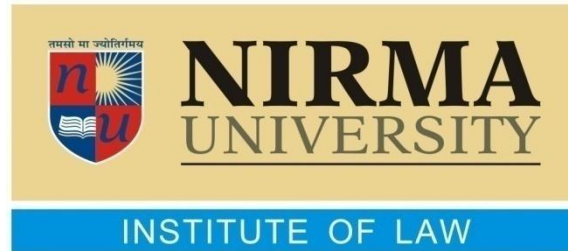


DISSERTATION

TREATMENT OF WOMEN RIGHTS IN JUSTICE DELIVERY SYSTEM:

ANALYTICAL STUDY

---



**SUBMITTED TO**

INSTITUTE OF LAW, NIRMA UNIVERSITY

*AS A PARTIAL FULFILLMENT OF REQUIREMENT FOR THE*

*DEGREE OF MASTER OF LAWS (LL.M)*

**UNDER THE GUIDANCE OF**

DR. PURVI POKHARIYAL

DEAN AND DIRECTOR

INSTITUTE OF LAW, NIRMA UNIVERSITY

**SUBMITTED BY**

ADITYA DADHICH

19ML001

## **DECLARATION**

I, Aditya Dadhich, bearing Roll no. 19ML001, do hereby declare that the dissertation submitted is original and is the outcome of the independent investigations/ research carried out by me and contains no plagiarism. The dissertation is leading to the discovery of new facts/ techniques/ correlation of scientific facts already known. This work has not been submitted to any other University or body in quest of a degree, diploma or any other kind of academic award.

I do hereby further declare that the text, diagrams or any other material taken from other sources including [but not limited to books, journals and web] have been acknowledged, referred and cited to the best of my knowledge and understanding.

Date:

---

Name: Aditya Dadhich

Roll no. 19ML001

Course: Criminal Law

Institute of law

Nirma University

## **CERTIFICATE**

This is to certify that the dissertation entitled “TREATMENT OF WOMEN RIGHTS IN JUSTICE DELIVERY SYSTEM: ANALYTICAL STUDY.” has been prepared by Aditya Dadhich under my supervision and guidance. The dissertation is carried out by him after careful research and investigation. The work of the dissertation is of the standard expected of a candidate for Master of Laws [LLM] in Criminal Law and I recommend it be sent for evaluation.

Date:

---

DR. PURVI POKHARIYAL

DEAN AND DIRECTOR

INSTITUTE OF LAW, NIRMA UNIVERSITY

AHMEDABAD

## **ACKNOWLEDGMENT**

This dissertation owes its existence to the help, support and inspiration of several people.

I would like to thanks Director and Dean of Institute of Law Nirma University Prof. (Dr.) Purvi Pokhariyal for giving me the wonderful opportunity to complete my LLM dissertation under her supervision. Thank you for all the advice, ideas, moral support and patience in guiding me throughout the project. Her support and suggestions have been inspiring and precious for the development of this dissertation.

I would also like to extend our gratitude to Associate Prof. (Dr.) Madhuri Parikh, who gave me her valuable time and inputs and helped me with all the technicalities of the research project.

Further I would like to thank to all non- teaching staff members and especially to staff member of library for providing remote access in this pandemic situation.

It would be ungrateful on my part if I fail to thank and acknowledge the help and inputs from my fellow students who, while they were busy with their own studies, took time to share their view regarding the topic with me.

## TABLE OF CASES

- Air India vs. Nergesh Meerza , AIR 1981 SC 1829
- C.B.Muthamma vs. Union of India & Ors., AIR 1979 SC 1868
- Charu Khurana vs. Union of India , AIR 2015 SC 839
- D.K. Basu vs. State of West Bengal, 1997 1 SC 416
- Delhi Domestic Working Women’s Forum vs. UOI , 1995 1 SCC 14
- Gaurav Jain vs. Union of India, AIR 1997 SC 3021
- Hindustan Latex vs. Maniamma, 1995 (3) SLR 231
- Hussainara Khatoon & Ors. vs. Home Secretary, State of Bihar, 1979 AIR 1369
- Indian Hostel & Restaurant Association (AHAR) and Ors vs. State of Maharashtra, AIR 2019 SC 589
- Indian Young Lawyers Association and Ors. vs. State of Kerala & Ors. , (2019) 11 SCC 1
- Lalita Kumar vs. Govt. of UP, (2014) 2 SCC 1
- Laxmi vs. Union of India , AIR 2015 SC 3662
- Mahmood Farooqui vs. State (Govt. of NCT Delhi), 2018 CriLJ 3457
- Mary Roy vs. State of Kerala and Ors., AIR 1986 SC 1011
- Medha Kotwal Lele vs. UOI, 1 SCC 297
- Mohammed Ahmed Khan vs. Shah Bano Begum, AIR 1985 SC 945
- Mohd. Akhtar vs. The State of Jammu and Kashmir, 2018(9) SC ALE181
- Mukesh& Anr. vs. State of NCT Delhi, AIR 2017 SC 2161
- Municipal Corporation of Delhi vs. Female Worker’s Muster Roll, AIR 2000 SC 1274

- Parivartan Kendra vs. Union of India & Ors., 2016 (1) ALD 70
- Randhir Singh vs. Union of India, AIR 1982 SC 879
- Ravada Sasikala vs. State of Andhra Pradesh & Ors., AIR 2017 SC 1166
- S.P.S Rathore vs. CBI & Ors., AIR 2016 SC 4486
- Sakshi vs. Union of India, AIR 2004 SC 3566
- Sarla Mudgal vs. Union of India, (1995) 3 SCC 635
- Shayara Bano vs. Union of India, AIR 2017 SC 4609
- Sheela Barse vs. State of Maharashtra, AIR 1983 SC 378
- Shobha Rani vs. Madhuka, AIR 1988 SC 121
- State of Punjab vs. Gurmit Singh, AIR 1996 SC 1393
- State of Tamil Naidu vs. Suhas Katti, C.C.NO. 4680/2004
- The Secretary, Minister of Defence vs. Babita Puniya & Ors., AIR 2020 SC 1000
- Tukaram & Anr. vs. State of Maharashtra, AIR 1979 SC 185
- Vishaka vs. State of Rajasthan, AIR 1997 SC 301

## **LIST OF ABBREVIATION**

- AIR- All India Reporter
- AIWC- All India Women Conference

- Anr. – Another
- CEDAW- The Convention on the Elimination of all forms of Discrimination  
Against Women
- CrPc- Code of Criminal Procedure
- CSWI- Committee on the Status of Women
- FIR- First Information Report
- Govt.- Government
- ICCPR - International Convention on Civil and Political Rights
- ICESCR- International Convention on Economic, Social and Culture Rights
- IEA – Indian Evidence Act
- IPC – India Penal Code
- NCRB – National Crime Record Bureau
- NHRC- National Human Rights Commission
- PIL- Public Interest Litigation
- SCC- Supreme Court Cases
- UDHR- Universal Declaration on Human Rights
- UN- United Nation
- UOI – Union of India
- Vs. – Versus

## TABLE OF CONTENTS

|                            |     |
|----------------------------|-----|
| DECLARATION.....           | i   |
| CERTIFICATE .....          | ii  |
| ACKNOWLEDGMENT .....       | iii |
| TABLE OF CASES.....        | iv  |
| LIST OF ABBREVIATION ..... | v   |

### CHAPTER 1

#### INTRODUCTION

|                                       |    |
|---------------------------------------|----|
| 1.1 INTRODUCTION .....                | 1  |
| 1.2 STATEMENT OF PROBLEM.....         | 3  |
| 1.3 LITERATURE REVIEW .....           | 4  |
| 1.4 CONCEPTUAL FRAMEWORK.....         | 11 |
| 1.5 AIM & OBJECTIVE OF RESEARCH ..... | 12 |
| 1.6 SIGNIFICANCE OF THE STUDY .....   | 13 |
| 1.7 SCOPE OF THE STUDY .....          | 13 |
| 1.8 RESEARCH QUESTION .....           | 13 |
| 1.9 HYPOTHESIS .....                  | 13 |
| 1.10 RESEARCH METHODOLOGY .....       | 13 |
| 1.11 CHAPTERISATION .....             | 14 |

### CHAPTER 2

#### HISTORICAL BACKGROUND

|                        |    |
|------------------------|----|
| 1. INTRODUCTION.....   | 16 |
| 2.1 VEDIC PERIOD ..... | 18 |



|   |    |
|---|----|
| 2.2 POST- VEDIC PERIOD .....                  | 19 |
| 3. POSITION OF WOMEN IN MEDIEVAL PERIOD ..... | 21 |
| 4. POSITION OF WOMEN IN MODERN PERIOD .....   | 24 |
| 4.1 PRE- INDEPENDENCE.....                    | 24 |
| 4.2 POST- INDEPENDENCE .....                  | 26 |

### **CHAPTER 3**

#### **CONSTITUTIONAL AND LEGAL SAFEGUARD FOR WOMEN AGAINST GENDER DISCRIMINATION**

|   |    |
|---|----|
| 1. INTRODUCTION .....                                       | 29 |
| 2. FEMINIST JURISPRUDENCE .....                             | 30 |
| 3. CONSTITUTIONAL PROVISIONS .....                          | 31 |
| 3.1 FUNDAMENTAL RIGHTS .....                                | 34 |
| 3.2 DIRECTIVE PRINCIPLE OF STATE POLICY .....               | 38 |
| 3.3 FUNDAMENTAL DUTIES .....                                | 39 |
| 4. CRIMINAL JUSTICE SYSTEM: AN LEGAL FRAMEWORK .....        | 40 |
| 4.1 ROLE OF POLICE IN SYSTEM .....                          | 41 |
| 4.2 PROCEDURAL LAW .....                                    | 43 |
| 5. OTHERS AND SPECIAL LAW.....                              | 46 |
| 5.1 INDIAN PENAL CODE, 1860.....                            | 46 |
| 5.2 INDIAN EVIDENCE ACT, 1872.....                          | 48 |
| 5.3 THE IMMORAL TRAFFICKING (PREVENTION) ACT 1956 .....     | 49 |
| 5.4 THE DOWRY PROHIBITION ACT 1961 .....                    | 50 |
| 5.5 PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005 ... | 51 |

|   |    |
|---|----|
| 5.6 THE INDECENT REPRESENTATION OF WOMEN (PREVENTION) ACT 1986..... | 51 |
| 5.7 THE SATI (PREVENTION) ACT 1987 .....                            | 52 |
| 5.8 INFORMATION TECHNOLOGY ACT 2000 .....                           | 52 |

## **CHAPTER 4**

### **INTERNATIONAL CONVENTION FOR WOMEN AGAINST DISCRIMINATION**

|   |    |
|---|----|
| 1. INTRODUCTION .....   | 54 |
| 2. COMMISSION ON THE STATUS OF WOMEN .....  | 55 |
| 3. UNIVERSAL DECLARATION ON HUMAN RIGHTS 1948 .....   | 56 |
| 4. THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1967) .....                    | 59 |
| 5. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) 1979..... | 60 |
| 5.1 INDIA AND CEDAW .....   | 62 |
| 6. CONFERENCE AND WOMEN RIGHTS .....  | 63 |
| 6.1 VIENNA DECLARATION .....  | 64 |
| 6.2 BEIJING CONFERENCE .....  | 65 |

## **CHAPTER 5**

### **ROLE OF LEGISLATURE AND JUDICIARY IN THE PROTECTION OF WOMEN RIGHTS**

|                                |    |
|--------------------------------|----|
| 1. INTRODUCTION .....          | 68 |
| 2. CRIMINAL AMENDMENT ACT..... | 69 |

|  |           |
|--|-----------|
| 2.1 CRIMINAL AMENDMENT ACT 2013 .....          | 69        |
| 2.2 CRIMINAL AMENDMENT ACT 2018 .....          | 71        |
| 3. JUDICIAL APPROACH .....                     | 72        |
| 3.1 SEXUAL OFFENCE .....                       | 72        |
| 3.2 SEXUAL HARASSMENT AT WORKPLACE.....        | 78        |
| 3.3 ACID ATTACK.....                           | 81        |
| 3.4 RIGHT TO EQUALITY AND DISCRIMINATION ..... | 84        |
| 4. OTHER LANDMARK JUDGMENT .....               | 87        |
| <b>CHAPTER 6</b>                               |           |
| <b>CONCLUSION AND SUGGESTION</b>               |           |
| 6.1 CONCLUSION.....                            | 90        |
| 6.2 SUGGESTIONS .....                          | 93        |
| <b>BIBLIOGRAPHY .....</b>                      | <b>96</b> |

# **CHAPTER 1**

## **INTRODUCTION**

### **1.1 INTRODUCTION**

Former President of USA Barack Obama once states that “I think that it’s important for judges to understand that if a woman is out there trying to raise a family; trying to support her family and is being treated unfairly, then the court has to stand up if nobody else will.” With this statement, the situation of women in a country is like contradictory while one side they are participating in all major spheres of life and giving tough competition in the fields of education, politics or the corporate world and at the same time they are the victims of the numerous forms of violence executed by both families as well as society. Although there are lots of provisions in a country like India related to the women enacted by the government but the truth tells the different story the situation of women’s and their rights are still marginal and bleak. Society is formed mainly on two pillars including men and women and she play a crucial role in the development of society but despite all these, they are considered a vulnerable group of the society.<sup>1</sup> Lord Denning in book titled “Due Process of Law” describe that “A woman feels as keenly thinks as clearly, as a man. She in her sphere does work as useful as man does in his. She has as many rights to her freedom to develop her personalities to the full as a man when she marries, she does not become the husband servant but his equal partner. They are equal.” Most often time it is forgotten

---

<sup>1</sup> Gopal G., Gender and Economic Inequality in India : The Legal Connection, 13(1) Boston College Third World Law Journal, 68 (1993)

that women are also human beings and they have also basic human rights and most importantly human dignity. The gender injustice further takes the shape of crime against women and the best example is that in a country like India where women are worshiped like shakti, despite of that atrocities are committed in all sections of life with them. The Criminal Justice System is more a regulatory or a social control mechanism as seen by the policymaker and law dominant of the country. The concept of justice is entrenched in every nation's culture and is closely related to the concept of fairness, equity, and treatment.<sup>2</sup> United nation described justice as “a principle of liability and fairness in the protection and justification of rights and the prevention and punishment of wrongs” Lord Macaulay drafted our system in the 19<sup>th</sup> century and with that process appeals and trial were conducted successfully. Police and courts play an essential role in the justice delivery system of the country as they count as pillars of the system formed by the Government to guard the individual rights and rights of society. Several provisions make sure the women’s right but this is very disheartening that If we look into the International aspect even after the “Convention on the Elimination of All Form of Discrimination against Women” (CEDAW) 1979 which mainly concerned about the equality between gender in the legal system but the reality is totally different and even The Constitution of India provide special status to women to remove the inequalities and numerous legislation which punish the offender of the discrimination but the ground scenario is not so commendable. All amendments made regards to this seem to be frivolous. When it comes to the implementation of laws it feels like crumble like a house of cards. Many times due to the crunch of co-ordination in the Criminal Justice System women suffer a lot. E.g. as the

---

<sup>2</sup> Anup Kumar, Criminal Justice System: Need for Reforms, International Conference- Criminal Justice under Stress, 2006

police play a fundamental role in the investigation process but on the same side it is very unfortunate to see cases like Mathura, Banwarari Devi, and Unnao's case were due the atrocities and negligence of police victims and her family suffered a lot. The need to transform in the approach of the police towards heinous crime is at a peak.

Even at the global level the rights to access justice for women are protected under the “Convention Elimination of All Forms of Discrimination against Women”, it is one of the fundamental elements of rule of law but on another side, the harsh reality of the system is to a certain extent different as gender-based discrimination faced by the women the various stage of the justice delivery system of the country.<sup>3</sup> However, women’s justice is different from men’s justice due to a higher level of poverty and power dynamics. The farmers of the Constitution also focus on women rights and talked about equal opportunities. In the present scenario, equal opportunities are the most ardent issues in today's society and the most important concern is a human rights issue, which affects women, in particular, plays a significant part in maintaining harmony and wealth in society. Not so friendly procedure of law kept many concerned women away from the laws and court. Concerned or ill-treated women have numerous experiences in the countrywide fairness method.

