
WOMEN AND LAW: PROBLEMS AND PROSPECTS

Rashi Maheshwari, Manipal University Jaipur

ABSTRACT

The main purpose of this research paper is to bring awareness in the society in terms of women and their legal rights given to them by the legislature. Legal awareness can be one of the important tool for gaining justice and equality in all the areas whether it be social economic and political. Awareness in terms of women rights will help creating positive environment which will show that all are equal in the eyes of law which will bring peace of mankind. Legal Awareness as the name say is the knowledge of law in terms of all the rights and opportunities available to the women as well as equal access to all the opportunities. This study will help us to understand all the crimes that are against women and will also help us to understand the punishments for that along with that it will also help to understand the legal status of women in the society as well as the articles that are provided by the Constitution of India.

Keywords: The Constitution of India, Crime against Women.

INTRODUCTION

Women constituted the keystone in the history of Indian Civilization. Women were the worthy of worship. They are consider to be the main pillar of household the fate of the household. They bring peace to the family. Even the whole universe is under the supervision and control of women. The God resides only in those households where womens are worshipped and are given respect.

Women portrayed the character of the good daughter, ideal wife and respectable mother. Women enjoyed freedom and have contributed to the large extent in the society in terms of justice and development in society. Gods are pleased it with where women are held at honour remained merely an ideal. She was under the influence where she is given on her parents, as an adult, on her husband as widow, on her son. Description of position status and education status, position and education of women doesnot complete without going through Manu's view. In our society position of women can be completely understood through customs and property rights.

EVOLUTION OF WOMEN RIGHTS

At times in 1500-1000 BC, women were consider as the symbol of life which shows her capacity to tolerate and her sacrifices were respectable in the society.

Then in ancient Rig Vedic period, (1700-1100 BCE), women were considered to be co-partners of their husbands and were enjoying all joys. They were even helping their husbands in all the activities along with the agriculture activities. Educated women were engaged in teaching work. However they were having very limited rights or no rights when it comes to their right in their fathers property.

But later in Vedic period in Smritis and Puranic era, the position of women gradually started declaring and it was observed that equality begined to vanished. The rights which they were enjoying earlier were not in existence and there were lot of restrictions in their social. Economic, political, and religious life.

As per Arthashstra “ It allowed her also to own money up to 2000 silver panas, any sum going above this was to be held by her husband on her behalf.

She was to be guarded in by her father in her childhood, by her husband in youth and by her

sons after the death of her husband. Thus she was completely depended on her family not having her own identity to stand alone and make her own name in the society.

In the Buddhist period- The status of women in Buddhist period was slightly improved in terms of religious field. During Gupta period there were laws regarding marriage, dowry, inheritance and widow remarriage was allowed.

In the 8th century Medieval India was one of the ‘dark age’ period for them. Medieval India saw many foreign conquests, and thus resulted into the decline in women’s status. When muslims came to India then on that period they brought their own culture. They considered women their a kind of property be it their property of father, brother or husband. and thus she was not having her own identity, will and desires of her own. And thus due to this kind of thinking the attitude of Indians towards their own women also changed and they also started treating their women like a property.

IN BRITISH PERIOD (COLONIAL ERA)

In 18th century to mid-20th century British ruled in India and the ruling of British Government brought some changes in terms of economic, social and political structure of Indian society. Arya Samaj in North India and the Brahmo Samaj in the State of Bengal, and Christian Missionaries came for the aid of Indian girls and women in all of parts life.

Raja Ram Mohan Roy raised his voice against Child Marriage, veil system and Sati Pratha and thus he fought for the right and inheritance for women. Status of women at the ending of the 19th century, reflects that the condition of woman was at its lowest point of literacy, of individuality, of health, of social status, including freedom of movement, or any kind of initiative of economic status of power.

The reasons which are considered to be held responsible for the degradation of the status of women in India were:

1. Patriarchal joint family system
2. Sati System
3. Polygamy
4. Forced
5. Denial of the right to divorce

6. Child marriage and
7. Pardah system.

The Britishers were the first rulers who were very liberal in their thinking and also unified the country as the whole. They believed that the rational thinking should be there on the basis of all customs and institutions and all customs and institutions so based on the reason had to be done away. Thus during British period Indian society faced large amount of modifications. The British Government worked slowly and thus provided alternative ways for those who wanted changes by introducing new educational systems, new social legislations, state structure, and new type of economy. For the upliftment of women in India, several factors were responsible. The very first one was the direct influence of the Britishers and their courtesy towards women, the general awakening of the Asians in the twentieth century and the political struggle for the independence of India and thus also able to gain considerable force to the feminism movement in India.

