

**Gender Justice is a Myth or Reality?**

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**1. Introduction**

India is a man dominant country. Men are the prominent persons of the family whether it may be joint family or nuclear family. Position of the male in our society is good. Position of women in India has remained a topic of concern since ancient times. They can be the perfect example of home makers. With their incomparable quality of calmness of their mind, they can easily handle even toughest situation. Indian women are completely devoted to their families. They're preached in the names of Goddess Sarasvati, Goddess Durga, Parvati & Goddess Kali.

Their condition remains unchanged even during the modern times with only little changes. In India, women were never given any right of liberty & equality. Their condition becomes even worse when they gave birth to girls. Men treated them in a humiliated manner. They were not only permitted not to step outside their house but also abstained from being educated. They were also supposed to eat after their husbands or even sometimes to eat their husband's leftovers. It's said during the ancient India, women enjoyed equivalent status & rights like their males counterparts. In addition they were properly educated in the early Vedic period. These references are available from the works of Grammarians such as Katyayana and Patanjali. Women also had the freedom to select their husbands. This system was known as 'Swambar.' In fact during this time, women had superior position than the males.

The status of women in India deteriorated during the medieval period with the entrance of the Muslims. Several evil practices such as female infanticide, sati and child marriage were practiced during this period. 'Pardah' was introduced to the society. Women were also forced to practice 'zenana.' Polygamy was also common during this period. Women also excelled in literature, music and arts. They were also rulers during this period. Some great-women rulers were Razia Sultana who was the only women-monarch to-rule-the throne of Delhi, Nur Jahan, and Gond Queen Durgavati who ruled for fifteen years before she was defeated in a battle by Ali emperor Akbar's. In spite of these powerful women, the condition of poor women remained the same.

During the modern times there was a little development in the women status. There were many women reformers in India who worked for the uplift & betterment of their female counterparts. Their

education was elevated and English was introduced during this period various female writers emerged in the society. In the modern time, women in India were given freedom & right such as freedom of expression & equality as well as the right to be educated. Various prestigious positions at this period were held by women. They're enjoying the 'ladies first' facility in different fields. However, some problems such as dowry, domestic violence, sex selective abortion, female infanticide are still prevalent.

## **2. A Burning Issue – Women Empowerment**

You might be listening to news, reading newspaper or magazine, you would have gone through incidents and accidents with women in India. While any other article on women's empowerment in India will take a look at our rich heritage and enlightened societies of the past where women were treated as equals, the concept of "India" itself evolved quite recently, relative to the sum of its parts' histories. But the truth is that in the modern India, the woman has always been a second grade citizen, no matter what its esteemed leaders have said or done.

Yes, it is only in India that glaring and brutal gang rapes occur frequently in a state that is headed by a woman Chief Minister. Gender discrimination is the least of worries for women in India, known otherwise as the fourth most dangerous country in the world for women. Other instances of violence against women has an astonishing and grim variety to it – with acid throwing, domestic violence stemming out of dowry, rape, harassment and an assortment of others.

- **What Is Women Empowerment?**

In the simplest of words it is basically the creation of an environment where women can make independent decisions on their personal development as well as shine as equals in society. Women want to be treated as equals so much so that if a woman rises to the top of her field it should be a commonplace occurrence that draws nothing more than a raised eyebrow at the gender. This can only happen if there is a channelized route for the empowerment of women.

Thus it is no real surprise that women empowerment in India is a hotly discussed topic with no real solution looming in the horizon except to doubly redouble our efforts and continue to target the sources of all the violence and ill-will towards women.

- **Crimes against Women**

The crimes against women fly directly against orchestrating women empowerment in India. A report on the crimes against women by the National Crime Records Bureau comes up with some alarming statistics:-

The year 2015 has witnessed a reduction in crime against women as compared to 2014. Recording a decrease of 3.1%, 2015 saw the registration of 3, 27,394 cases under the head of Crimes against Women as compared to 3, 37,922 cases in 2014, and show figures from the National Crime Records Bureau. Cases of rape have fallen by 5.7% coming down from 36,735 in 2014 to 34,651 in 2015. Incidents of gang rape too have shown a decrease from 2,346 in 2014 to 2,113 in 2015.