## **1.2 STATEMENT OF PROBLEM**

The Main aim of Justice delivery System is to provide fairness & justice to every person who is aggrieved, irrespective of their gender disposition. An only expectation of a normal human being is to avail access to justice with the equal treatment without any kind of discrimination. The last census reveals that more than half of the country’s population is females. Our Constitution and various other legislations prescribe numerous rights to all

---

<sup>3</sup> Reanda L., Human Rights and Women’s Right : The United Nation Approach, 3 Human Rights Quarterly,11 (1981)

citizens. But rapidly increasing Crime rates against women tell a different tale, and being a male in our country suggests more privileges.

Even though many provisions of the substantial and procedural law afford protection to women, there is an extreme increase in crime rate against women irrespective of these laws in place. As per the latest report of the “National Crime Record Bureau”, the crime rate of violence against women increased by sixteen percent compared to 2013 that is one of the concern areas which grab the attention. There is a need for analyzing the reason behind these increasing offences against women and the approach of the judiciary towards this issue. Maximum population of women is staying today in rural areas where curbing crimes against them is yet a distant dream when basic sanitation facility and education is also not accessible to them. To curb this issue and to afford women protection, the first step required is to address the underlying causes birthing these crimes and subsequently the need for robust safeguards in place.

### **1.3 LITERATURE REVIEW**

1. Akanji Babatunde, Responses of the Criminal Justice System to Violence against Women: A Review, 4 J.L. & Admin. Sci. 27 (2015).

This article talks about the responses of factors involved in the process of the justice system. It talks about the role of the most important factor of the System i.e. Police. This paper touches the various instances where police and different investigation agency of various countries violates the basic rights of the women during the whole process. The researcher aims at addressing the paper with the same essence and will cover some judicial interpretation.

2. Williams, L. (2004). Editorial: Women, Crime, and Criminal Justice. Women's Studies Quarterly.

This article mainly focuses on how women are generally ignored at large levels in the justice system of the country. It talks about the hurdles face by women in each role whether it is a victim or offender. This paper touches the various incidents like women and culture of abuse and incarceration as prisoners and culture of bias in court. The researcher aims to elaborate on the culture of abuse through numerous cases regarding women.

3. Pillai.K.N, Women and Criminal Procedure, Available at ([https://www.cwds.ac.in/wp-content/uploads/2016/12/ca\\_Women\\_and1.pdf](https://www.cwds.ac.in/wp-content/uploads/2016/12/ca_Women_and1.pdf)) [Accessed 1<sup>st</sup> April 2020].

This article is very informative in the light of gender basis in the criminal justice system. It talks about the influence of the term reasonable man in the system while dealing with offenses against women. It talks about the various provisions of arrest, investigation, trial, and detention. It concludes with a note that there is a need for alternative machinery for the prevention of the vagrancy of women. The researcher aims to address the same with some essence of judicial interpretation.

4. Gaur .K.D., 2018 Criminal Law and Criminology New Delhi, Deep and Deep Publication Pvt. Ltd.

The Author K.D. Gaur has highly described the provisions related to the sexual offenses and its statutory provisions. The author also focused on the rights of the victims and discussed the numerous provisions under the Indian Penal Code 1860 in the aspect of the sexual offenses. The researcher aims to the provisions with the



view of the author explained with the proper illustrations and judgments of the judiciary which leave an impact.

5. M.P. Jain 2017 Indian Constitutional Law, Wadhwa and Company, Nagpur

Numerous Constitutional provisions discussed by the author in this book. The researcher aims at the various Constitutional provisions and basic human rights that are Article 14, 15, 16 and some more which are related to women. Another focus area will be the Directive Principle of State Policy and Article 20, 21, and 22 which also guarantees rights to the accused and arrested person. The researcher will aim at the numerous constitutional provisions available to women to protect their rights.

6. Lotika Sarkar, Law and the Status of Women in India, 8 Colum. Hum. Rts. L. Rev. 95 (1976).

This article is very enlightening towards the status of women in the British period, pre and post-independence. It touches the thoughts of numerous freedom fighters regarding the women like Gandhi Ji. This article also discussed the general problems related to the status of women and law which includes constitutional provisions, judiciary, and police approach towards the problem. The researcher aims to through a light on the status of the women and attitude of numerous criminal justice agencies.

7. Malini Bhattacharya, Can law help women to survive? Social Scientist, Vol. 42, No. 1/2 (Jan–Feb2014), pp. 3-12

This article is very informative in the light of the report titled “Towards Equality” regarding the status of women and this article talks about the evolution of the status of women in the laws. This article also touches the area of radical amendments and

concludes with the point that it only hopes of equality that keeps alive the laws.

The researcher aims to focus on the concluding part of the report and also on the interpretation related to the evolution of the status of women in the laws in India.

8. Sukhpal Kaur, Women's rights: a historical perspective, The Indian journal of political science, vol. 70, no. (Jan. - Mar. 2009), pp. 121-130

This article is very informative in light of the evolution of women's rights. It also touches on some international aspects of the rights of women and their origin and development. This article also talks about the views of numerous philosophers and the evolution of rights in India towards women. The researcher aims to focus on the views of philosophers and also on the international aspect related to the subject.

9. Jogendra das, Reflection on Human Rights and the Position of Indian Women, The Indian Journal of Political Science, Vol. 64, No. 3/4 (July-Dec., 2003), pp.203-220

This article helps to gain more knowledge about the position of women with the perspective of human rights available in the nation. It touches the area of international aspects like Amnesty International and Universal Declaration of Human Rights, 1948 in the aspect of women. The researcher aims to focus on the principle of human rights and the judicial interpretation regarding the rights of women.

10. Nishtha Satyam, Women's Right are Human Rights, The Journal of National Human Rights Commission, Vol.17, 2018,pp.59-63

This article is very informative and helpful to gain knowledge about the international conventions regarding the discrimination against women. It talks about the numerous data collection made in recent times which includes the gender

gap report and percentage of crime against women. The researcher aims to use the article in the sense of some data collection report and will also focus on the international aspect as well as national.

11. Walby, S., Olive, P., Towers, J., Francis, B., Strid, S., Krizsán, A., Armstrong, J. (2015). Law and the criminal justice system. In Stopping rape: Towards a comprehensive policy. This article is very informative and widely discuss the numerous convention regarding the violence against women. The term rape has been extensively dealt with in the paper and how the criminal justice system intervenes to prevent rape by holding perpetrators accountable. This paper also though light on how gender basis and violation against women leads to the violation of human rights. The researcher aims to address the issues related to sexual violence and its consequences.

12. Anup Kumar, Criminal Justice System: Need for Reforms, International Conference- Criminal Justice under Stress, 2006.

This article is very informative in light of the formation and regulation of the justice system. It talks about the numerous components of the justice system and their maladies. It also suggests some to improve the condition of the criminal justice system. The researcher will aim to focus and discuss the combination of components and discuss about some fault in the system and try to find out the way to impose some remedies.

13. Prof. B.B.Pande, Is Criminal Justice System a Worthwhile Cause?, The Journal of National Human Rights Commission Vol.11, 2012,pp.11-27

This article is very informative as it tells us that policymakers and law dominant see the criminal justice system as a regulatory or social control mechanism. It talks about the concept between 'justice' and 'doing justice' and the operation of the criminal justice system. The researcher aims to analyze the concept of the criminal justice system through the eyes of numerous scholars and also focus on the role and functioning of the agencies of the justice system.

14. Women in Custody, Law Commission of India 135<sup>th</sup> Report, 1989.

This report was focused on the condition of women in custody and during interrogation. It contains certain provisions provided by the Indian Penal Code and The Criminal Procedure and The Evidence Act regarding the women. Commission also suggests some recommendations in the various enactments. The researcher aims to focus on the area of the recommendation and compare the present condition of women.

15. J.S. Verma J. Committee, 2013

Justice Verma Committee was constituted to recommend amendments to the Criminal Law to provide for quicker trial and enhanced punishment for criminals accused of committing sexual assault against women. It made recommendations on laws related to rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police, electoral and educational reforms. The researcher aims to address some of the recommendations in detail with the references of judicial interpretation.

In this report, various committee members recommended suggestions on reforms of the criminal justice system. The committee concludes that there is a need for

necessary provisions to restore the dignity of women even after convicted under code and it emphasized the need for security, discipline, and various program for the betterment of the women. The researcher aims to address some of the recommendations in detail with the references of judicial interpretation.

16. Rekha Pande, The History of Feminism and Doing Gender in India, 26 Estudos Feministas, 2018 pp.1-17

This article is very helpful to gain knowledge about the chronology in the matter of women's movement regarding their rights. It talks about three phases which include pre-independence, women movements, and post-independence. The researcher aims to analyze the outcome of the numerous movement and shifts of women status from period to period.

17. Zhonghong Bai, The International Protection of Women's Human Rights: With Emphasis on UN Convention on the Elimination of All Forms of Discrimination against Women, 7 Human Rights, 30 (2008)

This article is very informative in the light to better understand the provisions of the CEDAW. It provides the crux of the numerous conventions which contain the provisions to preserve the dignity of the women and it also discusses the limitation of the CEDAW. The researcher aims to interpret the provisions available in the numerous conventions and limitations and success of CEDAW.

18. Crime in India 2018, 66<sup>th</sup> Edition, National Crime Records Bureau

This Annual report contains detailed statistical information on the crime scene of the country. This report helps the researcher to collect the latest data available in

the context of the crime against women and disposal of cases by police. The researcher only focuses on the data related to women.

#### **1.4 CONCEPTUAL FRAMEWORK**

##### **1. Gender Justice**

Gender Justice is like open-ended expressions. In some incidents, it means alike treatment between men and women, and on some, its like “justice to the fairer sex”. The ultimate purpose of gender justice is that due to gender issues there should be no delay in justice and there should be no discrimination based on gender. Gandhi Ji once said that “Women are companions of men, gifted with equal mental capacity. Ignoring them will be a big mess for the civilization.” The Struggle for equality is one of the key concerns for the women in the society. This concern leads to the moment in various instances. Gender is more than the talks of men and women it concerns about transforming society towards the mindset of equality. It has to be placed where men and women should be treated equally. Equality should not be only on statues and legal documents. It should take into concern while discussing about access to justice.

##### **2. Human Rights**

Every human being born with the rights which deal with dignity and freedom, it a nominal right whichever individuals have against the state. It plays a crucial role in the development of the individuals. Universal Declaration of Human Rights was a major step towards the protection of the rights of every human being although it was not legally binding still many countries ratified it to ensure the protection of citizens. In the Indian Constitution, the shadow of human rights can be seen in the Fundamental Rights i.e. Part III of the Constitution which is enforceable by the court. Article 21 of

the constitution guarantees the right to life and personal liberty except according to procedure established by law. Directive Principle of State Policy ensures States to make policy for the protection of the basic right of human beings although they are not enforceable by court still it's a duty of the state to take measures.

### 3. Violence Against Women

According to United Nation "Violence Against Women any act of gender-based violence which likely to result in any kind of physical, sexual or mental harm to the women, it also includes threats of such act or arbitrary deprivation of their rights both in public or private" Any kind of violence against women is a serious infringement of their right to live with dignity and a peaceful life without discrimination. CEDAW also states the "Violence and discrimination interrupt women freedom or right to equality." Women are still considered a vulnerable group of the society. As per the latest stats available by the report of NCRB one can easily determine that still, we have a lot to do in the matter of rights related to women.

## **1.5 AIM & OBJECTIVE OF RESEARCH**

1. To highlights the provision of law for the safeguard of women in The Constitution of India and numerous procedural and substantive laws.
2. To evaluate an existing condition of women in the system.
3. To examine the judicial approach towards the atrocities faced by women.
4. To analyze the implementation of existing laws.
5. To analyze the problem faces by women during the interaction with Police.
6. To take out a conclusion based on the present study and make suggestive measures for better conditions of women in the system based on the present condition.

## **1.6 SIGNIFICANCE OF THE STUDY**

To analyze the provisions related to women and their implementation. It will also focus on the recent trends and amendments about the same. This study attempts to have a holistic view of the problem faces by women. It highlights the reaction of numerous agencies of the criminal justice system towards women rights. Also, the findings of this research paper will contribute to the existing literature on women condition in the system.

## **1.7 SCOPE OF THE STUDY**

It shall be limited to the provisions related to the women and the role of various agencies of the justice delivery system to protect them.

## **1.8 RESEARCH QUESTION**

1. What are the changes that took place related to concern of women's rights?
2. What are International Convention and Declaration concerning protecting women against gender discrimination?
3. What are the Constitutional and Legal safeguards provided to women against gender discrimination?
4. How the Judiciary interpret in the Protection of women against discrimination?

## **1.9 HYPOTHESIS**

There has always been a challenge to protect the status of women against discrimination despite constitutional and legal safeguards.

## **1.10 RESEARCH METHODOLOGY**

The nature study shall be Doctrinal Research or non- empirical. The present research is doctrinal because it has been carried out on the legal perspective and judicial interpretation related to the women and their rights and condition in the justice system of the nation.



#### Nature of study:

The approach towards study will be a combination of the collective design and descriptive research design. It will be a mixture of both quantitative and qualitative with a comparative study on some points which will help in the analysis of the research. It would be exploratory in the sense that the researcher will explore and try to understand the task of various agencies included in the justice system and existing legislation.

#### Method of Data Collection:

The method of data collection will be secondary as the researcher uses the available data which has been collected by someone else and which some statistical report of numerous Organization and Judicial Precedent

#### Source of Data Collection:

As the data is doctrinal so the source of data is a documentary source that includes both the primary and secondary data sources. Primary data includes legal sources and immediate sources of laws and secondary data include journals, books, articles, law commission reports, and numerous judicial decisions, published statics, and the internet.

### **1.11 CHAPTERISATION**

#### Chapter 1 – Introduction

This chapter will consist of an overview of the background and origin of the topic. This will include the objectives and aims, hypothesis, research question, and research methodology.

#### Chapter 2 – Historical background

This chapter will talk about the historical development of the title and its emergence. Changes in the women condition from the Vedic period to pre-independence to post-

independence. It will contain the jurisprudential aspect of the problem given basic rights and women in the criminal justice system.

#### Chapter 3 – Constitutional and Legal Safeguard for Women against Gender Discrimination

This chapter will comprise of a constitutional and legislative measure for the safeguards of women. The researcher will mention various provisions of the constitution as women perspective and protection of women under the Directive principle of the state policy. This chapter will also include the provisions of the Various Criminal legislation Act that will include the Indian Penal Code 1860, The Criminal Procedure Code 1873, and The Evidence Act 1872.

#### Chapter 4 – International Convention for Women against discrimination

This chapter will consist of numerous international conventions and declaration related to the protection of women against violence. The researcher will also focus on how various countries try to change their system so that women should get proper justice.

#### Chapter 5 – Role of Judiciary in the Protection of Women against Gender Discrimination

This chapter will focus on the role of the judiciary for the protection of women and their interpretation regarding law related to women. The Researcher will also discuss the provisions of criminal law and process of the criminal justice system.