Some important laws that were enacted in British Era:

1. Sati Prohibition Act 1829,
2. Widow remarriage Act 1856,
3. The special Marriage Act 1872,
4. The Married women's property Act 1874,
5. Child Marriage Restraint Act 1929,
6. Hindu women's Right to Property Act 1939.

Bengal Regulation XXI in 1779 declared infanticide to be murder. Then this law was applicable to even in the other parts of India in 1804. However, this illegal practice continues in India secretly specially in the Rajput community among the Rajputs in Rajasthan.

Some of the women organization named as Banga Mahila Samaj, and Theosophical Society started functioning at local level to promote ideas for women in their interest.

Many of the women reformers named as Pandita Ramabai also fought for the women for their disabilities. Women reformers like Dr. Annie Besant, Vijayalakshmi Pandit, Aruna Asaf Ali, Sucheta Kriplani etc also played very important role for the struggle of India's Independence. Sarojini Naidu, a famous freedom fighter and poet, was the first women from India who became the president of Indian National Congress and was also the first women who became the

governor of the State of India.

CONSTITUTIONAL MANDATE REGARDING THE STATUS OF WOMEN

1. Constitution of India is the supreme law of country and has done very great job in ensuring gender justice. The preamble of the Constitution of India ensure equality in terms of opportunities and also assures justice, political, social, economic status of an individual.
2. It has provided specific articles for the benefit of women and affirmative action in favor of underprivileged person in the society like Women, Children, SC/ ST.
3. It has also eliminated gender-based discriminations which is one of the main problem in country like India. In fact the Constitution of India also empowers the State to adopt some of the measures that to in terms of positive discrimination in the favour of women through Article 14.

(Air India v Nargesh Mirza – removed discriminatory service conditions requiring female employees to obtain government permission before marriage and denying married and pregnant women the right to be employed.)

C. B. Muthamma vs Union of India and others (AIR 1979)

The petitioner argued that she was denied the promotion to 1st Grade of the Indian Foreign Service on the grounds that:

1. There were long standing practice of the hostile discrimination against the women.
2. She had to undertake on joining the foreign service on the conditions that if she got married she will have to resign from her post.
3. She had to face the problems of being a woman and thus suffered discrimination.
4. Members of the appointment committee were actually prejudiced as a group
5. The Court focused on the need to overlapping all service rules to remove the discrimination against women.

Vineeta Sharma v Rakesh Sharma (2020) in this case the court said that daughters will be having equal coparcenary rights in the property of Hindu Undivided Family (HUF) and that to

right from their birth and they shall not be excluded from their inheritance right in the property, even though they were born before the 2005 amendment to the Hindu Succession Act, 1956.

In *Shayra Bano v Union of India (2017)* case, the court observed that the practice of triple talaq is the one which is against the basics of the Quran. Talaq-e- bidat (a form of talaq in muslim law) is the practise which gives a husband all the right to divorce his wife that to just by uttering continuously three times 'talaq' without his wife's consent.

The court while passing its judgement in the *Sabarimala (2019)* issue. The court provided permission for the women's entry of all the ages to the Sabarimala Temple overlapping all the old custom banning the entry of menstruating women.

Joseph Shine v Union of India (2018) in this judgement the court held that right to privacy which is given under Article 21, declared as unconstitutional, Section 497 provided under the Indian, and on the different side the same rights were not given to the wife of the husband to prosecute the other woman with whom her husband has committed adultery. Penal Code, gives all the rights to the husband to prosecute his wife's lover

CONSTITUTIONAL RIGHTS AND PROVISIONS FOR WOMENS IN INDIA

It is an actual thought that women's in the Indian society are victims of intolerance and social injustice that to in terms of basic human necessities to the matters of property inheritance. Even when the Indian Constitution provides for several benefits for women, status of women in our country is clearly not as desired. The fact behind this status of women is the lack of awareness of these rights is what makes the women not stand for themselves and their right to equal opportunities.

It is a felt need to eradicate violence and discrimination against women through the source of well-planned legal awareness programmes which highlight and empower women with the knowledge of the constitutional provisions made exclusively for them.

CONSTITUTIONAL PROVISIONS

The founders of the Constitution of India over 73 years ago were mindful of the weaker sections of the society would come across and thus gave their thoughtful representation of these sections in the basic rights and duties of the Indian citizen. They safeguarded women's rights by considering them at par with men in all spheres of development be it socially, emotionally,

economically, politically or physiologically.