There has been a marginal increase of 2.5%, however, in other sexual offences against women. Under the category of “assault on women with intent to outrage her modesty”, 2015 saw 84,222 cases being registered across the country as against 82,235 in 2014. The category includes offences such as sexual harassment, assault or use of criminal force to women with intent to disrobe, voyeurism, and stalking. Kidnapping and abduction of women also increased in 2015 to 59,277 cases from 57,311 in 2014.<sup>1</sup>

A total of 3, 09,546 incidents of crime against women (both under IPC and SLL) were reported in the country during the year 2013 as compared to 2, 44,270 in the year 2012. The proportion of IPC crimes committed against women under total IPC crimes has increased during last 5 years from 9.2% in the year 2009 to 11.2% during the year 2013. Madhya Pradesh has reported the highest number of rape cases (4,335), assault on women with intent to outrage her modesty (8,252 cases) and West Bengal has reported highest number of importation of girls from foreign country (9 cases) accounting for 12.9%, 11.7% and 29.0% respectively of total such cases reported in the country. Andhra Pradesh has reported 37.4% (4,702 cases) of total insult to the modesty of women cases reported in country during 2013. 0.6% increase in cases reported under Immoral Traffic (Prevention) Act (from 2,563 in 2012 to 2,579 in 2013) was observed during 2013 over 2012. Tamil Nadu with 549 cases has accounted for 21.3% of total such (2,579 cases) followed by Andhra Pradesh (489 cases) with 19.0%. Highest incidents of kidnapping & abduction 18.8% (9,737 cases) and dowry deaths 28.9% (2,335 cases) were reported in Uttar Pradesh. Offenders were known to the victims in 94.3% of rape cases (31,807 out of 33,707 cases). A total of 53,464 cases of crime against women were reported from 53 mega cities out of 3, 09, 546 cases reported in the country during 2013. The rate of crime in these cities at 69.7 was comparatively higher

<sup>1</sup> <http://indianexpress.com/article/explained/national-crime-records-bureau-data-2015-slight-dip-in-rape-crime-against-women-3004980/>

as compared to national rate at 52.2. Among 53 mega cities, Delhi (City) accounted for 21.4% (11,449 cases) of such crimes followed by Mumbai 5.5% (7,946 cases), Bengaluru 4.9% (2,608 cases) and Ahmadabad 4.6% (2,449 case)<sup>2</sup>.

To understand the problem of gender inequality we should concentrate on these issues.

- **Challenges**

There are several challenges that are currently plaguing the issues of women's rights in India. A few of these challenges are presented below. While a lot of these are redundant and quite basic issues faced across the country, these are contributory causes to the overarching status of women in India. Targeting these issues will directly benefit the empowerment of women in India.

- **Education**

While the country has grown from leaps and bounds since its independence where education is concerned, the gap between women and men is severe. While 82.14% of adult men are educated, only 65.46% of adult women are known to be literate in India. Not only is an illiterate women at the mercy of her husband or father, she also does not know that this is not the way of life for men across the world. Eradicating this gap and educating women about their real place in the world is a step that will largely set this entire movement rolling down the hill to crash and break the wall of intolerance, negligence and exploitation.

