws which apply to women are oppressive in varying degrees depending on the religion to which a women belongs. (Mitter: 2006).

CONSTITUTIONAL PROVISIONS

The Constitution of India not only grants equality to women but also empowers the state to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio-economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensures equality before law prohibits discrimination against any citizen on the grounds of religion, race, caste, sex or place of birth and guarantees equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(c) and 42 of the constitution are of specific importance in this regard.

LEGISLATIVE PROVISIONS

To uphold the constitutional mandate, the state has enacted various legislative measures intended to ensure equal rights to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women.

Although women may be victims of any of the crimes such as murder, robbery, cheating etc. the crimes which are directed specially against women, are characterized as "Crime Against Women". These are broadly divided under two categories.

1. The Crimes Identified Under the Indian Penal Code (IPC).

- (i) Rape (Sec.376 IPC)
- (ii) Kidnapping and Abduction for different purposes. (Sec.363-373)

- (iii) Homicide for Dowry, Dowry Deaths or their attempts. (Sec.302/ 304-B, IPC)
- (iv) Torture (both mental and physical) (Sec.498-A IPC).
- (v) Molestation (Sec.354 IPC).
- (vi) Sexual Harassment (Sec.509 IPC).
- (vii) Importation of Girls (upto 21 years of age).

2. Crimes Identified Under The Special Laws

Although all laws are not gender specific, yet the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

- (i) The Employees State Insurance Act, 1948.
- (ii) The Plantation Labour Act, 1951.
- (iii) The Family Courts Act, 1954.
- (iv) The Special Marriage Act, 1954.
- (v) The Hindu Marriage Act, 1955.
- (vi) The Hindu Succession Act, 1986.
- (vii) Immoral Traffic (Prevention) Act, 1956.
- (viii) The Maternity Benefit Act, 1961. (Amended in 1995)
- (ix) Dowry Prohibition Act, 1961.
- (x) The Medical Termination of Pregnancy Act, 1971.
- (xi) The Contract Labour (Regulation and Abolition) Act, 1976.
- (xii) The Equal Remuneration Act, 1976.
- (xiii) The Child Marriage Restraint (Amendment) Act, 1979.
- (xiv) The Criminal Law (Amendment) Act, 1983, amended in 2005.
- (xv) The Factories (Amendment) Act, 1986.
- (xvi) Indecent Representation of Women (Prohibition) Act, 1986.
- (xvii) Commission of Sati (Prohibition) Act 1987
- (xviii) The Domestic Violence Act, 2005.

Various Laws (Special) to Protect Women's Rights in India

Parliament of India, including state legislatures have taken several initiatives and promotion of Women's Rights in India. These laws inter alias include Special Marriage Act-1954, Hindu Marriage Act-1955, Hindu Succession Act-1956, Dowry Prohibition Act 1961, Indian Penal Code 1860, Criminal Procedure Code 1973 Amended in 2005, The Domestic Violence Act, 2005 etc.

1. Hindu Widow Remarriage Act, 1856: Marriage of a widow was prohibited among certain sects of Hindus and life of a widow was in miserable state. In order to uplift her status, "The Hindu Widow Remarriage Act, 1856" was passed to legalize the marriage of Hindu Widows in certain cases.
2. Indian Penal Code, 1860: Various sections have been incorporated in Indian Penal Code with a view to prevent and curb evils like cruelty against women, dowry death, sexual harassment etc.
3. The Indian Christian Marriage Act, 1872: This Act deals with the law relating to the solemnization in India of the Marriages of persons professing the Christian religion.
4. The Dissolution of Muslim Marriage Act, 1939: This Act deals with the suits of dissolution of marriage by women married under Muslim Law.
5. Hindu Succession Act, 1956 (later Amended in 2005): According to latest amendment, daughters have equal share, rights and liabilities in the partition of family property and guardianship in a Hindu family.
6. Immoral Traffic (prevention) Act, 1956: This act aims to deal with the problem of prostitution and to promote the welfare of fallen woman.
7. Hindu Marriage Act, 1956: This act has recognized the equal rights of man and woman in the matters of marriage and divorce.
8. Maternity Benefit Act, 1961: This Act provides for maternity benefits to women.
9. Dowry Prohibition Act, 1961: The main objective of this Act is to abolish giving and taking of dowry at the time of marriage.
10. Criminal Procedure Code, 1973 (Amended in 2005): This Act deals with provisions like arrest of women by female police, search and seizure of goods and maintenance etc. No women should be arrested before sunrise and after sunset. Whenever, it is necessary to cause a female to be searched,

the search shall be made by another female with strict regard to decency. The husband of the wife should give maintenance to his wife, children and parents.