#### Chapter 6 – Conclusion and Suggestions

## **CHAPTER 2**

### **HISTORICAL BACKGROUND**

“You can tell the condition of a nation by looking at the status of its women”

- “Jawaharlal Nehru”

#### **1. INTRODUCTION**

Nearly fifty percent part of the world’s population consists of women. Somehow in developed countries, women are equally treated like men in recent times but the situation

in India is different than others we provide equal status to women but mostly on the paper only. It works like irony, on one hand, we worship women as a goddess and on the same hand most heinous and illegal offenses are committed mostly against women like rape or sexual exploitation. Although it is gone through numerous changes still the matter of the position and human rights of women remained most concern area in the field of socio-cultural. Every role played by the women has a great impact on the society no matter whether it is directly or indirectly.<sup>4</sup> According to our Constitution, we provide the principle of equality to all women as they are legal citizens of the country. If we go through our ancient there were many instances where the women witness the inequality. A woman has free but does not have an independent life as numerous customs, usage, and tenets and practice clearly show us the position of women not only in the family unit but also in the public as well.<sup>5</sup>

In Ancient India the position of women is somehow complicated due to the different views of the different religions on one side some religion gives them the 'equal status like men' on the same side others created disrespect towards them.<sup>6</sup> Once Gandhi Ji said that "Women is the noblest of God's creation, supreme in her sphere of activity." With these thoughts in the early 20<sup>th</sup> century, there was a rise as Gandhi Ji started the liberalization of women as the national movement. Due to the effect of that many social workers including "Raja ram Mohan Roy" and several others in full swing started a revolution for the prevention the sati system the result of this movement was the enactment of numerous laws

---

<sup>4</sup> Dr. Malik P.S , Socio- Cultural Status of Women in India : A Historical Perspective, 04 Research Review Journal, 1524- 1528 (2019)

<sup>5</sup> Cohen M., The Condition of Women in Developing and Developed Countries, 11 The Independent Review, 261 (2006)

<sup>6</sup> Monda.P, "Women: Essay on the position of women in India", <https://www.yourarticlelibrary.com/eassy/wome-eassy-on-the-position-of-women-in-India/31314> (last visited May 31, 2020)

including Dowry prohibition<sup>7</sup>. Independence brought some good news for the women sector as parliament made enough efforts to provide similar status to women as men by removing inequality. With the help of the Constitution of India, they furthermore try to protect the equality of women. There are many other instances where sufficient efforts to provide equal status. So as far as Indian Society concerned it is a subject of fact that the situation of women varies from the old period to the modern age.<sup>8</sup>

## **2. STATUS OF WOMEN IN ANCIENT INDIA**

### **2.1 VEDIC PERIOD**

This was one of the golden eras for the women as they equal participation in every field of life and somehow enjoyed the equality. To understand the situation of women in the old age Vedic period one have to understand and analyze the “Hindu scriptures”, hymns, and numerous literary work that shows the societal customs which was established during that time.<sup>9</sup> Several criteria can be measured to find out the significance of women in the earlier period. For some more deep insights, one should look into some ancient literacy work and some epics. During the Vedic period, women had to look at the society full of dichotomy. They enjoyed a lofty status in the earlier period but in the later Vedic period it got crumble. In this period women used to contribute within the all areas of life along with men. They used to learn in the gurukula and women like Gargi, Yami, Gohsa were in the limelight in the field like education, art, and many more.<sup>10</sup> Women always were a part of the husband. In one of the Upanishads called Aitareya, wife has been recognized as the accompanying

---

<sup>7</sup> The Dowry Prohibition Act, 1961(Act No. 28 of 1961)

<sup>8</sup> Supra 4

<sup>9</sup> Saxena G.K, Position of Women in Vedic, Post- Vedic, British, And Contemporary India.4, International Journal of Legal Development and Allied Issues, 372 (2018)

<sup>10</sup> ibid

person of husband. Used of the word called ‘Dampati’ in Vedas when men and women comes together. In the Rigveda, it has been said that females are completely equivalent to the men and have sanction blessed to live as the queen of the house if she wants.<sup>11</sup> In the Hindu mythology named “Mahabharata”, Woman as a wife has been signified as the original cause of dharma, wealth, and pleasure<sup>12</sup>. At that time no men were permitted to carry out ritual rights without his wife. Women have the right to choose their life partner and no purdah system at that period. Girls are allowed to undergo the thread ceremony. The significance of women is based on equality, liberty, and co-operation, unlike in the western world. If we further talk about the epics of Hinduism then Veda Vyasa deliberately describes that Kauravas fell because of humiliation against Draupadi and the same goes to Valmiki’s Ramayana where Ravana abducts Sita which results into his death.<sup>13</sup> In Manusmriti it is described that “Women are worthy of worship. They are the fate of the household, the lamp of enlightenment for all in the household. They bring solace to the family and are an integral part of Dharmic life. Even heaven is under the control of women. The gods reside in those households where women are worshipped and in households where women are slighted all efforts at improvements go in the vain”<sup>14</sup>

## **2.2 POST- VEDIC PERIOD**

Now if we talk about the “Post-Vedic period”, position of woman started degrading due to some reasons. As per the ancient scriptures, women enjoyed a high grade but the whole scenario change during the Post-Vedic period. This period saw the beginning of the child

---

<sup>11</sup> P.Abhishek, A Critical Analysis of Status of Women in India, 5 International Journal of Pure and Applied Mathematics, 4853 (2018)

<sup>12</sup> Pal .B, The Saga of Women’s status in ancient Indian civilization.23,Miscellanea Geographica- Regional Studies on Development,180 (2019)

<sup>13</sup> Kumar S.M, Status of Women in Vedic Period , <https://www.speakingtree.in/blog/status-of-women-in-vedic-period> (last visited 04 June 2020)

<sup>14</sup> ibid

marriage and by that time the sati practice also came into the force in the medieval period. Lots of problems arisen for the Hindu women till the period of Mughal. One can see that the condition of the women became worse during that time.<sup>15</sup> During the Mughal period, women suffer lots of inequality in every field of humanity. Practice like “Sati Partha”, “Child Marriage”, “Polygamy” and Pudah Pratha is amid the most public immorality practice against the women at that time. On the other hand revolutionaries like Kabir, Meera, Nanak, and many others always stand for the privileges of the women due to them only some dignity of women was there at that time. As we move towards the Post-Vedic and Mughal era the significance of woman falls from a divine to merely an entity of indulgence.<sup>16</sup>

The age of Dharmashastras prescribe the conduct code for not only women and their families but the whole society. This period was the witness of the exclusion of women from both the religious and economic spheres. The dependence on men was at merge during this period and the concept of women inferior to men also came into existence. Two important laws code of this period is Manu Smriti and Yagnavalka Smriti.<sup>17</sup> As per Manu view “a woman, in her childhood is dependent on her father, in her youth on her husband and in her old age on her son” and in yagnavalka Smriti the age of marriage is defined and if parents unable to follow that then it would be considered as a sin. Child marriage was also given preference during this period. Lots of things change during old Vedic period to the Post-Vedic period, as during earlier times there was no discrimination on the base of

---

<sup>15</sup> Supra 9

<sup>16</sup> Mohapatra H., Status of Women in Indian Society, 3 Journal of Research in Humanities and Social Science, 33 (2015)

<sup>17</sup> Basu S, Position of Women in Pre-Independence Era: A Socio-Political Perspective” in Rathin Bandopadhyay, Sanjay Kumar Singh et al (eds), „Women Rights Human Rights“, R. Cambray & Co Pvt Ltd, Kolkata, 76, (2010)

gender and they were treated as pure as god and they have a special place in the society. But the later part i.e. Post- Vedic saw biasesness based on gender had started and women were treated as object and crime against them was on peak.<sup>18</sup> There was a downfall of the position of women from highest to lowest.

### **3. POSITION OF WOMEN IN MEDIEVAL PERIOD**

If one wants to describe a particular period as “Dark Age” for female then it is an medieval period where the state of women became more inferior rather than developing. Medieval period starts with the arrival of the Muslims from abroad particularly from the Middle East in India. With emerge of Muslim leaders “They brought with them different laws on inheritance and divorce and an entirely different from family life.”<sup>19</sup> They treat women as property and she had no right to express her feelings. They are not even allowed to more free and no sign of freedom in their life. This period which was led by Muslims saw the rise of the Purdah system and polygamy and secularism of women.<sup>20</sup> Muslims take-over country and with that the position of women gone through a miserable condition. All these fear and situation gave raise to many new problems which were faced by the women that includes “child marriage”, “Sati Practice”, curb on Girl education, and so on. Some of the Hindu believer believes that the woman goes to the heaven after this practice. Over time somehow it’s became a custom in the society. It considered a better option rather than live as the widow of the husband. In Rajput’s societies, there was another practice just like sati i.e. Jauhar but it is a mass suicide, unlike the sati where only the wife of husband do suicide.

---

<sup>18</sup> Supra 16

<sup>19</sup> Dr.Singh V.,The Position of Women in Medieval India, 7, Bhartiya Bhasha Shiksha Sahitya evam Shodh, 13 (2016)

<sup>20</sup> Tharakan, S., & Tharakan, M. Status of Women in India: A Historical Perspective. Social Scientist, 4 115 (1975)



Jauhar is a custom where wives immolated themselves while their husbands were still lives. The best example of this custom is Rani Padmavati. That times the position of female in the general public somehow dependent on marital status of her.<sup>21</sup>

Another norm can be seen medieval period was child marriage, which is still in practice at numerous remote villages of the country. In this practice, girls were married off the earlier age only. At the same time, they were not allowed to get proper education and on most of the occasions, they were treated as material only.<sup>22</sup> On the other side, the condition of the widow was also not so good. As soon as the husband died; a lot of restrictions imposed on wives. There were supposed to live like saint i.e. pious life. They were not allowed to any function or celebration in the society as their presence will mark as bad omen. With all that, they were not allowed to remarry. This reaction of the society towards the widow was one of the reasons women committing Sati.<sup>23</sup> One more custom which was in practiced mostly in Southern India is a system of Devadasis, in this girls were considered as the servant of God. “That time girl child in society were treated more as a liability in the sense that there is always a cost of marriage, they feel that they don’t want to educate the girl child as they always prefer a male child because they believe that they are the liberators of their soul when they die and when this comes to poorest families, if they get a female child then they think that ‘how can we work to turn this liability into an asset? So the system of devadasi comes into the scene where they think by dedicating their child to the goddess

---

<sup>21</sup> Supra 19

<sup>22</sup> Kumari S., Position of Women in Colonial Era, 1 International Journal of Educational Research and Technology, 109 (2010)

<sup>23</sup> ibid

and then the girl child will take over by the landlord and he assures regular income for the families.”<sup>24</sup>

The status of women was quite better in other religions than Hindu and Islam i.e. Jainism, Sikhism, and Buddhism. They help society for the betterment of the women to some extent. They encourage society to provide education to the girls and encourage women to participate in numerous fields in all directions. ‘Guru Nanak’ was the best example of this as he speaks up for the equality among both the gender every sector which includes political, educational, or cultural. Many spirituals Guru of Sikh community work towards the better position of Indian women.<sup>25</sup> They have their philosophy like “No doubt women are contributing remarkably in every arena of human life, but the contribution of the society and government towards the cause of gender equality is in question ... A large population of women have to suffer acute inequalities, deprivation, and injustice. Increasing physical violence against women in the form of rape, dowry and many more this all reflect that how women were treated in the society as well as in family”<sup>26</sup>

In the end, it can easily be determined that the women were dispossessed of their rights; from high status to disgrace, no property rights, the tradition of sati, the marriage ceremony of children, and many more. The condition of women at that moment was miserable.<sup>27</sup> In ancient times the situation of women was much better and honourable but drastic change took place in the middle period. They were treated as the goddess in ancient times but in the medieval period, the practice like Sati, child marriage, and devadasi degrade their

---

<sup>24</sup>Shingal.A., The Devadasi System: The Temple of Prostitution in India, 22(1) UCLA Women’s Law Journal, 107 (2015)

<sup>25</sup> Supra 19

<sup>26</sup>Kapur .J, Challenges of Gender Equality in the New Millennium and Guru Granth Shaib, 37, P.P.P, 62 (2005)

<sup>27</sup> Supra 22

dignity. We can conclude with the point that women saw numerous changes in the behaviour of the society towards them and it also varies from religion to religion. The trace of expectation was in the society which demands the right of women and tries to improve the grade of women.

#### **4. POSITION OF WOMEN IN MODERN PERIOD**

##### **4.1 PRE- INDEPENDENCE**

The Pre- Independence period also called as British period saw an extreme alter in the position of women. One of the reasons was the introduction of the western culture in the Indian socio pattern. Now during the East Indian Company, many eminent reformers like “Raja Ram Mohan Roy” and “Ishwar Chandra Vidyasagar” did a lot towards the upgrading the condition of women community . It was “Raja Ram Mohan Roy” only who abolished “Practice of Sati”. In 1847 first girl’s school started in India by the Peary Chand Sarkar. The Revolt of 1857 saw a great conquer from the women too. One of the History Scholar said “The revolt of 1857 was famous for Hindu- Muslim unity. People forgot the barriers of religion and marched shoulder to shoulder against the British. Along with the barriers of religion, barriers of gender also crumbled during the revolt. Hundred of women fought the British and many were even in commanding roles. The biggest example of this would be Rani Laxmibai of Jhansi and Begum Hazrat Mahal, who led the siege of Lucknow”<sup>28</sup> “The British East India” Company had control on top of country and after the queen’s direction. During this period two important movements took place in the 19<sup>th</sup> century there was a Socio reforms Movement and another one is National Movement. The question of

---

<sup>28</sup>Rana.U, The revolt of 1857: When gender barriers crumbled, woman fought as equals, TOI, May 9, 2016, <https://timesofindia.indiatimes.com/city/meerut/The-revolt-of-1857-When-gender-barriers-crumbled-women-fought-as-equals/articleshow/52193240.cms> (last visited 10 June 2020)

the status of women was raised in both the movement. Social reform was concerned about the practice like Sati, child marriage, and education. In amid of this there was abolition on the practice of Sati and legislative progress towards the widow re-marriage and many more things. The social reform thinkers had an ideology that by giving education to the girls and women the change can be initiated and their thinking was like if society wants to grow than it must improve the condition of women.<sup>29</sup> Another movement was a national movement which helps women to develop confidence and power which help them to fight for their causes. Gandhi Ji's view was that the most important thing for women is education which ensures their development and moral values and makes them capable like men on the same platform. Gandhi Ji was a believer in the 'Ahimsa' i.e. non- violence and he found that abilities in the women to incorporate his principle so he envisaged crucial roles to women in establishing the non- violence.<sup>30</sup> The result of this was numerous woman moments were held which demands the violation of the old customs and education reforms. This period saw the numerous changes in the old custom of the society like "Sati Abolition Act (1820)", "Widow re-marriage Act (1856)", "Women education, Ban on female infanticide (1870)", Abolishment of Devadasi System (1929) and many more.<sup>31</sup> Another major achievement "All India Women's Conference" (AIWC); it had been crucial step towards equality of women.<sup>32</sup> It can be concluded with the point that awareness was created during the British period, somehow the British Government only passed law and bills the real work done by great community transformers like Raja Rammohan Roy,

---

<sup>29</sup> Supra 4

<sup>30</sup> Nishita, Status of Women during British Period <https://www.yourarticlelibrary.com/women/status-of-women-during-british-period/47393> (last visited 10 June 2020)

<sup>31</sup> Kumari. S, Position of Women in Colonial Era,1, International Journal of Education Research and Technology, 109 (2010)

<sup>32</sup> Leonard, K., Women in India: Some Recent Perspectives, 52(1), Pacific Affairs, 95 (1979)

Ishwar Vidyasagar and many others. With the education benefits and encouraging taking part in the political area also, the involvement of women was seen in every field.<sup>33</sup>

## **4.2 POST- INDEPENDENCE**

As soon as India got independence with parallel to that Indian women also got some relief as they get the voting right and equality rights guarantee under the Supreme law of the land. Women participated in independence result in rewards as an introduction to basic human rights.<sup>34</sup> Post Independence period saw the growth of women in some area as they are free to choose any profession they want and education too. As the equal chance provided in the Constitution they can aspire to be on the highest post. Constitution formation ensures equivalent rights for both the gender. According to it “no citizen shall be discriminate on the ground of religion, race, caste, sex, place of birth, or any of them”<sup>35</sup> Many articles like Article 15 and 16 and 14 forbids discrimination and treat both as like in the eye of law. The framer of the Indian Constitution has the ideology that somehow the growth of the country depends on the condition of women so they emphasize the removal of inequality and give every opportunity to the women. Even “Universal Deceleration of Human Rights” (UDHR) thought that they were needed for extra concern and protection for women and children. The preamble of India ensures the principle of liberty, equality, and justice. It focuses on the liberty of thoughts or belief and fraternity towards each other. Apart from all these Constitutional rights, there was much other legislation that ensures the safeguard of the women to be maintained. It includes “The Dowry Prohibition Act 1961”, “The Immoral Traffic (Prevention) Act 1986”.