1. Article 14 Right to Equality ensured that the state shall not deny any person is man or woman, equality before the law or equal protection.
2. Article 15 (1) & (3) prohibits discrimination on the basis of sex and empower the state for making any special provision for women and children.
3. Article 16 (2) emphasizes on equality of opportunities in matter of public employment and prevents any discrimination against women with respect to any employment.
4. Article 19 talks about for the Right to freedom which entitles women and men the exclusively freedom of speech and expression. But unfortunately, it does not take into considerations in many households in our India especially for women.
5. Article 21 talks about protection of the life and the personal liberty and also talks about that no person shall be deprived of his life and personal liberty. Unlike the law, the ratio of women in our country is alarming which is quite evident from the sex ratio of many Indian states.
6. Article 23 talks about prohibiting human trafficking along with the forced labour. But taking into consideration innumerable cases of women abduction than we are forced to wonder about the actual implementation of this right.

Directive Principles of State Policy:

1. Article 38 it says that states to ensure a social order for the welfare of the people and remove any disparities and minimize inequalities in terms of income amongst citizens.
2. Article 39 (1) ensures that the men and women both will be having equal right to means of livelihood.
3. Article 39 (4) ensures the fact that there will be equal pay for both man and women.
4. Article 41 calls for the right to education, work and proper public assistance and also ensuring that state to make effective provisions for all irrespective of their caste and sex.
5. Article 42 ensures to provide just and humane conditions in terms of work and maternity benefit relief for women.
6. Article 44 talks about for uniform civil code for the citizens to secure both man and women to respect all communities and philosophies.
7. Article 47 focuses on fact to raise the level of nutrition and improving public health.

CRIME AGAINST WOMEN

1. In ancient Indian women was having good amount of respect in the society as provided in Rigveda and other scriptures. Thesis can be written regarding the status of women and their deeds right from vedic period to the modern era. But as the time flew because of social, economic and political women started losing their status. Many kind evil traditions and customs stepped in which restricted the women and trapped them to the boundaries of the house.
2. Definition of Crime against women- "The actual meaning of „crime against women“ is a kind of direct or indirect physical or mental cruelty to women. Crimes which are specifically against women" and in which women are the only victims are termed as 'Crimes Against Women'.
3. Thus it is very much important to clear the concept of Violence against women. Violence is also termed as a kind of abuse and also include physical aggression or misbehave.
4. The United Nations termed in 1993 "Violence against Women in Declaration on the Elimination of Violence against Women. It states it as an act of gender-based violence which results in, physical, sexual or psychological harm including threats of such acts, whether occurring in private or public.

Legal Provisions for Women in India

Even though there were well settled constitutional provisions for women, there was need for providing certain arrangements or laws in order to further strengthen the interest and safety of women in our country. These provisions are intended to combat discrimination and different kinds of violence and problems faced by women as victims.

These provisions are broadly classified as:

- Crimes under The Indian Penal Code (IPC)
- Crimes under The Special Laws (SLL)

A complete list of crimes identified in the two categories are listed as follows:

Under IPC:

1. Rape (Sec 376 IPC)
2. Kidnapping and Abduction for different kind of purposes (Sec 363- 373)

3. Torture, both physical and mental under (Sec 498-A)
4. Molestation (Sec 354)
5. Sexual Harassment (Sec 509)
6. Importation of girls (21 years of age)

In the second category of Special Laws the crimes identified are:

1. The Employees State Insurance Act, (1948)
2. The Plantation Labour Act, (1951)
3. The Family Courts Act, (1954)
4. The Special Marriage Act, (1954)
5. The Hindu Marriage Act, (1955)
6. Hindu Succession Act, 1956 with amendment done in (2005)
7. Maternity Benefit Act, 1961 (1995)
8. The Criminal Law (Amendment) Act, (1986)
9. Indecent Representation of Women Act, (1986)
10. Commission of Sati(Prevention) Act, (1987)
11. Prohibition of Child Marriage Act, (2006)

RAPE

A man is said to commit the offence of “rape” who, except in the cases had committed sexual intercourse in any of the circumstances with the women falling in the below six points:

(First) —if it is against her will.

(Secondly) —If it was without her consent.

(Thirdly) — With her consent, if her consent has been obtained by putting the person in whom she has interest or herself in the fear of hurt,

(Fourthly) —With her consent, when the man himself knows that he is

(Fifthly) — With her consent, when, at time of giving the consent, by the reason of unsoundness or the reason of intoxication administered personally by him or gave by any other person and due to which she is not able to understand the nature and consequences of that to which she gave consent.