11. The Child Marriage Restraint (Amendment) Act, 1978: This act has altered the marriageable age of bridegroom to 21 years and bride to 18 years.
12. Family Court Act, 1984 : According to this Act, the state government after consultation with High Court shall establish for every area in the state comprising a city or town whose population exceeds one million a family court, and may establish family court for such other areas in the state as it may deem necessary.
13. Indecent Representation of Women (Prohibition) Act, 1986: This Act aims to deal with the prohibition of indecent representation of women through advertisement or in publications, writings, paintings and figures or in any other manner.
14. Commission of Sati (Prevention) Act, 1987: This Act has declared the custom of Sati as illegal in our country.
15. Legal Service Authorities Act, 1987: It has provision for free legal aid to women.
16. Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 (Amendment Act, 2002). This Act seeks to prohibit pre-natal diagnostic techniques for determination of sex of the fetus leading to female feticide.
17. Domestic Violence Act, (Prevention) 2005: For the first time, women in India will be given protection from and compensation for abuse they sustain in their own homes under a new law.

The Domestic Violence Prevention Act 2006 recognizes all forms of abuse against women in the home, including physical, sexual, verbal, emotional or economic abuse.

This Act will provide women with a safeguard and a sort of sword in their hand, so that they will no more be ill treated.

ABUSE OF WOMEN'S RIGHTS

Women constituting nearly half of the population are routinely subjected to torture, starvation, terrorism, humiliation, mutilation and even murder. Such crimes are gross violation of the victim's humanity. Women's rights are not commonly classified as human rights. This is problematic both theoretically and practically, because it has grave consequences for the way society views and treats the fundamental issues of women's life. It is pertinent to question why women's rights and human rights are viewed as distinct looks at policy implications approaches of this schism to changing it.

Women's human rights are violated in a variety of ways. Of course, women sometimes suffer abuses such as political repression that are similar to abuses suffered by men. In these situations females victims are invisible because the dominant image of the political actors in our world are male. However, in many violations of human rights the victims are women.

The human rights movement has focused primarily on abuses, where gender is a primary or related factor because these have been the most invisible and often the greatest challenge to human rights movement.

Much of the abuse of women is part of a larger socio-economic and cultural web that entraps women, making them vulnerable to abuses that cannot be delineated as exclusively political or solely caused by states.

The assumption that states are not responsible for violation of women's rights in the private and cultural sphere ignores the fact that such abuses are often, when the immediate perpetrator is a private citizen. Yet human rights activists readily pressure states to prevent other forms of abuse, such as slavery and racial discrimination that also occur privately.

WOMEN AND VIOLATION OF THEIR HUMAN RIGHTS

Even today women are not being allowed to live successfully the life of a human being. By and large, a woman is looked up as an unblest creature of God. She has become the worst victim of male chauvinism in the form of rape, assault, molestation and brutal killing. The biological weakness of women makes her an easy prey particularly to physical domination. She is often a victim of physical violence not only outside her home but also inside of it added to that the constant neglect of the female children, which apart from having adverse effect on their health also creates mental trauma.

Dowry deaths are the culminating point of violence. Thousands of girls are being ill treated by their spouses and greedy in laws for more dowries. In the process, they immolate themselves at the altar of this evil every year. Despite anti-dowry measures, the government has not been able to curb this evil. Discrimination in the choice of child resulting in female infanticide accounts for nearly 3 million deaths in

the country. (Khullar: 2004). The serious problem of female infanticide has invited the wrath of social organization and the National Human Rights Commission. In this process, Women's Rights are part of Human Rights which are hampered.

Violence against women is a global problem. It is partly a result of gender relations that assumes men to be superior to women. Much of the gender based violence is considered normal and enjoys social sanction. It includes physical aggression, such as blows of varying intensity, burns, attempted hanging, sexual abuse and rape, psychological violence through insults, humiliation, coercion, blackmail, economic or emotional threats and control over speech and actions. In extreme but not unknown cases, death is the result. (Adriana: 1996). These expressions of violence take place in a man - woman relationship within the family, state and society. Usually domestic aggression towards women and girls, due to various reasons remain hidden.