---

<sup>33</sup> Supra 7

<sup>34</sup> Pande, R, , the History of Feminism and Doing Gender in India, 26(3) Estudos Feministas, 1, (2018)

<sup>35</sup> Article 15(2), Indian Constitution 1950

To work upon the request of the “United Nations of General Assembly” to arrange details information towards position of females. By the year 1971, “The Ministry of Education and Social Welfare Government” appoints a “Committee on the Status of Women in India (CSWI)” concerning same issue.<sup>36</sup> Committee had his main task “To examine the constitutional, legal and administrative provisions that have a bearing on the social status of women, their education and employment and to assess the impact of these provisions and to consider the development of education among women and determine problems faced by them in various field includes workplace, household and many more.” The title of the report was ‘Towards Equity’ and it concludes with the statement that there were difficulties in the path of women’s to achieve education, literacy, and livelihood. In their view, Indian states had failed to fulfill constitutional provisions of gender equality. Committee also finds out that “The review of disabilities and constraints on women, which stem from Socio-cultural situations, indicates that the majority of women are still very far from enjoying the rights and opportunity guaranteed to them by Constitution. The social laws, that mitigate the problems of women in their family life, have remained unknown to a large number of females masses in this country, who are as ignorant of their legal rights today as they were before independence.”<sup>37</sup>

One more incident that clearly describes the condition of women and this incident picked the momentum during the late 1970s i.e. Mathura Rape case and it brought the group of women together to protest against the atrocities and brutality against them. The acquittal of policemen who committed rape while on duty in station and the protest of women on

---

<sup>36</sup> Reddy D. Special Committee for status of women, Telangana Today, Nov. 19<sup>th</sup> 2018 <https://telanganatoday.com/special-committee-status-women> (last visited 12th June 2020)

<sup>37</sup> “Towards Equality-The Unfinished Agenda-Status of Women in India 2001”, “The National Commission for Women’s Right”,<sup>4</sup>

this incident have taken hype and it covered in whole media. The impact of protest is so strong that it resulted into “The Criminal Procedure Code 1973”, “Indian Evidence Act 1872” & “Indian Penal Code 1860” and added the provisions related to custodial rape. Even in today’s scenario, a bulky figure of cases is pending and on the other side, many cases remain unreported. The conviction rate is also very low. Indeed many laws ensure the safety of women but somehow our justice delivery system fails to justice as it has many lacuna and loopholes in the whole process. There are many cases where the protectors of laws i.e. Police or any other officers turn into offenders and commits atrocities against women. In spite, the Government tries to uplift the situation of women in the public by numerous legislation and laws, e.g. Criminalisation of Triple Talaq. Even Judiciary also focuses on improving the status of women by providing them basic rights. Recently in Sabarimala temple issue Apex court uplifts the ban on the entry of women. After so many years of independence, it feels awful that women are still fighting for their basic rights. After the old period, the standing of women degrades more rather than improving. One of the reasons behind this may be the not have of proper implementation of laws and lack of awareness and illiteracy among women especially in the remote area of the country.

## **CHAPTER 3**

### **CONSTITUTIONAL AND LEGAL SAFEGUARD FOR WOMEN AGAINST GENDER DISCRIMINATION**

“However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good”

“Dr. B.R. Ambedkar”

#### **1. INTRODUCTION**

Rule of law concept is not restricted to safeguarding the “civil and political rights” although it covers “social, economic, cultural & dignity”. If there any inequality and injustice then with the help of law a democratic state establishes equality and removes injustice.<sup>38</sup> One of the most important motives of the constituent assembly was to provide everyone an equal opportunity and no discrimination based on gender. An International

---

<sup>38</sup> Sharma O.P, Equality and Protective Discrimination under the Constitution of India, 1 Indian J.L. & Just. 92 (2010)



law jurist Sir Hersch Lauterpach said “the protection of human personality and its fundamental rights is the ultimate purpose of all law, national and international.” It is also true that law cannot be separated like different laws for different gender or religion. It can’t be like that ‘law related to men’ and ‘law related to women’. However, there can be some provisions for women to promote the dignity of women as their condition is not so good in the society. The legal language marginalized women by saying that “he” includes “she”. Of Course, this marginalized woman in legal languages was a mere reflection of her marginalization in real life.<sup>39</sup> The laws and legal institutions were of men, run by men, and for men especially and only exceptionally for women. For a normal human being their basic right i.e., Human rights are the most important thing in any country justice system and it is a accountability of the State if there is any kind of violation. Even at International Law, it counts under the most concerning areas so its provision describes in “The Universal Declaration of Human Rights” and “UN Charter.”

## **2. FEMINIST JURISPRUDENCE**

Economic, political, and economic and equality of sexes are an important part of law philosophy.<sup>40</sup> It invites numerous debates on domestic violence, sexual violence, and gender discrimination. India had gone through three-phase of feminism and it was initiated by men, unlike the western world. They tried to boost the condition of women in many ways one of them was the abolishment of sati practice. Feminism in India goes through from three-phase. The first was to ban the practice of child marriage, sati, and reduce illiteracy. The second phase was in the British period where Gandhi Ji encouraged women

---

<sup>39</sup> Upendra Baxi, “On Being a Woman”, Har Anand Publication, New Delhi, 1994, p.168

<sup>40</sup> Sahu, G, Feminist Jurisprudence and Gender Justice in India,  
<https://lawandsocialengineeringinindia.blogspot.com/2017/06/feminist-jurisprudence-and-gender.html>  
(last visited 16th June 2020)

to take part in the political area as they are promoters of non- violence. “All India Women Conference (AIWC)” & “The National Federation of Indian Women (NFIW)” were the result of the second phase.<sup>41</sup> Another one was post-independence which saw the flow of globalization which brings out the opportunities for both the gender. It can be said that feminism in India main motive is to protect rights and opportunities for Indian women in every sector. As we saw in the landmark judgment of Shah Bano<sup>42</sup> where Muslim women after forty- three-year marriage got divorced from her husband and according to personal law it is not necessary on the side of a husband to pay her alimony. Shah Bano challenges this in the Apex Court and got the judgment in her favor and court-ordered husband to pay monthly allowances. Feminist Jurisprudence changed a lot of things in the country, due to the active participation in the numerous movements and more women know about their rights this result into the changes into various legislative Acts including “The Immoral Trafficking Act 1956”, “The Dowry Protection Act, 1961” and many more.<sup>43</sup> Feminist Jurisprudence faced many difficulties while fighting for the basic individual rights for women. In India there lot of Constitutional and Legal Frameworks that provide particular provisions for the women to upgrade their status in the civilization.

### **3. CONSTITUTIONAL PROVISIONS**

As Dr. B.R. Ambedkar rightly states “The Constitution is not a mere lawyer document, it is a vehicle of life, and its spirit is always the spirit of the age.” In a general words Constitution is written and living document which contain basic rights of all and the structure of Government. Here Constitution is described as a living document because it

---

<sup>41</sup> Rania. P, Feminist Jurisprudence: An Evolution from Fixed Mindset to A Growing Mindset,5 Amity International Journal of Juridical Sciences 32 (2019)

<sup>42</sup> 1985 SCR (3) 844

<sup>43</sup> ibid

keeps revolving around the current situation of the country. On 26<sup>th</sup> January 1950, India adopted his Constitution as the longest written document which contains legal provisions. The members of the Assembly while discussing the provisions to be installed were focused on hurdles of women community with that; they formed some special provisions for women.<sup>44</sup> The Constitution Assembly used a paternalistic approach related to women they decided what is good for them and ensure they get what they deserve.<sup>45</sup> Among 296 members in the assembly, there were only 15 women against 281 men, and out of 15, two members, namely Rajkumari Amrit Kaur and Hansa Mehta were part of a committee formed for fundamental rights with the main purpose of to provide and secure fundamental rights of everyone.<sup>46</sup> The Indian Constitution contains both the norms which are enforceable by court i.e. “Fundamental Rights” and which are not is “Directive Principle of State Policy.”<sup>47</sup> Makers of the Supreme Law somehow prejudiced by “Universal Declaration on Human Rights” (UDHR) whose main aim was to focus on maintaining the dignity and rights of each and everyone without any discrimination. The Indian Constitution was adopted by all the people as it mentioned in the preamble that “We the people of India..... Hereby adopt, enact and give ourselves this Constitution”. The preamble of our nation aims to secure and provide “Justice- social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity and promote fraternity among all the citizens and ensure the dignity of each individual and unity of the nation.”<sup>48</sup>

---

<sup>44</sup> M.P. Jain, “Indian Constitutional Law”, 8, Ed. 2017

<sup>45</sup> Dev. S. Gender Injustice in India: A Feminist Jurisprudential Perspective, 10 Tattva- Journal of Philosophy ,69 (2018)

<sup>46</sup> ibid

<sup>47</sup> Supra 44

<sup>48</sup> J.N. Pandey, “Constitutional Law of India ” 55, Ed. 2018

Every person wants to maintain his or her dignity and individual dignity is an primary part of basic privileges, so Indian Constitution had numerous provisions that protect the dignity of the human being. It is a harsh truth that the condition of women is not so commendable.<sup>49</sup> During old age period, condition was stable but after that, it degrades from stages to stages. If we saw the condition after independence than also the human rights record in India is not so commendable. Amnesty International (AI) in his report titled “India: Torture, Rape and deaths in custody” which discloses the miserable condition of individual rights including the females rights; also describes India “Lawless State.”<sup>50</sup> It is also true that law cannot change society in an overnight. After massive movements and to fulfill the international regulation Government formed National Human Rights Commissions (NHRC) to make sure the safeguard of the individual rights of all.

The conflict of gender justice as a whole is like a continuous process but the Constitution of India to a certain point done a splendid job by making sure there should be no biasness based on gender.<sup>51</sup> There are several articles in the “Constitution of India” that make particular provision for women which ensure maintenance of dignity. It prohibits discrimination against women in every sector. With the equality, it also authorizes the State for positive discrimination regarding women’s issues. Even Justice Verma Committee observed that “Until and Unless States pursues a policy of affirmed determination to be able to correct past imbalance perception against women, it will not possible for men and

---

<sup>49</sup> Nagarwal N., Gender Justice Ideology and the Indian Constitution: Analysing Equality Rights, 4 Indian Journal of Law and Justice, 111 (2013)

<sup>50</sup> Das.J., Reflection on “Human Rights and The Position of Indian Women”, 64 The Indian Journal of Political Science, 203 (2003)

<sup>51</sup> Supra 49

indeed women themselves, to view women in a different way and through the prism of equality.” Let’s have a look into the numerous necessities detailed in the Constitution.

### **3.1 FUNDAMENTAL RIGHTS**

Once while conversation about individual rights Amartya Sen says, “There is something profoundly attractive that irrespective of citizenship or territorial legislation in this world, everyone has some basic rights which should be respected.”<sup>52</sup> Shrimati Ammu Swaminathan, one of the members of the Constitution assembly; while expressing her view said that “I know that the Constitution of India gives us Fundamental rights, equal status, adult franchise and also removed untouchability and things for which India had been fighting from a long period. But things on just paper will not make the country happy and prosperous. The ideas of the Constitution should be implemented by the people of the country.”<sup>53</sup> Mostly Constitution lies on the two major pillars i.e. “Fundamental Rights” & “Directive Principle of State Policy”. Provisions have their main focus as to grant Socio-economic fairness to the entire society irrespective of their gender. Framers of the Constitution were also well known with the fact about the unequal treatment of the women and concerning that they draft some provisions to secure the women.

“Article 14” discusses “the Equality” into two aspects: “Equality Before Law” and “Equal Protection of the Laws”. The phrase “Equality before the law” counts as a negative notion which is adopted from the British Constitution. In simple words, it means that no one is above law. According to Jennings, it means “Among equals the law should be equal and should be equally administered and that like should be treated alike.” This also includes

---

<sup>52</sup> J. Manhor S, Contemporary Women’s Issues, Marginalised Women and Human Rights, 12 Journal of the National Human Rights Commission, 1 (2013)

<sup>53</sup> Swaminatahn A, Fundamental Rights and Directive Principle: Twin Pillars of Constitution, “Selected Speeches of Women Members of The Constitution Assembly”, 1 (2012)

“Dicey’s Rule of law” concept which means “Supremacy of law” and nobody is greater than the law.<sup>54</sup> It ensures that no special privileges to anyone despite their position. No matter whether it is a privilege or unprivileged all are equal in front of law. Another expression is “Equal Protection of law” all those who are in similar positions or circumstances under the territory will enjoy the same protection and rights without any discrimination. This concept is taken from the U.S. Constitution. In all Article 14 emphasis on that, all persons should be treated alike. Even after such protection, there are lots of instances where the equality of women is in question. In “C.B.Muthamma vs. Union of India and Ors.”<sup>55</sup> Petition was by the senior woman officer when denied for the promotion to upper grade. She complained that it was unconstitutional and illegal and also claimed that many provisions in civil services were work as discrimination against women. Judges decide “there is a need to change the mindset of towards discrimination against women.” Recently in Haji Ali Daragh Case Bombay High Court allowed entry of women; Court said prohibiting of females violates “Right to religious freedom” along with that there is violation of “Right to equality” under the Constitution.<sup>56</sup>

“Article 15” forbids any kind of “discrimination based on religion, race, caste, sex, and place of birth.”<sup>57</sup> “Article 15(3)” i.e. “Nothing in this Article shall prevent the state from making any special provisions for women and children.”<sup>58</sup> It gives enhance authority to State to formulate particular proviso in the betterment of women and children. This clause mainly focuses to maintain the dignity. As Smt. Hansa Mehta, a member of Constitutional

---

<sup>54</sup> Supra 48

<sup>55</sup> AIR 1979 SC 1868

<sup>56</sup>Bhatia G. The Equality of entry, The Hindu 08<sup>th</sup> September 2016, <https://www.thehindu.com/opinion/lead/The-equality-of-entry/article14626846.ece> (last visited 19th June 2020)

<sup>57</sup> Supra 44

<sup>58</sup> Supra 35, Article 15(3)

assembly said that “Women Organization have only asked for the social justice, economic justice, and political justice.” The only point of this Article 15(3) is to build up the position of women in society and continue the theory of equal opportunity between men and women. In “Government of A.P vs. P.B. Vijay Kumar”<sup>59</sup> court held “Article 15(3) wide enough that it includes any special provision of women including reservation in jobs. Article 16 does not hold such a reservation.”

Article 16 states “ Equality of opportunity in public employment”. It limited to issue of unfairness towards area of employment and appointment unlike Article 15 which covers numerous areas that do not come under Article 16. Article 16(2) “No citizen shall, on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for or discriminated against in respect of any employment or office under the State.” Now in Hindustan Latex vs. Maniamma<sup>60</sup> a lady security guard denied promotion on the base of sex, the respondent was a security guard in the appellant company. She obtained National Physical Efficiency Test Certificate and promoted to Head guard. Now the post of A.S.I came and respondent applied but her application turned down and denied. The matter went to Court and Court observed that “the denial of the promotion was a violation of Article 16(2) where it is stated that there should be no discrimination based on sex in respect of employment.”

Article 19 grants the Protection of certain rights, 19(g) allowed to “practice any profession or to carry any occupation or trade.” “In Indian Hotel and Restaurant Association (AHAR) and Ors. Vs. The State of Maharashtra and Ors”.<sup>61</sup> In this case, the Bombay Police Act

---

<sup>59</sup> AIR 1995 SC 1648

<sup>60</sup> 1995(3) SLR 231

<sup>61</sup> AIR 2019 SC 589

1951 amend in 2005, by that inserted Section 33A which prohibits performing any type of dance in eating houses or beer bars or permitting room. The petition was filed by the association because it is discrimination against women who employed to dance in eateries and it also violates the right to work and earn a livelihood. Bombay HC find out an violation of Article 14 and 19(1) (g) by the Section 33A. Now in an appeal to Apex Court, the judgment was upheld by the Court and observed “Section 33A violates Article 19(1)(g) as it interferes between right to work and ban purpose was contradictory as ban force some women into prostitution.”

Article 21 “no one should be deprived of life or personal liberty except according to procedure establish by law.”

1993, the 73<sup>rd</sup> & 74<sup>th</sup> Amendment were there to increase the position of women at grassroots level of democratic process and self-governance. It ensures the reservation of 33.33 percent and 1/3 for the post of chairperson at local bodies<sup>62</sup>. Article 243D reserved the seats for the ST and SC in panchayat and among the reserved seats 1/3 should be for women. Same like this Article 243T reserved seats in the municipality for SC and ST out of which 1/3 should be for women.