- **Actions Taken To Empower Women**

- (A) **Millennium Development Goal<sup>3</sup>**

The United Nations Development Programme constituted eight Millennium Development Goals (MDG) for ensuring equity and peace across the world. The third MDG is directly related to the empowerment of women in India. The MDGs are agreed-upon goals to reduce certain indicators of disparity across the world by the year 2015. The third MDG is centred towards promoting gender equality and empowering women:

“Eliminate gender disparity in primary and secondary education, preferably by 2005, and in all levels of education by no later than 2015”

<sup>2</sup><http://ncrb.gov.in/CD-CII2013/compendium%202013.pdf>

<sup>3</sup> <http://www.in.undp.org/content/india/en/home/mdgoverview.html>

### **(B) Ministry for Women & Child Development**

The Ministry for Women & Child Development was established as a department of the Ministry of Human Resource Development in the year 1985 to drive the holistic development of women and children in the country. In 2006 this department was given the status of a Ministry, with the powers to:- Formulate plans, policies and programmes; enacts/ amends legislation, guiding and coordinating the efforts of both governmental and non-governmental organisations working in the field of Women Development.

### **(C) Swayamsidha Programme<sup>4</sup>**

Additionally, the Ministry is also implementing the *Swayamsidha* programme – an integrated scheme for the empowerment of women at a total cost of Rs. 116.30 Crores. Self-help groups which will empower women to have increased access to all kinds of resources that they are denied, in addition to increasing their awareness and skills. This programme will benefit about 9,30,000 women with the setting up of 53,000 self-help groups, 26,500 village societies and 650 block societies.

### **(D) National Commission for Women<sup>5</sup>**

The National Commission for Women is a Department within the Ministry of Women it was set up exclusively to help women via the Constitution – by reviewing Legal and Constitutional safeguards for women, recommending remedial legislative measures, by facilitating quick redressal of grievances and by advising the Government of India on all policy matters affecting women. The website allows for online submission of complaints and fast redressal exclusively for women. Additionally it is also a good resource of information for women and the Commission is committed to helping out women in need.

I believe that after this protest against women's disparity will end up with a social movement in India. And at the end, hopefully, women in India will obtain equality and a society without rape and violence.

### **3. Empowerment of Women and Law**

Social change 'is an inevitable phenomenon of every society because social conditions never remain static. Social change whether it comes through legislation or through judicial interpretation indicates the change in accepted modes of lie, or perhaps a better lie. The changing pattern does have an impact on

<sup>4</sup> [http://www.wcdhry.gov.in/SWAYAMSIDHA\\_F.htm](http://www.wcdhry.gov.in/SWAYAMSIDHA_F.htm)

<sup>5</sup> <http://ncw.nic.in/>

the laws and the life of a given society and law must keep pace with the changing socio-economic trends and political movements of the society, while at the same time preserving necessary balance between individual rights and duties. Thus law and justice provide a potential force for the attainment of a progressive social change.

#### 4. Constitution of India and Women Empowerment

With the birth of republic came a grand document vibrant with new ideas, new philosophies and new rights namely the Constitution. It brought about a sweep change and a social revolution beyond imagination. Justice Krishna Lyre in his book "Social Justice - sunset or Dawn expressed following words:—

“Indian Constitution is prominently a social document. It is goal oriented. This document puts women completely at par with men and fulfils the cherished goal of equality in matters of civil, political and economic rights. The political rights of franchise has also been given to Indian women under the provisions of the constitution. Besides, they have been given right to vote and stand in election for any post. Article 14 guarantees to all persons the equal protection of the laws. Article 15 prohibits sex based discrimination and Article 16 confers economic equality by ensuring equal opportunity in matters of public employment”.

Under Article 15 (3) the State has been empowered to make special provisions for women. Article 14 and 15(3) providing a touch-stone for tying the validity of all other laws play pivotal role in attaining equal rights for women along with a better protection as in other branches of law. The Constitutional mandate of equality of sexes and special protection provided under Article 15(3) was enforced by the Supreme Court in the cases of *Air India v Nargesh Meerja*<sup>6</sup> *C.B. Muthamma v Union of India*<sup>7</sup>, *Maya Davi v The State*<sup>8</sup>, *Yusuf Abdul Aziz v State of Bombay*<sup>9</sup> and *Srnt. Wmithri Vishnu v Union of India*<sup>10</sup> where unequal provisions were quashed against women some cases favoured for protecting women. It is observed the various cases decided by the Supreme Court and the High. Courts that the constitutional provisions have been interpreted by them in the same spirit in which they were framed. Legal measures favourable to women have been upheld by the judiciary and those discriminating against them have been, by and large, discarded.