Violence affects the lives of millions of women world-wide in all socio-economic and educational classes. There are many kinds of violence which vitiate the rights of women are discussed below:

Domestic Violence:

Domestic Violence refers not only inter spousal violence but also violence perpetrated by other family members. It includes harassment, maltreatment, brutality or cruelty and even the threat of assault and intimidation. It includes physical injury, as well as "Willfully or knowingly placing or attempting to place a spouse in fear of injury and compelling the spouse by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse has a right to abstain". Confining or detaining the spouse against ones will or damaging property is also considered as acts of violence. (Bedik: 1999)

In Indian society, especially wife battering is more frequent than any other type of assault in domestic violence against women. It is a serious social problem with its root in historical and religious attitudes towards women in our country. It is socially traditional but not legally legitimized. It is one of the mostly unreported crimes in the country. In one of the survey of the 84 victims studied, 14 percentage were very young below (20 years), 45 percentage young (21-30 years) and 41 percentage middle aged (31-45). Among the batterers 2 percentage were very young, 52percentage young and 16 percentage middle aged. (Dutta: 2003)

Dowry Harassment and Bride Burning:

Dowry is a transfer of property from the bride's family to that of the bridegroom, at the time of marriage. (Negi:1997: 14). According to the present practice, dowry usually subsumes material gifts and cash paid to the bridegroom and his kin. This practice continues even after marriage (Paul: 1993). The dowry given at the time of marriage is not only the transaction as far as daughter's marriage is concerned. This is a series of ceremonies associated with the girls in the family. The practice of giving gifts to the husbands family in cash or kind and rituals connected with pregnancy, child birth and ceremonies for piercing the ear of the girl and so on (Negi : 1997 : 15). The gifts are no longer a token of affection from parents to the daughter, but instead an elaborate demand from the marital family. (Negi: 1997: 16)

Despite a list of legislation protecting the rights of women, most importantly the prohibition of giving and taking of dowry under the Dowry Prohibition Act, 1961, women in India are tortured physically and mentally and even killed or driven to suicide by their husbands and in laws for not bringing sufficient dowry.

Sexual Harassment at work:

According to Mac Kinnos (1979) sexual harassment of working women is primarily a problem faced by women that men rarely face this problem and therefore it should be considered a form of sex discrimination. (Sikhri:1999: 128).

The Indian Penal Code 1860 defined sexual harassment as: "Such unwelcome sexually determined behaviour (whether directly or by implication) as physical contact and advances. A demand or request for sexual favours, sexually colored remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of sexual nature".

Male ego problems, sexual perversion, sexual obsession, widowhood, pornographic materials and media portrayal is said to be some of the reasons for the harassment of women.

Eve Teasing:

Eve teasing is an act of terror that violates a woman's body, space and self respect. It is one of the many ways through which a woman is systematically made to feel inferior, weak and afraid. Whether it is an obscene word whispered into a woman's ear; offensive remarks on her appearance; an intrusive way of touching any part of a woman's body; a gesture which is perceived and intended to be vulgar: all these acts represent a violation of a women's bodily integrity.

Eve teasing denies a woman's fundamental right to move freely and carry herself with dignity, solely on the basis of her sex (Hindu, August, 2, 1948).

Some acts of eve-teasing mentioned by girl students interviewed are : indecent remarks, singing obscene songs, hitting, touching or pinching in crowded places, snatching dupatta and in some cases even forced kissing, mailing anonymous love letters and exhibiting male genital in front of women. (Ashraf: 1997: 89).

Under Section-294 of IPC, 1860, this offence is cognizable and punishable and a police officer can arrest the offender without a warrant but it is bail able. (Ashraf: 1997).

Rape and Sexual Violence:

Rape, sometimes called sexual assault, is an assault by a person involving sexual intercourse with or sexual penetration to another person without that persons consent. Rape is generally considered a serious sex crime as well as a civil assault. Rape is also now recognized as an element of the crime of genocide, when committed with the intent to destroy, in whole or in part, a targeted group.

Under Sec.376 of IPC, whoever commits rape shall be punished with imprisonment of either description for a term which shall not be less than 7 years which may be for life or for a term which may extend up to 10 years and also shall be liable to fine?