One should understand that there is a difference between rights available on paper and the situation of the same in reality. Rights of Women must be looked through a new vision. The objective to boost the position of women will be incomplete without the change in the mindset of the public. There should awareness programs so that women can know about their basic constitutional rights.

---

<sup>62</sup> Singhvi A, India's Constitution and Individual Rights: Diverse Perspectives, 41 Geo.Wash.Int'L.Rev. 327 (2009)



### 3.2 DIRECTIVE PRINCIPLE OF STATE POLICY

“Part IV of Constitution of India” i.e. “Directive Principles of State policy”. It directs state toward following a particular principle and give power to compose certain provisions for the people including women although they are not enforceable but states have to look after the interest of the women. Equal remuneration for equal kind of work guarantees under DPSP along with adequate means of life and so on. So Article 39(a), the State should make policies securing that to protect both men and women of the country in the same way, comprise the privilege of sufficient means of living. It focuses on the adequate means of life to all irrespective of gender.

Article 39(d) directs “equivalent pay for equal work for both men and women”. Under this, states are under obligation to ensure that there should be no discrimination when it comes to wages and payment. In “Randhir Singh vs. Union of India”<sup>63</sup>, Court observed that although this provision doesn’t come under Part III which are enforceable by the court but still it the constitutional goal, and it a duty of the state to maintain this provision. Court observes that the “Doctrine of equal pay and equal work” would be relevant to both the gender.

Article 39(e) ensures proper healthiness and strength of workforce. No force should be imposed on the women to work in a hazardous condition which is not suitable for work. To complement this there is a provision in the Factory Act 1948 which prohibit women’s to work in hazardous and inhumane condition.<sup>64</sup>

Under Article 39A, encourages fairness on an equal base without discrimination and also provides free legal aid services to all persons who are in need. In “Sheela Barse vs. State

---

<sup>63</sup> AIR 1982 SC 879

<sup>64</sup> Supra 44

of Maharashtra”<sup>65</sup> a milestone case where Apex Court on looking at the condition of under trail women inmates direct government to provide free legal assistant to all of them.

Article 42 states an essential task in the well-being of women as this imposes a responsibility on the state to guarantee fair and humane working conditions and assistance to motherhood. <sup>66</sup>

Article 44, the makers of the Indian Constitution had alert of the gender insecure issue among people. They incorporated “Uniform civil code” which ensures that everyone will treat the same throughout the nation. Even after years of independence, the state didn’t make any serious steps towards it. In *Sarla Mudgal vs. Union of India*<sup>67</sup>, in this case, a Marriage taken place according to Hindu Customs and after that husband covert himself into other religion without dissolving the earlier marriage, Apex Court observed that this was against the law and he can be prosecuted under the “Section 494 of Penal Code” i.e. the offense of Bigamy. Court also directs the Government at the Central level to take a look at Uniform Civil Code with a new dimension and it important to implement uniform civil code in an effective measure to ensure gender inequality.

### **3.3 FUNDAMENTAL DUTIES**

Part IV- A which deals with fundamental duties contains some provisions relating to women as an exception to the dignity of women. Article 51-A introduced by the 42<sup>nd</sup> amendment of the constitution. Article 51-A (e) is connected to women community, “It shall him the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistics, regional or

---

<sup>65</sup> AIR 1983 SC 378

<sup>66</sup> Supra 35

<sup>67</sup> (1995) 3 SCC 635

sectional diversities; to renounce practices derogatory to the dignity of women”<sup>68</sup> Dignity of individuals is a very important part of human rights so it should not be violated within any mode.

#### **4. CRIMINAL JUSTICE SYSTEM: AN LEGAL FRAMEWORK**

The dilemma of offense against women is not fresh. In Indian culture, there are many cases where women face violence including mistreatment, torture, human trafficking, rape, murder, and many others. There are numerous rights provided by the Indian legislation for the women protection in India. On 16<sup>th</sup> Dec. 2012, a heinous crime like rape was committed in a moving bus with a young student of Delhi, it raised questions on the protection of female in the principal city of the nation. Many questions put forward to the Police about their patrolling and protection to the women. Due to the less effective and slow justice pressure created on the Government by the large number of public protest which turns into a national movement later. This leads to the formation of the Justice Verma Committee; this makes enactment in the Criminal Amendment Act 2013 which leads to a quick trial of offenders. Even after all this a latest report of “National Crime Record Bureau (NCRB) Report” ‘one rape reported every 15 minutes in India’<sup>69</sup> It’s only about sexual offense there are lots of other crime also faced by women like acid attack, it a crime which destroy the women future and unless the implementation of enactment is not effective there is no use of such laws and for that Police plays an important role the criminals should be taken into custody by them quickly and gathering of evidence should be effective and should focus

---

<sup>68</sup> Supra 35

<sup>69</sup> NCRB data 2018: One rape reported every 15 minutes in India, 11<sup>th</sup> January 2020 <https://www.indiatoday.in/india/story/ncrb-2018-woman-reports-rape-every-15-minutes-in-india-1635924-2020-01-11> (last visited 22nd June 2020)

on the speedy trial.<sup>70</sup> Even after such provisions, the crime against women increasing year by year below Table 1 shows the data from NCRB<sup>71</sup>:-

| CRIME AGAINST WOMEN (IPC+ SLL) |        |
|--------------------------------|--------|
| 2016                           | 322949 |
| 2017                           | 345989 |
| 2018                           | 363819 |

TABLE 1(“IPC= Indian Penal Code, SLL = Special and Local Law”)

As we saw in the above table the cruelty against women increasing rapidly year to year. Our country's justice system is made up of many complex relationships between the various laws that derive from the system including the “Indian Penal Code 1860”, “The Criminal Procedure Code 1973” and “Indian Evidence Act 1872” and various special laws. There were numerous instances where the Law Commission and Committee suggest some reform in our system. In 2000 under supervision of Justice V.S.Malimath, the “Committee on Reforms of Criminal Justice System” was formed with aim to analyze criminal jurisprudence.<sup>72</sup> Most of these reforms were on paper only; the reality on the ground level is different. Criminal Justice System is like a link between the police, public prosecution, court, judge, and prison.

#### **4.1 ROLE OF POLICE IN SYSTEM**

Under the Constitution of India Police come under the State List, so each state in India have their police forces with the main function to uphold the enforcement of law and order in the particular state. Justice Delivery System of our country always focuses on the

---

<sup>70</sup> Supra 52

<sup>71</sup> Crime in India 2018, Vol.1 National Crime Records Bureau (Ministry of Human Affairs), 195(2018)

<sup>72</sup> Government of India, Committee on Reforms of Criminal Justice System Ministry of home Affairs, New Delhi March 2003

individual rights and dignity of the person no matter whether it accused or victim. We can see the shadow of it in our criminal jurisprudence the accused presume as innocent until proven guilty.<sup>73</sup> Police work as gatekeepers of the justice delivery system as they are most important bureau that protects law & order with a responsibility to support of the safeguard of rights. The initial facts of complaint enter the justice system through the report to police or complaint to the magistrate. The investigation of the particular incident is the most crucial and vital thing of the case. It decides the case the future circumstance of the case. Investigation includes collecting the evidence to the examination of the witness. As per the NCRB report Crime in India 2018, there are still many investigations pending from the previous year, Table 2 shows the data of some of the crimes against women<sup>74</sup>:-

“Police Disposal of Crime against Women- 2018”

| Crime Head                         | Cases Pending<br>Investigation from previous<br>year | Cases Reported during<br>the year |
|------------------------------------|--|-----------------------------------|
| Rape                               | 13762  | 33356                             |
| Human Trafficking                  | 458  | 854                               |
| *Total IPC Crime against<br>Women* | 153139   | 323345                            |

TABLE 2

This data through a light on that somehow police fails to protect the citizens and their basic human rights. Reports of Law Commission and Malimath committee both suggest that it

<sup>73</sup> Shoal S.R., Role of Police in Indian Criminal Justice Administration, 21 Journal of Gujarat Research Society, 238 (2019)

<sup>74</sup> Supra 59, 214

must be separate wing of investigation and enforcement of law & order but no major steps were taken to implement this. Based on their investigation they filed a charge sheet in the court and its court who decide future of accused.

There were many instances where police violates the basic individual rights mostly at the moment of arrest and interrogation of the suspects.<sup>75</sup> Many times Women faced the atrocities by the police as they refused to complain as in Delhi “Domestic Women’s Forum vs. Union of India”<sup>76</sup> Court states that “Complaints are handled roughly and are not given much attention as is warranted. The victims more often than not are humiliated by the police.” Even the Condition of women in jail is miserable as in “Hussainara Khatoon & Ors vs. Home Secretary, State of Bihar”<sup>77</sup>; there were a small number of women prisoners who were in detention without even being the commitment of any offense they were the victim of the offense so they were vital for the reason of evidence. Till now no proviso under the law where women can keep in lockup in the name of protective custody merely as she is essential for collecting evidence. Apex Court immediately gives the order to let go of all the women and children and should keep in a welfare home. Therefore Supreme Court released a guideline that must be look after by police during arrest, search, detention, and interrogation.

## **4.2 PROCEDURAL LAW**

“The Criminal Procedure Code 1973” is the foremost practical operation, which establishes the power and function of the police, the judicial process, court, and defense

---

<sup>75</sup> Marwah V, Human Rights and Role of Police, 40 Journal of Indian Law Institute, 138 (1998)

<sup>76</sup> 1995 SCC (1) 14

<sup>77</sup> 1979 AIR 1369

councils. In adding up to common provision relevant to all people, apart from that some specific provisions, that only been enacted for the betterment of women.

Law relating to arrest of women; “Chapter V of the Criminal Procedure Code 1973” contains the proviso for arrest; “Section 41” talks about power of police officers where he can arrest without warrant. Apex Court in “D.K.Basu vs. State of West Bengal”<sup>78</sup> provided a guideline for arrest which is compulsory for each and law enforcement officer to follow. Section 46 explains “how to arrest should be made” is as follow “Provided that where a woman is to be arrested unless the circumstances indicate to the contrary, her submission to custody on an oral intimate of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the woman for making her arrest”<sup>79</sup> and further after the amendment in 2005 “Section 46 prohibits the arrest of a woman after sunset and before sunrise except in unavoidable circumstances.” If there is a need to search women then according to section 51(2) it will be done by women officer only. Same as that Section 53 (2) CrPc provides that the examination of women must be done by a female doctor or medical professional who registered herself.

Another concern area is the First Information Report (FIR) in crime against women. According to Section 154 of CrPc when it is a sexual offense the statement regarding the offense will be recorded by the lady officer. At many instance police officer Makes hindrance in the lodging the FIR by giving the irrelevant reason of jurisdiction so “Lalita Kumari vs. Govt. of UP”<sup>80</sup> it was held that police officer has to register FIR and Rape

---

<sup>78</sup> 1997 1 SCC 416

<sup>79</sup> Section 46, The Criminal Procedure Code 1973 (Act 2 of 1974)

<sup>80</sup> 2014 2 SCC 1

victim can make her complaint to whichever Police Station is near irrespective of jurisdiction as Zero FIR. Now when it comes to the privacy of the victim then it is very much necessary to maintain the dignity of the sufferer of the crime so in the “Criminal Procedure Code 1973” there is a provision which maintains right to privacy during the registration of the declaration. According to Section 164, rape victims can register her complaint or statement to the magistrate in private only. If victim want then the statement can be recorded at home or any other place where she finds convenient.

Section 125 to 128 in Code contains an order of maintenance to women. Section 149 gives power to police officers to prevent any cognizable offence against women. Under Section 161 only a lady police officer or any female officer can deal with the examination of the witness. Section 309 provides provisions of trial and inquiry should be completed within 2 months and according to Section 327, it should be held in camera. Section 357A provides compensation to the victims. Section 416 provides special provisions to pregnant women which include delay of the capital sentence and Section 437 ensure female offenders may be released on the bail despite non-bailable offense.<sup>81</sup>

One of the main areas which need reforms is Bail as granting bail is on the discretion of judges and there are many cases even after the heinous crime against women, accused get the bail easily and in offences like rape and dowry death it give sufficient time to accused to fabricate the evidence is if he releases on the bail. Due to this, the aim to create deterrence among criminals is unable to achieve its goals. There should be some strictness towards the criminals who commit any crime against women.

---

<sup>81</sup> The Criminal Procedure Code 1973 (Act 2 of 1974)



## 5. OTHERS AND SPECIAL LAW

### 5.1 INDIAN PENAL CODE, 1860

In our country, there are numerous lawmaking measures for protection of equal rights, counter Gender discrimination, and from the violence and brutality against female. To maintain the constitutional provisions Parliament enacted various laws that describe the “Crime Against Women” in penal law and special law.

Some Major ‘Crime against Women’ in “Indian Penal Code 1860”<sup>82</sup>:-

| Section | Offence   | Punishment                                  |
|---------|---|---|
| 228 A   | Disclosure of an identity of the victim of an offence                 | 2 years and fine                            |
| 294     | Obscene acts and songs  | 3 months or fine or both                    |
| 304- B  | Dowry death   | Life imprisonment                           |
| 313     | Causing miscarriage without women consent                             | Life imprisonment or 10 years and fine      |
| 326A    | Voluntary causing grievous hurt by acid                               | 10 years or life imprisonment or fine       |
| 354     | Assault or criminal force to woman with intent to outrage her modesty | 5 year or fine                              |
| 354A    | Sexual Harassment   | Rigorous Imprisonment up to 3 years or fine |

---

<sup>82</sup> Act 45 of 1860

|       |   |  |
|-------|---|--|
| 354B  | Use of Criminal Force with<br>intent to disrobe                     | 7 year and fine                                  |
| 354C  | Voyeurism   | 3 year and fine                                  |
| 354D  | Stalking  | 3 year and second<br>conviction 5 years and fine |
| 366   | Kidnapping or inducing<br>women to compel her<br>marriage           | Up to 10 year and fine                           |
| 366A  | Procuration of minor girl   | Up to 10 year and fine                           |
| 366B  | Importation of girl from a<br>foreign country                       | Up to 10 year and fine                           |
| 376   | Punishment for Rape   | Life imprisonment                                |
| 376A  | Vegetative State of victim  | Life imprisonment                                |
| 376AB | Rape on a woman under<br>twelve years of age                        | 20 year or Life<br>imprisonment or Death         |
| 376B  | Sexual intercourse by<br>husband upon his wife<br>during separation | 7 year and fine                                  |
| 376C  | Sexual intercourse by a<br>person in authority                      | 10 year and fine                                 |
| 376D  | Gang Rape   | 20 year or life and fine                         |
| 376DA | Gang Rape on a woman<br>under 16 year                               | Life imprisonment and fine                       |

|       |   |  |
|-------|---|--|
| 376DB | Gang Rape on women<br>under 12 year       | Death or Life imprisonment<br>and fine |
| 498A  | Husband or relative subject<br>to cruelty | 3 year and fine                        |
| 509   | Modesty of woman                          | 3 year and fine                        |

## 5.2 INDIAN EVIDENCE ACT, 1872

It provides provision of the admissibility & inadmissibility with both the civil and criminal matters applicable in judicial proceedings. “Section 113A”, 113B, and 114A contain some special provisions for women. Section 113 A ensures “Presumption as to abetment of suicide by a married woman.” If matter about abetment of suicide within the seven-year of marriage come around and if she committed suicide then it will be “May Presume” by the Court that suicide have been abetted by husband and relative. Section 113B states that if a husband or any person had done any cruelty or harassment in the matter to collect or demand dowry, in this process or due to this woman dies then it will “Shall Presume” by the Court that such person was behind the death. Section 114A states that when there is a matter of rape the consent of the women is the most crucial thing in this kind of heinous crime. If women confirm no consent then the court “Shall Presume” the same from her side. Another Section 146 which deals with the cross-examination questions provided that if the offence is related sexual assault or attempt to commit the same then question like immoral character, previous sexual experience will be irrelevant and not permissible by the court.<sup>83</sup>

---

<sup>83</sup> The Indian Evidence Act, 1872 (Act 1 of 1872)

There is some particular legislation for the safeguard of females which includes “The Immoral Trafficking (Prevention) Act 1956, The Dowry Prohibition Act 1961, Protection of Women from Domestic Violence Act 2005, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 and The Criminal Law (Amendment) Act, 2018.”