(Sixthly) — With or without her consent, when she is under the sixteenyears of age.

(Exception) —Sexual intercourse by a man with his own wife, who is the under fifteen years of age, is not rape.]

Punishment - Rigorous imprisonment for a term which [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine]

State of Punjab vs Gurmit Singh (1996)

Anonymity of victim - Addresses and Name of victims will be kept secret in criminal proceedings. Even at the supplying copies of the charge sheets the identity of the victim will be kept secret supplying copies of charge sheets to the accused, the identity of victims may be withheld. The Supreme Court in this case held that as far as possible the court should avoid disclosing the prosecute to avoid further embarrassment of a victim of sex crime

Section 327 of the CrPC states that the trial of certain offence of sexual nature should be held in camera. Trial if it is conducted in camera, then it will help the victim to give testimony comfortably. There will be some kind of shyness if there will be the presence of media and public due to which she may not give testimony freely. If in case where the witness or victim is protected it will help the victims of crimes which will help them to be little comfortable.

Trial in camera will not only be helping the victim in keeping their self respect but will also be helpful and will act as the strong evidence. Trial in Camera will also help in improve the quality of evidence. It will also help her to stay free from any kind of hesitation as she may be in open court, under the surrounding of the public. The improved quality of her evidence would help the courts in arriving at the truth and sifting truth from falsehood.

Also in Nipu Saxena Vs Union of India and ors. It was held that Names and addresses of victims may be kept secret in criminal proceedings in any media, it include all types be it social press or electronic media.

Bodhisattwa Gautam vs. Miss Subhra Chakraborty (1995)

Subhra Chakraborty (alias - Kalpana) -A student of the Baptist College, Kohima where Shri Bodhisattwa Gautam who was a lecturer, filed a complaint in the Court of the Judicial Magistrate, 1st Class, Kohima, Nagaland, alleging, that, the accused with wrong and malafied intention gave her false promises and assurance, fraudly and dishonestly undergone sexual intercourse. Accused not only fraudulently induced her but also co-habited with here by giving her false assurance and promises of marriage but also intentionally and fraudulently went through certain marriage ceremonies with his knowledge and thereby with wrong intention

made the victim believed to be the lawful wife of the accused.

Accused even committed the offence of miscarriage by forcing the victim to go through abortion twice the times against her will.

It was held by the court that there were very serious allegations against the accused that he dishonestly married the Subhra Chakraborty and also married with her fraudulently before the God and compelled her for the abortion twice the times. The accused was instructed to pay the victim amount of Rs. 1.000 every single month as the amount of compensation during the pendency of Criminal Case in the court of Judicial Magistrate, 1st Class. He was also directed liable to pay arrears of the compensation at the same rate from the date on which the complaint was registered.

Tuka Ram vs State Of Maharashtra (1978)

It is known as Mathura rape case in India . An incident of custodial rape which took place in India on 26 March 1972, where Mathura, a young girl(tribal community), was brutally raped by two policemen in Police Station in Gadchiroli district of Maharashtra.

This case came to the Session Court on 1 June 1974 in the Sessions Court. Here the judgement was passed that the policeman were not guilty. It was believed that because Mathura was 'habited to sexual intercourse', thus she gave her consent voluntarily and thus under these circumstances only sexual intercourse will be proved and not rape and this was even supported by the medical reports submitted by the doctors who said that there were no signs on her body to show that there was any kind of force on her. And thus the allegations and charges were removed and the two accused were acquitted.

Then again the appeal was filled and the Nagpur Bench of the Bombay High Court set aside the judgement passed by the session court and sentenced the accused imprisonment. The court held that voluntarily submission in consequence of any fear, threat or injury will not be considered as consent or willingness for sexual intercourse.

Outraging the Modesty of women/ Sexual Harassment

Section 354(IPC)- Whoever on any women uses any criminal force and assault with the intention to outraging the modesty of women shall be entitled to punished with imprisonment of term not less than one year but which may extend to five years and will also be liable to fine.

Section 509(IPC)- Whoever, on any women intentionally makes any gestures or makes any sound or utters any words with intent to outrage the modesty to insult any woman shall be seen, shall be entitled to the punishment for term which may extend to three years and fine.