<sup>6</sup> AIR 1989 SSC 1829

<sup>7</sup> AIR 1979 SC 1868

<sup>8</sup> (1988) 1 LR 743

<sup>9</sup> AIR 1954SC321

<sup>10</sup> (1985) ISC 369

### **The Criminal Law (Amendment) Act, 2005, 2006, 2010 &2013**

The law of rape was altered by the Criminal Law (Amendment) Act, 1983 after a decision of Supreme Court in the *Mathura rape case*. A new concept 'custodial Rape' was also defined in clause (2) of section 376 of Indian Penal Code by this Act. National Commission for Women Act, 1990: For the purpose of setting up of an agency to fulfil the surveillance functions as well as to facilitate Redressal of grievances of women the National Commission for Women Act, 1990 was enacted. The main function of the Commission is to look into the matters relating to the Constitutional and legal safeguards provided for women and review the existing laws and suggest amendments, if necessary. The Commission also have executive cum judicial functions to look into the complaints and take *suo moto* notice of the cases relating to women's rights.

This new Act has expressly recognised certain acts as offences which were dealt under related laws. These new offences like, acid attack, sexual harassment, voyeurism, stalking have been incorporated into the Indian Penal Code<sup>11</sup>

### **Amendment of the Provisions of the Indian Penal Code, 1860**

The Criminal Law (Amendment) Act, 2013 that came into force on the 3<sup>rd</sup> of February, 2013 amended as well as inserted new sections in the IPC with regard to various sexual offences. The new Act has expressly recognized certain acts as offences which were dealt under related laws. New offences like, acid attack, sexual harassment, voyeurism, stalking have been incorporated into the Indian Penal Code.

### **Sexual Harassment – Section 354A**

Sexual harassment is bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favors. The critical factor is the unwelcomeness of the behaviour, thereby making the impact of such actions on the recipient more relevant rather than intent of the perpetrator.

The essentials of the offence of sexual harassment as defined in the case of *Vishaka v. State of Rajasthan* are –

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<sup>11</sup> [http://en.wikipedia.org/wiki/Criminal\\_Law\\_%28Amendment%29\\_Act,\\_2013](http://en.wikipedia.org/wiki/Criminal_Law_%28Amendment%29_Act,_2013)

1. physical contact and advances involving unwelcome and explicit sexual overtures; or
2. a demand or request for sexual favours; or
3. making sexually coloured remarks; or
4. forcibly showing pornography; or
5. Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.

#### **Provisions after Amendment**

Section 354A Sexual harassment has been made a gender neutral offence whereas earlier, a man who makes unwelcome sexual advances, forcefully shows pornography or demands/requests sexual favours from a woman commits the offence of sexual harassment *simplifier* under section 354A; this is punishable by imprisonment of up to three years. Making sexually coloured remarks also amounts to sexual harassment, which is punishable by imprisonment for up to one year.

#### **Provisions after Amendment**

Section 354B ,If a man assaults or uses criminal force to any woman or abets such act with the intention of disrobing or compelling her to be naked in any public place, he commits an offence under section 354B, which is punishable with imprisonment between three and seven years. This section deals with a very specific offence and adds to and supplements the provision dealing with the offence of outraging the modesty of a woman. This is a welcome provision in view of the fact that many cases have been reported in the news of women being stripped in public as an instrument of punishment mostly in backward areas.

#### **Voyeurism – Section 354C**

Voyeurism is the act of watching a person engaged in private activities. If a man watches a woman engaged in private activities, when the woman does not expect anyone to be watching, he has committed the offence of voyeurism.