### **5.3 THE IMMORAL TRAFFICKING (PREVENTION) ACT 1956**

Article 23 “prohibits the traffic in human beings and forced Labour”. In “Vishal Jeet vs. Union of India”<sup>84</sup> Court states that the export and import of human beings for prosecution is like some vegetable market. Despite Indian commitment to numerous International Convention and treaties related to human rights, thousands of women trafficked through forced labour, prostitution, etc. Indian Government ratifies “International Convention for the Suppression of Immoral Traffic in Persons 1950”. Under Article 23 of the same traffic of person must be Punishable by the law. So to implement the provision of the convention Government enacted The Immoral Trafficking Act 1956. Trafficking in persons defines as “the recruitment, transportation, transfer or harboring through force and threats or any other means for the exploitation. That includes sexual exploitation, forced labour, or practice of slavery.”<sup>85</sup> In “Gaurav Jain vs. Union of India”<sup>86</sup>, Apex Court issue guidelines regarding the plight of woman prostitutes. Several directions were given to the administration and social organization to take suitable measures to rescue and prevent women from falling in the trap of prostitution and also issue guidelines regarding the rehabilitation of their children so that they can live their life with dignity. After decades

---

<sup>84</sup> AIR 1990 SC 1412

<sup>85</sup> Khan A.S, Human trafficking, Justice Verma Committee Report and Legal Reform: An Unaccomplished Agenda, 56 Journal of Indian Law Institute, 567(2014)

<sup>86</sup> AIR 1997 SC 3021

on the recommendation prepared by Justice Verma Committee in 2013 by the Criminal (Amendment) Act, the legislation makes changes in Section 370 of Penal Code which talks about Human Trafficking and it adopted the definition as it is in Palermo Protocol but omitted the words “Abuse of a Position of Vulnerability.”<sup>87</sup>

#### **5.4 THE DOWRY PROHIBITION ACT 1961**

To maintain the dignity of the women, there was enactment of “The Dowry Prohibition Act 1961” and “Section 304B of Indian Penal Code” which contain the provision of dowry death crime. The primary objective of the Act is to prohibit taking and giving dowry which includes property, money, or goods. Despite the several enactments passed by both the Central and State Government somehow we as a society failed to curb this evil practice of dowry.<sup>88</sup> As per the latest report of the NCRB, the incidence of dowry death increase at a rapid speed. In 2018 the incidence of dowry death recoded as 7166. To create deterrence among people the Section 304B of Penal Code was inserted in 1986 which prescribes the punishment of seven-year for this heinous offence but by looking at data it does not seem that society is concern about dignity and life of women. In *Shobha Rani vs. Madhukar*<sup>89</sup>, on a continuous demand by husband and other family members, the wife asked for a divorce for the same reasons. With the reasoning that there is nothing immoral in that as the husband needs money for his use and in that it’s the responsibility of the wife to help the husband and dismissed the application. Apex Court had a different approach and overruled the judgment of Higher Court and observed that demand of the dowry is banned under the law and it enough for setting aside the finding of a court.

---

<sup>87</sup> Supra 70

<sup>88</sup> Pramila B, A Critique on Dowry Prohibition Act 1961, 76 Proceedings of the Indian History Congress, 844(2015)

<sup>89</sup> AIR 1988 SC 121

## **5.5 PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT 2005**

Domestic Violence is a offense that is indirectly linked to the patriarchy mindset of the society. Act was enacted to ensure a more helpful safeguard of the women that make sure by the Constitution against any type of violent behavior faced by her within family or matter related to the same. Like “Section 498A” of the Indian Penal Code 1860, contain the word “cruelty” against wife by his husband or his relatives.<sup>90</sup> Article 14, 15, and 21 talks about the equality, discrimination, and dignity of the human being and it also provide remedies intending to care for the women against domestic violence. The main motive found out from the Act is “To protect the wife or female live-in partner from domestic violence at the hands of the husband or male live-in partner or his relatives, the law also extends its protection to women living in a household such as sisters, widows or mothers.” Despite these stringent provisions the violence at domestic level increases rapidly. Recently this ongoing pandemic i.e. COVID-19 the National Commission for women report a 94 percent raise in the complaint during the lockdown in the country.<sup>91</sup> This show the patriarchy mindset and improper implementation of the provisions.

## **5.6 THE INDECENT REPRESENTATION OF WOMEN (PREVENTION) ACT 1986**

Enactment of Act with the object to prohibit indecent representation in the way of publication which can be done to the individuals or general way in form of advertisements and by some painting, films, or anything that indecent representation of women.<sup>92</sup> The basic aspect of Indecent representation is there be should portrayal of any part of women's

---

<sup>90</sup> Supra 82

<sup>91</sup> Nigam S., COVID-19: India's Response to Domestic Violence Needs Rethinking, South Asia Journal, <https://ssrn.com/abstract=3598999> (last visited 4<sup>th</sup> August 2020)

<sup>92</sup> Act 60 of 1986

body in an indecent manner and must be derogatory and must be of such nature to degrade or wound public morality. Ministry of Child and Development drafted a bill in 2012 called “The Indecent Representation of Women (Prevention) Amendment Bill” which is still pending to become an Act.

### **5.7 THE SATI (PREVENTION) ACT 1987**

Earlier sati was the valid practice in ancient India. It is an abhorrent practice in which the wife set to burn after the death of her husband. But this practice was odious, irrational, and opposed to the dignity of the women and health. It was Raja Rammohan Roy who opposed it and due to his efforts, it comes to end. The government enacted the Act related to this in the year 1987 which provides the punishment if the practice done anymore.

### **5.8 INFORMATION TECHNOLOGY ACT 2000**

In this world of technology, the crime against women faced sexual harassment online too. It comprises sexual abuse and sexual crime online too. The enactment of the Act was with the main focus in a matter of women is to stop the obscene materials published online. Section 67 of the Act explains this only which derives the punishment in the matter of publishing or transmitting obscene in electronic form. Recently there was a case where a boys group on Instagram share the obscene pictures of girls and talk dirty about girls which went viral on social media. In-State of Tamil Nadu vs. Suhas Katti<sup>93</sup> this was the first case where the conviction under the IT Act 2000 was held which set the precedent for the others. A divorced woman loaded a complaint against a man who posted some obscene message on the messenger group to take revenge on the rejected marriage proposal. He also posted

---

<sup>93</sup> CC.NO.4680/2004

her number on the various groups which result in several frustrating calls to the victim. Court convicts him under Section 67 of the Act.

## **CHAPTER 4**

### **INTERNATIONAL CONVENTION FOR WOMEN AGAINST DISCRIMINATION**

"We must understand the role of human rights as empowering of individuals and communities. By protecting these rights, we can help prevent the many



conflicts based on poverty, discrimination, and exclusion (social, economic, and political) that continue to plague humanity and destroy decades of development efforts.”

—Mary Robinson

## 1. INTRODUCTION

Removal of all kind of biasness related to women incorporated in United Nations ethics value and fundamental rights as “Women's Rights are Human Rights”<sup>94</sup> even after the world entered into 20<sup>th</sup> century the harsh reality continues to be similar all around no matter despite being developed country or else developing females suffer an abuse of their rights and realizes that women's rights are not a priority. Once Indira Gandhi ex-prime minister of India said that “Indian Women have more rights than any other countries, but there are large are wherein women are suffering, where they are not conscious of their rights.” To upgrade the status and protect the rights of females the UN made guidelines and it ensures equality among all gender. UN Charter was the first global treaty where the principle of equality comes into the scenario.<sup>95</sup> The preamble of the charter also focuses on the “promoting and encouraging respect for human rights and fundamental freedoms for all without any discrimination based on sex, religion” and it works with an aim of “to reaffirm faith in fundamental human right, in dignity and worth of the person and equal rights of men and women.” Concerning this, there were some more articles for the protection of discrimination against sex that include Article 13 which is a mandate of general assembly and Article 55 which talks about the encouragement of individual rights. In support of the

---

<sup>94</sup> Hilary Clinton, 4<sup>th</sup> World Conference on Women by the United Nations Development Programme(UNDP)1995

<sup>95</sup> Margaret.B, Work on the United Nation Relating to the Status of Women, 4 Human Right Journal, 365 (1971)

same “Universal Declaration of Human Rights (UDHR)” was established in 1948. The word used in that “All Human Being” and “everyone” and it interprets like this declaration is for all.<sup>96</sup>

## **2. COMMISSION ON THE STATUS OF WOMEN**

It is an inter-governmental organization that deals with gender parity and empowerment. From approval of the Economic and Social Council, it came into force in 1946 June 21<sup>st</sup>. It is an organization that has responsibilities to encourage the International Law about the women’s basic privileges. “Commission on the Status of Women (CSW)” is one of the successful UN body which focuses on the promotion of the women status in the world. It drafts numerous conventions and studies on the “Civil and Political and Economic and Social rights” of women.<sup>97</sup> One of them was the initial drafting of the “Convention on Eliminating of the Discrimination against Women” (CEDAW) which later accepted by the “General Assembly (GA)” in 1979. Commission acknowledges that even with such existing law which mandates equality there was unfairness on the base of sex. To ensure maximum implementation commission introduced two systems i.e. educational and reporting. In the former one focus on the awareness campaigning, conferences and seminars regarding the rights of women and in later one i.e. reporting system; member’s states and institution have to inform the secretary-general about the development and also require submitting the report concerning the execution of the numerous convention deals with the women’s rights.<sup>98</sup>

---

<sup>96</sup> Fraser, A.S., *Becoming Human : The Origins and Developments of Women’s Human Rights*, 21 Human Rights Quarterly, 853 (1999)

<sup>97</sup> Galey M, *Promoting Nondiscrimination against Women: The UN Commission on the Status of Women*, 23 International Studies Quarterly, 273(1973)

<sup>98</sup> Guggenheim M, *The Implementation of Human Rights by the UN Commission on the Status of Women: A Brief Comment*, 12 Texas International Law Journal, 239(1977)

With the concern of issue GA also adopted the Human Rights Commission. The working method of both the commission was different. Based on different resolutions it decides its theme and the theme of 2020 was “Review and appraisal of the implementation of the Beijing Declaration and Platform for Action and outcome of the 23<sup>rd</sup> special session of General Assembly.”<sup>99</sup>

### **3. UNIVERSAL DECLARATION ON HUMAN RIGHTS 1948**

The goal to abolish all kind of discrimination can be seen in the provisions of Universal Declaration and numerous covenants including “International Covenant on Civil & Political Rights and Economic & Social rights” which combined to make “International Bill of Human Rights” which works as international instrument in International Law related to Human rights.<sup>100</sup> The importance of declaration grows rapidly in international law as it was binding on all states but in reality, it was not and it works as a guide designed for growth of individuals' rights worldwide. Interpretation of rights is that it is not for particular one group or community it works as a whole. Feminists believed that the experience of women should be added to the approaches of human rights as by doing these women can be more visible and practice of their right will come into the limelight.<sup>101</sup> “Article 1” explains “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” In another article the rule of fairness preserve in the declaration as Article 2 “Everyone is entitled to all the rights and freedom outlined in this declaration, without

---

<sup>99</sup> Commission on the Status of Women, <https://www.unwomen.org/en/csw> (Last Visited 9th July 2020 )

<sup>100</sup> Reanda L, Human Rights and Women's Rights : The United Nation Approach, 3 Human Rights Quarterly, 11 (1981)

<sup>101</sup> Bunch C, Women's Right as Human rights : Towards a Re-Vision of Human Rights, 12 Human Rights Quarterly, 486 (1990)

distinction of any kind such as race color or sex. No discrimination shall be made based on the political jurisprudence or international status of the country or territory to which a person belongs.”<sup>102</sup> The UDHR is not lawfully obligatory on states that mean there is no legal enforcement on the implementation of these provisions. General Assembly of UN claimed the declaration work like a common standard for states to encourage them for the safeguard of rights and freedom. UDHR was formed to encourage freedom of thought and human rights to all.

Now in 1966 United Nation accepted covenant on human rights i.e. “International Convention on Civil and Political Rights” (ICCPR) and “International Convention on Economic, Social and Cultural Rights” (ICESCR)<sup>103</sup>. Even in Universal Declaration Article 3 to 21 deals with the Civil and Political rights which “include the right to life, liberty, and security of persons (Article 3), the prohibition against torture, inhuman or degrading treatment on punishment (Article 5) and from Article 22 to 28 it talks about economic and social rights which include right to education (Article 26), right to participate in cultural life (Article 27).”<sup>104</sup>

“International Convention on Civil and Political Rights” (ICCPR) incorporated with the main aim to assurance the protection of political and civil rights of each person. General Assembly adopted on 19<sup>th</sup> December 1966; UDHR and ICCPR with its Optional Protocols combined known as “International Bill of Rights”.<sup>105</sup> The main idea of the ICCPR is to look after an inborn dignity of individuals & protect basic human rights. With that motive

---

<sup>102</sup> Article 2, Universal Declaration of Human Rights 1948

<sup>103</sup> Bai Z, The International Protection of Women’s Human Rights: With Emphasis on UN Convention on the Elimination of All forms of Discrimination against Women, 7 Human Rights, 30 (2008)

<sup>104</sup> Universal Declaration of Human Rights 1948

<sup>105</sup> International Convention on Civil and Political, Canadian Civil Liberties Association, 27<sup>th</sup> Oct. 2015, <https://ccla.org/summary-international-covenant-on-civil-and-political-rights-iccpr/> (Last Visited 8<sup>th</sup> July 2020)

Article 2 “States Party of the convention should respect and ensure to all individuals within its territory, without any discrimination based on sex, race, language, and any other status.”<sup>106</sup> Rule of non- discrimination can be seen in Article 3 which states that “State who ratify this will ensure the equal enjoyment of the civil and political rights; no discrimination based on gender.” With that provide most of the articles of the convention include the word “every human being” or “all”. Article 6 conveys that “Every human being has the right to life which shall be protected by the law.” Article 10 “All persons deprived of their liberty shall be treated with humanity and dignity of the person.” The drafting of articles strongly indicates that convention was against discrimination.<sup>107</sup>

“International Convention on Economic, Social and Culture Rights (ICESCR)” declared by the Assembly in 1966. This convention was also about the “inherent dignity and of the equal and inalienable rights of all.” As per the convention parties who ratify this has to ensure the non- discrimination as Article 2(2) states that “undertake the guarantee that rights enunciated will be exercised without any discrimination based on race, sex, religions, birth or other status.” In continuation Article 3 follows same with main aim of unfairness; it states “to ensure the equal rights of men and women to the enjoyment of the economic, social and political.”<sup>108</sup> The drafting of the convention includes words like “everyone” and “all” in numerous articles that indicate the principle of non- discrimination. ICESCR also focuses on the equivalent in payment and opportunity at the promotion level. Human Rights law along with International Convention aims to protect the rights of the individuals. These treaties focus on the various rights including torture, cruelty, and so on.

---

<sup>106</sup> Article 2, International Convention on Civil and Political Rights 1966

<sup>107</sup> Supra 84

<sup>108</sup> Champan A, A Violations Approach for Monitoring the International Covenant on Economic, Social and Cultural Rights, 18 Human Rights Quarterly, 23(1996)

Despite such well-built provisions to guard human rights a lack of implementation of this enactment leads to the fall of the main objectives of the treaties and convention. As both the ICCPR and ICESCR work on to vanish any kind of discrimination and maintain the dignity of the individuals.<sup>109</sup> But it fails to change the mindset of the people recently a burning issue like MeToo Movement at many instance questions was raised on the character of the women which dignify their dignity and put their basic human rights in danger as this will create fear in their mind which leads to the less number of complaint against such real crime. States are obligatory to implement suitable diligence to stop & react to all work of violence against women. A broad system of prevention and safeguard, with real prediction of mitigating harm, varying outcomes, and ensuring liability, should be the norm.