Reproductive Rights:

Reproductive rights are rights relating to sexual reproduction and reproductive health. Reproductive rights are not recognized in international human rights law and are used as the following rights: the right to legal or safe abortion, the right to control ones reproductive functions, right to education about contraception and sexually transmitted infections, protection from gender based practices such as female genital cutting (FGC) and men genital mutilation (MGM). Though reproductive rights are understood as rights of both men and women, yet these are most frequently advanced as women's rights. The World Health Organization (WHO) advocates reproductive rights with a primary emphasis on women's rights. The 16th Article of the Proclamation of Teheran of UNO recognizes reproductive rights as a subject of human rights.

Abortion:

Women's access to safe and legal abortions is restricted in law or in practice in most countries in the world. Even where abortion is permitted by law, women may only have limited access to safe abortion services. Only a small number of countries prohibit abortion in all cases. In most countries and jurisdictions abortion is allowed to save the pregnant woman's life, or where the pregnancy is the result of rape or incest. Some internationally famous Human Rights Groups, such as Human Rights Watch, consider abortion will be allowed within the context of human rights in exceptional circumstances. However safe abortion services are first and foremost a human right. Approximately 13 percentages of maternal deaths worldwide are attributable to unsafe abortion which varies between 68,000 and 78,000 deaths annually. Human Rights Watch, an independent organization working for the protection of human rights argues the denial of pregnant women's right to make an independent decision regarding abortion violates or poses a threat to a wide range of human rights.

Custodial Violence against Women:

Violence against women by the people who are supposed to protect them (members of the law enforcement and criminal justice systems) is widespread. Women are physically or verbally abused. They also suffer sexual or physical torture. According to Amnesty International, thousands of women held in custody are routinely raped in police detention centre worldwide. The report of the Amnesty International underlines the necessity for states to prosecute those accused of abusing women in detention and to hold them accountable for their actions.

In the last few decades, women all over the world and especially in India have broken all barriers and obstacles and take up cudgels against injustice, violence and crime against women besides other social and environmental issues like fighting against illiteracy, bonded labour, child marriage and tribal problems.

References

Books

1. Asirvatham, E, Political Theory, Upper India Publishing House Private Ltd., Lucknow, U.P. 1976.
2. Barker, Ernest, Principles of Social and Political Theory, Oxford University Press, Oxford, 1952.
3. Basu, D.D., Constitutional Law of India, Prentice Hall of India Private Ltd., New Delhi 1998.
4. Batra, Manjula, Women and Law, Allahabad Law Agency, Faridabad, Haryana, 2001
5. Darren J.O., Byrne, Human Right, An Introduction, Pearson Publication, New Delhi.
6. Desai, Neera, Women and Society in India, Ajanta Publication, New Delhi, 1900.
7. Dev, Arjun, Human Rights, NCERT, New Delhi, 1996.
8. Dewan, V.K., Law Relating to Offences Against Women, Orient, Law House, New Delhi, 2000.

9. Iyer, Padma, Human Rights of Women, Pointer Publication, Jaipur, 2006.
10. Khana, S.K., Women and the Woman Rights, Common Wealth Publishers, New Delhi, 1998.
11. Manisana, Discrimination Against Women in India : A Gender Study, Akansha publishing House, New Delhi, 2008.
12. Raj, Hans, Indian Government and Politics, Surjeet Publication, Delhi, 2002.
13. Roy, M.K., Violence against Women, Common Wealth Publications, New Delhi, 2000.
14. Sharma, P.D., Police and Criminal Justice Administration in India, Uppal Publishing House, New Delhi, 1985.
15. Singh, M.P., Police Problems and Dilemmas in India, Mittal Publications, New Delhi, 1998.

Journals

1. Ashok Kumar, Sambalpur, Police Repression Continues, New Delhi, V-29 (14),5 April, 1981.
2. Dasgupta, Ranjit, Police-People relationship in contemporary India, Indian Journal of Public Administration, V-(32) (4), Sept. , Oct, 1986.
3. Diaz, S.M., Role of Police in the Prevention of Crime and Treatment of Offenders, A Social Defence, V-II (42) Oct, 1975.
4. Mohanty, Govind, Orissa Police Collusion in Congress-1 Attacks on CPI-Men, New Age, V-28 (29), 20 July, 1980.
5. Pattnaik, Kirans, In Orissa : At the Mercy of the Police, New Age, V-29 (36)6 Sept, 1981.
6. Singh, Sitar Ram, Role of Police in Modern Society, Indian Journal of Criminology, V- (15) (I) Jan, 1987.