#### **Provisions after Amendment**

Section 354C , Any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the



perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished. Under Section 354C, such a person is liable. In case of first conviction, imprisonment is not to be less than one year, but may extend to three years, and shall also be liable to fine, and on a second or subsequent conviction, punishment with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

### **Stalking – Section 354D**

It means following a person and making or attempting to make contact for personal interaction, despite a clear disinterest being displayed by the other person. Stalking may be committed both physically and through electronic media.

### **Provisions after Amendment**

Section 354D Stalking has been made a specific offence under this new section. If a man stalks a woman, he may be punished with imprisonment of up to three years for the first time, and five years for the subsequent convictions. However, the offence is subject to certain exceptions like where a person can show that the acts done were in pursuance of some law, amounted to reasonable conduct or in order to prevention of some crime.

As per the definition in Section 354D the offence was gender-neutral offence, making the crime of stalking punishable for both the gender whether male or female. However, the Amendment Act of 2013 changed '*Whosoever*' to '*Any Man*' making the offence of Stalking a gender-specific offence. Section 354D of the Ordinance of 2013, was highly inspired from the definition of 'Stalking' in Section 2A of the Protection from Harassment Act, 1997 passed by British Parliament on 25<sup>th</sup> November 2012. Under the Act, the offence is limited to the physical act of following or contacting a person, provided that there has been a clear sign of disinterest, or to monitoring the use by a woman of the internet, email or any other forms of electronic communication.

### **Rape Section 375 and 376**

Justice Krishna Iyer in the case of *Rafiq v. State of U.P.*<sup>12</sup> made a remark that, "*a murderer kills the body, but a rapist kills the soul*". The Parliament by means of Amendment Act, 2013 has enlarged the ambit of

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<sup>12</sup> AIR 1981 559

rape by making certain non-penetrative act as offence amounting to rape. The Amendment Act, 2013 repealed the Ordinance (Amendment) Act, 2013 which was having wider ambit, thereby raising serious questions regarding the lacunas or loopholes that the judiciary could confront in future.

### Provisions after Amendment

Section 375 Under the new section, a man is said to commit rape if there is:

- Penetration of penis into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Insertion of any object or any body part, not being penis, into vagina, urethra, mouth or anus of any person, or making any other person to do so with him or any other person;
- Manipulation of any body part so as to cause penetration of vagina, urethra, mouth or anus or any body part of such person or makes the person to do so with him or any other person;
- Application of mouth to the penis, vagina, anus, urethra of another person or makes such person to do so with him or any other person;
- Lastly, touching the vagina, penis, anus or breast of the person or makes the person touch the vagina, penis, anus or breast of that person or any other person.

The 2013 Act expands the definition of rape to include oral sex as well as the insertion of an object or any other body part into a woman's vagina, urethra or anus.

The punishment for rape is seven years at the least, and may extend up to life imprisonment. Any man who is a police officer, medical officer, army personnel, jail officer, public officer or public servant commits rape may be imprisoned for at least ten years. A punishment of life imprisonment, extending to death has been prescribed for situations where the rape concludes with the death of the victim, or the victim entering into a vegetative state. Gang rape has been prescribed a punishment of at least 20 years under the newly amended sections.

The new amendment defines 'consent', to mean an unequivocal agreement to engage in a particular sexual act; clarifying further, that the absence of resistance will not imply consent. Non-consent is a key ingredient for commission of the offence of rape. The definition of consent therefore is key to the outcome of a rape trial, and has been interpreted systemically to degrade and discredit victims of rape.

## Exceptions to the Section

Marital rape, a contentious issue among feminist groups in India, is an exception to section 375, provided that the wife is not under 15 years of age. An exception also has been provided for the purpose of medical examination. In April, 2013, the Supreme Court criticised present medical tests for rape survivors, and has castigated the standard two-finger test in the case of *Lillu @ Rajesh v. State of Haryana*[xxiii]. Justices BS Chauhan and Kalifulla have directed the centre to provide better medical tests that do not violate the dignity of rape-survivors, thus preventing a “second rape”.