#### **4. THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1967)**

It took four years to complete a discussion between CSW and the General Assembly to finalize the document. Finally, on 7<sup>th</sup> November 1967, GA approved pronouncement on the “Elimination of all forms of discrimination against women”<sup>110</sup>. Although this declaration was not lawfully binding, it was merely a political statement. This was the major step towards a convention on women’s rights. As “A convention becomes legally binding to a particular State when that State ratifies it. Signing does not make a convention binding, but it indicates support for the principles of the convention and the country's intention to ratify it.” There is a slight difference between signing and ratifying a

---

<sup>109</sup> Supra 101

<sup>110</sup> Kathree F, Convention on the Elimination of All Forms of Discrimination against Women, 11 South Africa Journal on Human Right, 421 (1995)

document. Simple signing a document doesn't give legal obligation; ratification of convention is necessary for the legally binding. Now even after the Charter of UN and declaration of privileges and many other mechanisms related to the protection of equality rights, there was discrimination against women regularly. This declaration was formed with the purpose to ensure the recognition of the rule of unfairness.

Article 1 states "Discrimination against women, denying or limiting as it does their equality of rights with men is fundamentally unjust and constitute an offense against human dignity." The main purpose of the declaration was "abolish existing laws, customs, regulations, and practices. Which are discriminatory against women and to establish adequate legal protection for equal rights of men and women"<sup>111</sup>

## **5. CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) 1979**

International Law "the protection of human personality and its fundamental rights is the ultimate purpose all law, national or international". This was a significant milestone in the area of rights of females; it formed with a major goal to end the prejudice against women.<sup>112</sup> After the "Elimination of all forms of discrimination" in 1967, CSW determined to plan a single lawful instrument at international law level to remove the discrimination against women. In 1977 General Assembly formed a group to draft a convention and in 1979 it was finally accepted by the GA and came into the force in 1981.

---

<sup>111</sup> Morsink J, Women's rights in the Universal Declaration, 13 Human Rights Quarterly (May 1991).

<sup>112</sup> Tang K, Women's Struggle against discrimination: The UN Women's Convention and the Optional Protocol, 34 The British Journal of Social Work, 1173 (2004)

CEDAW is an international treaty and agreement which was formed to prohibits all kinds of discrimination against women and officially binding to those who accepted it.<sup>113</sup> The convention came into effect faster in comparison to previous human rights conventions. Preamble recognizes about “extensive discrimination against women continues to exist and it violates the principle of equality and human dignity.” Article 1 defines discrimination as “shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” Every country that ratifies this convention will make provision for the principle of equality among all in the Constitution and other lawmaking measures not in favor of the discrimination.<sup>114</sup> Article 15(2) of the convention “States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals”

As CEDAW was the first inclusive agreement on the human rights of females but as comes to implementation of the same somehow its fails to fulfill its object. Mere an enactment of law can’t satisfy the norms of the convention. One of the problems raised in the middle of implementation was provision of reservation. As reservation favors customs, national laws in going all this the main motive of convention get neglect. Now if the state parties are

---

<sup>113</sup> Ngaba S, CEDAW: Eliminating Discrimination against Women, 27 Agenda : Empowering Women for Gender Equality, 81 (1995)

<sup>114</sup> *ibid*



serious in the implementation of the convention then they must adopt positive measures to implement the things by including the rule of equality in the Constitution, adopt legislation that prohibits discrimination against women, and abolish such laws which are contradictory to the convention.<sup>115</sup>

If we correlate this with the current situation of the world in this phase of COVID, the United Nation “Committee on the Elimination of Discrimination Against Women (CEDAW)” draft a detailed guideline linked to the women rights which have to be taken into consideration by each state who ratify the convention. A guidance note was released by the committee which deals with the measures which government should take care while dealing with the women rights that includes ensuring the safeguard of female from the gender-based violence and equal participation in the decision making.<sup>116</sup>

## **5.1 INDIA AND CEDAW**

India ratified the same in 1993 in July. Ratification of the Convention means it is the duty of the states that ratified to oblige the provisions of the convention. There were numerous cases where Apex Court held that the “Convention on Eliminating Discrimination Against Women” is a vital design of the basic rights and directive principles of the state.<sup>117</sup> India ratified the convention with two declarations first one is “In the aspect of Article 5(a) and 16(1) of the convention the Government declares that it shall abide by and ensure these provisions in conformity with its policy of non- interference in the personal affairs of any community without its initiative and consent” the second one is “Article 16(2) of the convention, Government of India declares that though in principle it fully supports

---

<sup>115</sup> Supra 110

<sup>116</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/Display/News.aspx?NewsID=25818&LangID=E> (last visited 18<sup>th</sup> July 2020)

<sup>117</sup> Madhu Keswar vs. State of Bihar, AIR 1996 SC 2178

compulsory registration of marriage, it is not practical in a vast country like India with its variety of customs, religions, and level of literacy” and with the matter of the reservation i.e. Article 29 of the convention India doesn’t bound itself with the paragraph one of the Article 29. On the same side, India doesn’t ratify the Optional Protocol CEDAW. It can determine that the role of international convention kept into consideration by the Judiciary while deciding the case. While drafting the Vishaka Guideline Court laid down that India is a ratifying party of the “CEDAW” so it has to take place to eliminate the Discrimination against Women. So Article 11 “State parties should take appropriate measure to eliminate discrimination against women in the field of employment and ensure equality.” and Article 24 confirms that “State Parties to adopt all the necessary measure at the national level; to implement or achieve the rights mentioned in the convention.”

## **6. CONFERENCE AND WOMEN RIGHTS**

1993 “World Conference on Human Rights” comes to an end with the enclosure of gender-specific violation in the international law agenda.<sup>118</sup> This conference saw the hard work of activists that turn into success later on. The conference concluded with a declaration called “Vienna Declaration and Programme of Action” which focuses on the infringement of individual rights respective of gender. This was first World conference which talks about women’s experiences at different levels including discrimination & harassment at the workplace and denial of the basic rights available to them and treatment before & under law. A preparatory process starts from this conference related to the critical reviews on the treatment of women's rights in the declaration and Programme of action. Let us see two main conferences related to women’s rights.

---

<sup>118</sup> Sullivan D, Women’s Human Rights and the 1993 World Conference on Human Rights, 88 The American Journal of International Law, 152(1994)

## 6.1 VIENNA DECLARATION

This was the first time when United Nations recognizes that there was violation of women's basic rights. Conference comes to end with declaration called "Vienna Declaration" which specifically determine the basic individual's rights of female as "an inalienable, integral and indivisible part of universal human rights" Para 18 of the declaration states all these things. It further talks about gender based violence and type of sexual harassment which results as international trafficking and exploitation of the dignity and respect of the individuals. Concerning this a draft for "violence against women" that welcomed by General Assembly and appoints Special Rapporteur on the same issues.<sup>119</sup> It further states that the rights of women should be the component of the activities of UN human rights. Numerous non- government organization, institutions or intergovernmental organization puts their efforts in secure & protect and promote. Para 36 of declaration ensures "equal status and human rights for women." It states that the complete and equivalent enjoyment of rights by the women and this should be a priority for the Government and United Nations too. Women should be both beneficiaries and agents in the development process. So on Para 39 of the Vienna Declaration ensures purge kinds of Discrimination against women. It encourages CEDAW and in end, it welcome the "World Conference on Women" which to be held in Beijing in 1995 with the theme of women equality, peace, and development.<sup>120</sup>

---

<sup>119</sup> Mertus J, A Perspective on Women and International Human Rights after the Vienna Declaration: The Inside/ Outside Construct, 26 New York University Journal of International Law and Politics, 201(1994)

<sup>120</sup> ibid

## 6.2 BEIJING CONFERENCE

The opening statement of Ismat Kittani<sup>121</sup> reflects the concern about women rights he said “The Challenges is how to make (existing) laws take effects in the daily lives of women.” Their rights supposed to be “inalienable, indivisible and integral part of the human rights at universal level” Conference aim were to maintain the phase achieved at preceding conferences related to the women’s. Beijing Conference had a legal dilemma about females rights as integral part of the society under the state’s so its domestic law that should have provisions to protect the rights. With the addition of this, there should some legally binding document which the implementation of local laws which prohibits the discrimination against gender.<sup>122</sup> Former first lady of the United States Hilary Clinton while addressing the conference pronounces that “Women’s Right is Human Rights.” There were numerous concern areas which discuss in the conference platform of action. Some of them are Violence against Women and the Rights of females. Both even after years-long this is the alarm issue in the world. Platform of Actions of the conference anticipated on the awareness programs at the educational level and suggests the government to enact something related to the ban on the trafficking and prostitution.

Beijing Platform for Action Para 210 talks about “First responsibility of the Government is the protection and promotion of basic human rights of all human beings.”<sup>123</sup> It is one of the most concerning issues as each time right were guarantee by-laws but when it comes to implementation Government fails to do so. It has been seen that nations who not ratified

---

<sup>121</sup> Former Deputy Secretary of United Nation

<sup>122</sup> Margaret P, The Status of Women under International Human Rights and Law and the 1995 UN Conference on Women: Beijing China, 84 Kentucky Law Journal, 1249(1995)

<sup>123</sup> Beijing Declaration and Platform for Action (September 1995)

<https://www.unsystem.org/content/beijing-declaration-and-platform-action-september-1995> (Last Visited 9th July 2020)

the CEDAW have less legal provision compare to who ratified. Violence and discrimination against women nullify their rights and put their dignity in danger. At the end of the conference, there were some recommendations like to follow the CEDAW; the government should ratify the existing law and make sure the execution of the convention; there should be the formation of some National institution and awareness campaign. Only ten countries agreed to adopt the conference platform of action document as it is.

Now the questions that come in mind are that can documents like this make differences in the condition of the women or protect women from the violation. As Beijing is not the legally binding document rather it is only a document to guide Government to implement the existing laws which ensure the shield to women to protect their rights.<sup>124</sup> CEDAW is officially binding convention to the state that ratifies it and in many instances, it save the Basic Rights of women. In *X and Y vs. Georgia*<sup>125</sup>, X and her daughter Y had a previous experience of sexual assault and physical too by X's husband. X made complain in 2001 but she had to withdraw the same due to the peer pressure from the husband. After that again in 2004, she made a new report on the ground of violence and discrimination by her husband against her and her daughter. But no legal action was taken by the officials they only took the signed statement of the husband that he will not commit the same in future anymore. Now in 2007 X goes to "European Court of Human Rights" and claimed violation of the CEDAW regulation comes under Article 1 i.e. "discrimination" and Article 2(b)-2(f) i.e. "obligation of states parties to adopt all the appropriate measures, legislations and legal protections to prevent discrimination against women by individuals or public authorities." Committee found that there was a violation of both articles by Georgia and

---

<sup>124</sup> Supra 103

<sup>125</sup> U.N.Doc.CEDAW/C/61/D/24/2009

direct him to pay monetary compensation to X and Y and make sure they fulfill all the compulsion appear under the CEDAW.

This was just an example where States failed to accomplish the obligation and ensure protection. State must adopt the legislature which protects and prohibit discrimination. But most importantly it should not be on paper only there must be the implementation of the same. Even after so many years of the despite Vienna Declaration and Beijing Conference and their Program of Action women faced discrimination daily. In many countries, women still have no basic right that includes the Right to vote, the Right to education, and denied Access to Justice.

## **CHAPTER 5**

### **ROLE OF LEGISLATURE AND JUDICIARY IN THE PROTECTION OF WOMEN RIGHTS**

“Law should not sit limply, while those who defy it go free and those who seek its protection lose hope”.

“(Jenison v. Baker (1972) 1 All ER 997)”

#### **1. INTRODUCTION**

Indian Justice Delivery System somehow based on the adversarial justice system which is generally on the accusatorial process taken from the British Colonial. In reality, the system is a tilt towards who commit the crime as the accused to be presumed as not guilty and weight is on the opposite side to prove his fault ahead of rational doubt with that accused also have the benefit of the to remain hushed. The core purpose of the System is to penalize wrongdoer and guard who is not guilty. In the adversarial method, the judge is like umpire its' his duty or responsibility to see whether the prosecution has proved the charges, not in favor of accused ahead of a certain uncertainty; provide the advantage of the doubt to accused if prosecution fails to prove.<sup>126</sup> While in Inquisitorial systems, the judge has the power to investigate the case or crime scene also empowered to issue the warrants, arrest, and examine the accused. In many instances, the system put bound on the magistrate to rely on the arguments held by both the parties. Even the Malimath Committee agrees with the fact that the discovery of the truth is an adversarial system that is not like the inquisitorial system.

---

<sup>126</sup> Vijay, Yash S., The Adversarial System in India: Assessing Challenges and Alternatives (September 16, 2012) <https://ssrn.com/abstract=2147385> (last visited 1<sup>st</sup> July 2020).

Former President of our country “Dr.R.Venkataraman” states that “The Adversarial System is the opposite of our ancient ethos. In the panchayat justice, they were seeking the truth, while in the adversarial procedure, the Judge does not seek the truth, but only decides whether the charge has been proved by the prosecution. The Judge is not concerned with the truth; he is only concerned with the proof. Those who know that the acquitted accused was the offender, lose faith in the system.” Even SC in “Ram Chandra vs. State of Haryana”<sup>127</sup> held “there is an unfortunate tendency for a Judge presiding over a trial to assume the role of referee or umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortion flowing from combative and competitive elements entering the trial procedure.” Even the Malimath Committee felt that several features of the inquisitorial method should adopt to make our adversarial structure more effective. On the same side no matter whether it is an adversarial system or an inquisitorial system the main motive of the judiciary should be the security of the rights of people.

## **2. CRIMINAL AMENDMENT ACT**

### **2.1 CRIMINAL AMENDMENT ACT 2013**

12<sup>th</sup> December 2012, the entire country was shocked by an incident that happened at the heart of the country i.e. Capital City Delhi. A young girl was gang raped and torture in private bus. This incident not only shocked the nation but also brought the mentality of the Indian society on one side without any support from the political leader the young blood of the country start protest, that protest leads to the Criminal Amendment Act 2013 while on another side some political leader, spirituals guru and even defense lawyer were telling

---

<sup>127</sup> AIR 1981 SC 1036



the do's and don't for the women in our country.<sup>128</sup> The statement of defense lawyer A.P. Singh was disturbing as he states "These rapists are not hardened criminals. They need rehabilitation. It is you women, who lead the men in our country astray....if my daughter was having premarital sex and moving around at night with her boyfriend, I would have burnt her alive. I would not have let this situation happen. All parents should adopt such an attitude". The concept of speedy trial was overlooked in this matter and it took near 8 years to get justice to a deceased who died while fighting.

Central Government appoint committee chaired by the former CJI J.S.Verma for the recommendation of stringent laws that deal with such heinous offence and make a recommendation on rape laws and important provisions dealing with the protection of the women.<sup>129</sup> The committee submitted its report and after that, the amendment act was enacted in 2013 based on the findings and suggestions made by the committee. This act introduced many novel provisos for the protection of women including "Section 326 A & 326 B- Protection of Women against acid attack, Section 354A- Sexual Harassment, Section 354C- Voyeurism and Section 354D- Stalking"<sup>130</sup>. The definition of rape is expended after the amendment. Changes suggested by Committee were progressive one but parliament didn't accept all of them as the Committee focus to make crime like rape "Gender Neutral" but parliament has a different perspective on that and makes it women-centric only. Another concern issue rose by the committee was about consent and marital

---

<sup>128</sup> Yadav P, Criminal Law (Amendment) Act, 2018- A Critical Evaluation,5 International Journal of Research and Analytical Reviews, 1770 (2018)

<sup>129</sup> Dixit V, The Criminal Law (Amendment) Bill, 2013- A Critical Analysis, 2 Rostrum's Law Review , 111(2013)

<sup>130</sup> The Criminal Law (Amedment) Act, 2013 (Act No. 13 of 2013)

rape. But again Parliament sticks to its provisions and decide consent age 18 and no stringent law regarding marital rape in the amendment Act.