Rupan Deol Bajaj vs K.P.S. Gill 1996

The Supreme Court held that slapping a women on her posterior amounted to outraging of her modesty within section 354 and 509 of Indian Penal Code. Before police did not initiate any action on the FIR of complainant. And even High Court allowed the petition of Mr. Gill for quashing of the FIR on the grounds that matter being too trivial, so it needs no action.

Supreme Court held that he alleged act of Mr. Gill in slapping on her posterior amounted to outraging her modesty within section 354 and 509 of IPC for it was only an affront to the normal sense of the decency but also an affront of her dignity.

Vishaka vs State of Rajasthan 1997

In absence of certain legislation Supreme Court laid down guidelines regarding prevention of sexual harassment at workplace. These guidelines were made compulsory for every employer of the any organisation to provide mechanism to redress and listen grievances regarding to sexual harassment of women at workplace. This Case were to be treated as law under article 141 of the Constitution of India.

In framing on guidelines, the supreme Court made reliance on Convention on Elimination of All Forms of Discrimination against women.

The guidelines were issued under article 32 of Constitution of India. It effect as law and it is mandatory for every organization to follow both in private and public organization unless the parliament enact the law in this regard.

Apparal Export Promotion Council vs A K Chopra (1999)

The Supreme Court reiterated the guidelines laid down in Vishaka case and upheld the dismissal of officer who was found guilty of sexually harassed the subordinate female employee at work place. The Court also held that physical contact is no necessary to constitute the sexual harassment at workplace.

Legal Awareness & Consciousness – What can be done

It is crystal cleared from the above discussions that adequate and good amount of steps have been taken at the formative level to ensure the safety and security of women. What we need to question is why is it not seeking the desired results?

To understand this let's take a look at the challenges in spreading this awareness and building legal conscience among people:

- Evaluative measure adopted: Having received the knowledge and information about given constitutional and legal provisions a person should somehow relate to it, assess it and compare it with his/her own values. It should instill in every citizen the desire and moral value to evaluate his/her own behaviour towards women in the society. We should keep a check on our motives and acts in the society within the legal spheres. Once this transformation and self evaluation elements are formed a person can decide whether to violate the legal norms or not. Hence the social and spiritual manifestation of right legal practices should be encouraged through adoptable evaluation strategies.
- Lack of social security, dignity and respect for women: Women in many areas of our country and those of many other countries in the world are looked down upon as a weaker section of the social structure. They are expected to behave in a certain way hence giving rise to lack of respect among the so called higher sections of the patriarchial society. If a woman speaks for herself and her equality, she is considered as an outcast and bold. Feelings of vengeance and resentfulness are encouraged towards her declaring her as a threat to community and is ostracised at times too. Hence we need to build a secure and dignified environment for women of all classes, economic status and regions.
- General lack of awareness: People in their daily lives are so busy and are not taking into consideration that legal awareness is their priority. It is only when they need the law or are encountered with life situations involving the law that they look for solutions. We need to change this and make it a part of our growing up. Even when we study about the legal structures and basic rights and duties in the senior classes we do not go into the depths of what exactly are child rights or women rights. Hence stepping up efforts to spread awareness about the significance of these laws should be worked upon.
- Insufficient societal efforts in enforcement of cultural and social rights of women: We know that there are acts and laws in place but how much is the society doing to bring them into practice is questionable. Even the ones aware of it do not step forward to enforce these rights

of women. The society and community as a whole needs to step up and come forward to bring the desired changes in the mindset and fight against those still living on patriarchial norms. The cultural practices and rituals have to evolve to accept women in the way they are treated equally. Instead of demeaning the women the people who conduct ill practices against women should be demeaned publically so that one thinks before committing atrocities on women of their families.

- Poverty, violence, ignorance and lack of education specially for girls: Womens are dependent on their parents or spouses for monetary support. This feminization of poverty and women's economic vulnerability contributes to violence. Girls cannot work to fulfill their desire to study and hence are forced to quit education by the parents so that money is saved. These girls and women are ignorant of the policies and facilities created by the government for their growth and development and hence can not break out of their forced and undesirable environments.

CONCLUSION

Knowledge of law gives us the power to act and function judiciously. The fundamental postulate of the Indian Criminal Procedure Code is – the Ignorance of law excuses no one from compliance there with, which simply means just because you are ignorant of a law and its consequences you cannot be allowed of committing a crime. Legal Awareness in such types of situations becomes one of the major significant and the need for spreading it undisputable. It is this legal awareness which would bring a qualitative change in the social order of our country and help our society align with the evolving changes in the technology driven era.