## 5. Problem of Implementation of Laws

The aforesaid study reveals that after the independence many Acts have been passed for empowering and improving the conditions of women but these Acts remain only on the paper. The ineffectiveness of those laws can be attributed firstly to the fact that these laws have been framed more as a token gesture than from any genuine concern to change the status quo of women. In some cases there have been wide disparity between the initial demands of the women campaigners, the recommendations of the law Commission and the final enactments. Also while one organ of the State, the legislature, has been over anxious to pass laws, the other organs, the executive and judiciary did not reflect this gesture in the implementation and interpretation respectively.

Thus there is a big gap in availability of legal rights of women and their actual enjoyment or implementation. Educational constraints and social backwardness of the majority of Indian women accounts for the great hiatus between their legal status and their actual position in life and society, and their failure to utilize legal rights available to them for improving their social status. Though the orthodox sections of Hindus and Muslims want to keep them in old convictions and conservative practices but it is the duty of government to provide protection against unhealthy an unsuited conditions by enacting and amending new laws. Really there is a Lacuna at least on the part of the government and also in implementing machinery.

## 6. SUGGESTIONS

### A. Labour Law

- (1) Labour laws pertaining to women should be properly implemented and a time bound mechanism should be set up for the follow up action, otherwise all the provisions will remain on the paper and there can be no proper social justice to the section of the society which is

suffering on account of sex bias. There is a need that the provisions of Maternity benefits Act should be extended to the women working in the agricultural sector. There must be a provision in the Act for free medical aid before, during and after confinement. Welfare and safety measures provided for the protection of women should be extended as per present scientific development.

- (2) Equal Remuneration Act should be fully implemented without discrimination on the basis of sex, in order to provide fair and just treatment to women workers.
- (3) There is also a need to harmonise work and family responsibilities for women. There should be action to change to traditional sharing of family responsibilities. Workplaces should be made family-friendly, including more flexible working time arrangements.
- (4) Social support services and infrastructure should be provided to enable women (and men) to harmonise work and family responsibilities more effectively.
- (5) There is also a need that the women should be encouraged to become literate. There must be good training arrangements. There is also need to equip women to operate more effectively in factories and workshop.

#### **B. Personal Laws:**

- (1) It is suggested that women should have an equal share in the property of her husband from the date of her marriage with a right to dispose of her share in property under extenuating situation.
- (2) Women should have right of free access to her children even if they remain in the custody of her husband.
- (3) Though the law has provided adequate provisions before and after the marriage but not after the dissolution of marriage. Marriage dissolution leaves many problem to be resolved.
- (4) The laws do not make adequate provisions for solving the problem which arise after the divorce in all the communities. For solving this problem there must be uniformity in the laws of marriages and divorces. A careful survey of the law shows that in preparing a uniform civil code for all the people of India, many benefit will ensue. In such an endeavour, many unjustifiable and discriminatory points of detail could be pruned and trimmed. The unification of marriage laws, as marriage laws form the core of family laws, can be first important steps towards a

Uniform Civil Code. Thus there should be a uniform civil code of marriage and divorce for all the countrymen.

## 7. CONCLUSION

Thus, today our country is in need of gender legislation of women laying down her rights irrespective of religion and region. The legislative measures are in favour of women, but their success depends on effective implementation. The proper implementation, Co-ordination of the three branches is absolutely essential. The Lack of implementation due to absence of commitment to the policy of the constitution has led to either non-implementation or to watering down by the judiciary and the executive of the beneficial effects.

From the above view one question which is confronting us is whether social change and gender justice can be brought about merely by passing stricter laws and implementing them? On the contrary the existing laws, the amendments and the new laws add to the confusion. Thus until there is empowerment of women, dissemination of legal awareness amongst them, economic status raised with the family and in the society, law will remain in effect on paper only.