## **2.2 CRIMINAL AMENDMENT ACT 2018**

After the modification in 2013, it was assured that offence like this will not happen in the future. But in August 2013 there was another case of gang rape in Mumbai known as Shakti Mill Case, working women went to a site for some project work and accused helped women and his friend to enter into shakti mills for capturing some ancient things and after some time accused called three more people and one of them was juvenile then they tied his friend and dragged the victim into a room and commit a heinous crime. They also clicked some photographs to threaten that if she complains to the police then they will circulate this.<sup>131</sup> There were many other instances like Kathua Case and many more. Mere after the 5 years of the amendment there was another amendment in the Criminal Law in 2018. This elaborates on the category of heinous offences against different age groups. The chief focus was on the speedy trial in the case of sexual offences against women. It amends to complete the investigation of the gruesome offences within 2 months or as far as possible. Criminal Law (Amendment) Ordinance 2018 approved by the cabinet and it introduce the provision of the “Death Penalty” for the heinous offence against Child. It came into the force on 21<sup>st</sup> April 2018. Highlight of the Criminal Amendment Act 2018<sup>132</sup> as follows:

---

<sup>131</sup> Kaur A, Shakti Mills Gang Rape Case – 2013, <https://blog.ipleaders.in/shakti-mills-rape-case/> (last visited 2<sup>nd</sup> July 2020)

<sup>132</sup> Act 22 of 2018

(a) Section 376AB- deals with prescribing the punishment of heinous crime i.e. rape on women under the age of 12 years. The maximum punishment for this will be the Death penalty or imprisonment of 20 years to life and fine.

(b) Section 376 DA deals with the gang rape of a girl who is under 16 years. Maximum punishment describe is life imprisonment and fine

(c) Section 376 DB describe the punishment of gang rape with a girl under 12 years i.e. death, life imprisonment and fine<sup>133</sup>

### **3. JUDICIAL APPROACH**

Apart from Constitutional provisions in many instances, the Indian Court comes to rescue the right of the women and pronounce some landmark judgment in favor of the protection of women. Arijit Pasayat J. states that “A socially sensitized Judge, in our opinion, is better statutory armor in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos”<sup>134</sup> Judiciary consists of Lower Court, High Court, Supreme Court and it may be possible that they all differ in the interpretation of the argument and facts present before them. Judiciary plays a critical role in the interpretation along with framing the laws related to women and tries to heave the dignity in society.

#### **3.1 SEXUAL OFFENCE**

In the case “Rafiq vs. State of U.P.”<sup>135</sup> Krishna Iyer J. state that “a murderer kills the body, but a rapist kills the soul.” Rape is not only an offense against women it considers a crime against a whole society as it was stated in “Bodhisattwa Gautam vs. Subhra

---

<sup>133</sup> Indian Penal Code 1860 (Act No. 45 of 1860)

<sup>134</sup> State of Punjab vs. Ramdev Singh, AIR 2004 SC 1290

<sup>135</sup> 1981 AIR 559

Chakraborty”<sup>136</sup> Court further observed that “Rape is, therefore, the most hated crime. It is a crime against basic human rights and is also a violation of the victim’s most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21. To many feminists and psychiatrists, rape is less a sexual offence than an act of aggression aimed at degrading and humiliating women. The rape laws do not, unfortunately, take care of the social aspect of the matter and are inept in many respects” *Tukaram & Anr. Vs. State of Maharashtra*<sup>137</sup> famously called a Mathura Rape Case have a massive blow on the women community and their rights as it turn into movement in India. In 1972 a tribal girl aged 16 years goes to the police station to record a grievance and in return what she got? raped by two policemen. The district court released the accused with the reasoning that a girl was habituated to sex and marks on the body were not sufficient to prove forced sex. In a plea to Higher court upturned the finding of the subordinate court; convicts the wrongdoers. After it matter went to Apex Court and on an utter shocked Apex court set away from the finding of the High Court and yet for a second time acquitted the accused. Apex Court said there was no sign that the victim opposed the act of the accused as there was no personal injury and the victim went silently with the accused without any defense and the victim failed to establish the accusations ahead of reasonable doubt.

This judgment shows the patriarchal mindset of the judiciary at that time and it also leads to a massive moment to protect the dignity of women. This moment turn into a first massive amendment in the criminal law of India. A letter was written by some eminent lawyers of the country to change some point in the legislature related rape which includes the burden

---

<sup>136</sup> A.I.R 1996 SC 922

<sup>137</sup> A.I.R 1979 SC 185

of proof would shift away from the victim in cases like this and the victim name should be anonymous. After all this hustle finally in 1983 there was an change in the Criminal Law. 1995 in “Delhi Domestic Working Women’s Forum vs. Union of India”<sup>138</sup>; army persons commit the heinous offence with women in a running train. Supreme Court talks about the brutality of the police against the rape victim as Apex Court observed “The defects in the present system are: Firstly, complaints are handled roughly and are not even such attention as is warranted. The victims, more often than not, are humiliated by the police. The victims have invariably found rape trials a traumatic experience. The experience of giving evidence in court has been negative and destructive. The victims often say, they considered the ordeal to be even worse than the rape itself. Undoubtedly, the court proceedings added to and prolonged the psychological stress they had had to suffer as a result of the rape itself.” Court further directs that police should inform all the basic right which is available to her and provide legal representation and protect her secrecy during the trial. In this particular case court had shown a concern about the one of the most significant aspect in the system is how the police handle the complaint of the victim have a massive impact on the whole case.

In Sakshi vs. Union of India<sup>139</sup> although the appeal was dismissed by the Apex Court to include all forms of penetration like penile/oral in the meaning of rape under Section 375 of Indian Penal code. Court by giving reasoning of “Doctrine of Stare Decisis” and observed that it will create ambiguity dismissed the petition. But on relying upon a judgment of State of Punjab vs. Gurmit Singh<sup>140</sup> issue a guideline that the entire trail

---

<sup>138</sup> 1995 1 S.C.C 14

<sup>139</sup> A.I.R 2004 SC 3566

<sup>140</sup> A.I.R 1996 SC 1393

related to Section 354 and Section 375 will held in a camera under “Section 327 of Criminal Procedure Code”. Later on by “The Criminal (Amendment) Act 2013”, those words are included in the definition of rape.

Now if we talk about the consent; after the amendment in 2013, a new definition of the consent with reference to sexual assault was introduced it means “Unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non- verbal communication willingness to participate in the specific sexual act”<sup>141</sup> In “Mahmood Farooqui vs. State (Govt. of NCT of Delhi)”<sup>142</sup> a complaint was lodged against accused by a 35-year researcher who came to India for her research work. Prima Facie of the case showed that accused forced the complainant to have oral sex too whom she denied but the accused forced her to perform. Later the accused apologies for the act by sending mail. Section 375(d) of Indian Penal code explains that “applies his mouth to the vagina, anus, and urethra of a woman or makes her do so with him or any other person.” By looking at the facts the conditions of rape were fulfilled first it was against her will and second without consent. Trial court found accused guilty and convicts him under Section 375 of code. But on an utter shock when accused appeal to Delhi Higher Court it change the sentence of the Trial Court and acquits the accused by giving the reasoning that the victim unwilling to perform the act was only in her mind. She failed to convey the same to the accused and things she conveyed was different. Court held that “There is no communication regarding her fear in the mind of the prosecutrix to the appellant as she makes fake orgasm to end the ordeal.” Somehow this judgment showed the orthodox mindset as Court applied Section 90 of Indian Penal Code which defines consent as the known “to be given under

---

<sup>141</sup> Supra 130

<sup>142</sup> 2018 CriLJ3457

fear or misconception.” Court ignored the concept of consent established by the “Criminal Amendment Act 2013”.

Marital Rape is one of the most concerns area but till now there is no stringent law against it. Even in the third phase of the 20<sup>th</sup> century in India a husband doesn’t commit crime even after intercourse with wife without her consent. Sir Matthew Hale once said that “The Husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract.” It seems Indian lawmakers took his statement seriously. Even Justice Verma Committee recommends that it should treat as a crime; the rapist is a rapist irrespective of his connection with the victim. Justice Gita Mittal states that “If a girl married to a man it doesn’t mean that she is all time ready for the intercourse. There should consent for the same.” But the Indian legislature is least worry about it.

If we compare the situation of that time to present than the condition or scenario doesn’t change even after two major change in the criminal law one in 2013 after the incident of Nirbhaya and another one in 2018. Despite such legislature and laws the crime against women increases in a rapid phase. The “National Crime Records Bureau (NCRB)” “Crime in India” states that crime against women increased by 16% compared to 2013.<sup>143</sup> Data released by NCRB shown in the below table:

| Crime           | 2016  | 2017  | 2018  |
|-----------------|-------|-------|-------|
| Rape            | 38947 | 32559 | 33356 |
| Attempt to Rape | 5729  | 4154  | 4097  |

Table 1

---

<sup>143</sup> Bhattacharya D, NCRB Data Shows 16% increase in crime against women in modi govt’s terms, 24<sup>th</sup> Oct. 2019 <https://www.newsclick.in/NCRB-data-shows-16-increase-crimes-women-modi-govt> (last visited 2nd July 2020)

Recently case like Unnao where a minor girl approached a local politician for the job but purportedly raped by him and when the family of victim approach police to report the incident they refused or failed to register FIR after which showed the failure of the police and legislative system after that family filed a case in court. Victim father was beaten brutally due to this he died in the judicial custody and victim also tried to burnt herself this series of incident attract the nation attention then apex court of the nation took Suo Moto through the letter of the victim and transfers the case from Uttar Pradesh to Delhi and finally on 20<sup>th</sup> December 2019 the culprit sentenced to life imprisonment.

Even the report of Special Rapporteur on violent behavior against Women<sup>144</sup> put remarks that “Analysis reveals commonalities in the ways that the Indian justice system failed to prevent, investigate, prosecute, and punish perpetrators of sexual violence or to provide effective redress to female victims.” as in *Mukesh & Anr. Vs. State of NCT of Delhi*<sup>145</sup>, a 23-year-old girl raped by some guys including a minor in a running bus. The attack was so gruesome that victim was unable to survive and accused awarded by death penalty but as our justice system is more accused centric it took 8 years to prevail justice to the victim of such heinous crime; on a certain extent, this shows the breakdown of the system to grant access to justice to the sufferers. Recently the observation made a High Court while dealing with anticipatory bail to one of the accused who alleged of raping a woman on a plot of marriage. Krishna S Dixit J. observed, “The explanation offered by the complainant that

---

<sup>144</sup> Access to Justice for Women, Indian’s Response to Sexual Violence in Conflict and Social Upheaval 2015

<sup>145</sup> A.I.R 2017 SC 2161



after the perpetration of the act she was tired and fell asleep’ is unbecoming of an Indian woman; that is not the way our women react when they are ravished.”<sup>146</sup>

### 3.2 SEXUAL HARASSMENT AT WORKPLACE

If there is Harassment at occupation place then it will count in the violation of the basic right available to women including her dignity, equality, life, and liberty. Due to the rapid growth of this kind of harassment, the legislature enacted an Act called “The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) 2013 Act”.<sup>147</sup> Act faced lots of criticism due to flaws as Section 14 of the Act<sup>148</sup> contains the provisions to penalized women on “false and malicious complaints” even Justice Verma felt that this will nullify the object of the Act. The findings of NCRB titled “Crime in India- 2018” showed the data of Sexual harassment in the last few years as follows in the below table:<sup>149</sup>

| Crime  | 2017 | 2018 |
|--|------|------|
| Sexual Harassment At<br>Work Place or Office<br>Premises | 479  | 401  |
| Sexual Harassment In<br>Public Transport System          | 599  | 730  |

Table 2

<sup>146</sup> ‘Unbecoming of Indian women to sleep after rape; Mirror Now, <https://www.timesnownews.com/mirror-now/in-focus/article/unbecoming-of-indian-woman-to-sleep-after-rape-observes-karnataka-high-court-while-granting-bail-to-accused/611572> (Last Visited 10th July 2020)

<sup>147</sup> Kapur N, Workplace Sexual Harassment: The Way Things Are, 48 Economic and Political Weekly, 27 (2013)

<sup>148</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013 (Act No. 14 of 2013)

<sup>149</sup> Crime in India- 2018, 1 National Crime Records Bureau(Ministry of Home Affairs), 195(2018)

The table shows the statistics of only that case which are record on a complaint.

Now judicial approach towards this issue was commendable as in Vishaka vs. State of Rajasthan<sup>150</sup> woman was social activists, while doing her work she tried to discontinue a child marriage but she failed miserably while doing same after that some time to seek revenge form her six-man raped her in front of her husband. While she went to the police station to object; first they tried to delay the filling of case but later on, they filed. But again she faced cruelty by the woman police officers while collecting evidence. Then to an utter shock Trial Court acquitted the accused but she did not lose hope and got support from other women's social workers and filed PIL in Apex Court which resulted in a landmark judgment in the field of women's rights. A three bench judges issued a guideline which to be followed by each and every sector including both private and public. The judgment was visionary and tried to fill the lacuna in the system. It was the first time when Apex Court took invoked the ratified conventions by India related to women at the international level. Court looks into the “Convention on the elimination of all forms of discrimination against women 1979” and while issuing guideline court observed that “The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14,19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum”<sup>151</sup> This judgment was creative as it was first time

---

<sup>150</sup> A.I.R 1997 SC 301

<sup>151</sup> Srivastava S.C, Sexual Harassment of Women at Work Place: Law and Policy, 39 Shri Ram Centre for Industrial Relations and Human Resources, 364(2004)

when sexual harassment was looked through the vision of the equality and on the same side there was no legislature related to this issue so the guidelines were legally binding at workplaces. In this judgment, “Gender Equality includes both the protection from the sexual harassment and right to work with dignity recognizes basic individual’s right and the international convention and norms have great significance in the formulation of the guidelines.” Ashok Kumar Ganguly J. said, “The Vishaka judgment made it clear that gender equality and the right to a safe and secure working place is part of the fundamental rights guaranteed by the Constitution and it is the duty of the judiciary to ensure that the state enforces these rights.”

In “Municipal Corporation of Delhi vs. Female Worker’s Muster Roll”<sup>152</sup> the question raised in this case was about muster roll female workers whether they are entitled to maternity benefit or not. The matter goes before the tribunal and it allowed claimed and direct corporation to provide maternity benefit to the worker even on muster roll. After that HC dismissed the appeal and Corporation filed Special Leave Petition. Similar to earlier incident same was dismissed by the Court with the reasoning that the activity of the Delhi Corporation falls under the definition of industry and according to CEDAW Article 11 “State shall take appropriate measure to eliminate discrimination against women in the field of employment to ensure equality” So it was held that maternity benefit should be provided to the workers working on the muster roll. This judgment worked as a boost to women employee as it was clear by the Court that Status of employment is not the criterion to get maternity benefit.

---

<sup>152</sup> A.I.R 2000 SC 1274

After such effective guidelines in Vishaka the next task was the implementation of guidelines and for the same in “Medha Kotwal Lele vs. Union of India”<sup>153</sup> an PIL lodge in 2013 with highlighting the issues of the number of cases and the improper execution of the Vishaka guidelines. Apex Court observed State Government should major amendment in the “Central Civil Service (CCS)” rules and formed an effective mechanism to examine the proper implementation of the guidelines and further directed that the aggrieved one can go Higher Court of the State.

Even at the university level, it is compulsory to have Internal Complaint Committees to deal with the sexual harassment and it has to issue a proper guideline related to the same at the university level.

### **3.3 ACID ATTACK**

Acid attack is a gruesome and heinous crime still India doesn't have a specific law that regulates the crime of acid attack. To a certain extent, acid attack is a gender-based violence which not harms victims physically but also mentally. Penal Code of India which was enacted in 1860 covers the crime like this and compensation to the victims under “The Criminal Procedure code 1973”. “226<sup>th</sup> Law Commission report” was based on Acid Attack to count as the Special offence which comes under the provision of Penal Code. Commission remarks that “Through acid attacks is a crime which can be committed against anyone either man or woman. Indian is more gender-specific as most of the attacks committed on the women as per the reports. Refusal of the proposal of marriage or denying dowry is the reason behind this. As an attacker unable to bear with the rejection and deny

---

<sup>153</sup> 1 SCC 297

leads them to commit such heinous crime which destroys the body of the victim.”<sup>154</sup> The “Criminal Amendment Act 2013 add section 326(A) & section 326(B)” in Indian Penal Code related to acid attack.<sup>155</sup> Earlier it was like no compensation awarded to the sufferers of such attract and in case any compensation given then it was so minimum and inadequate to meet up the expenses of the cure of sufferer. Some major causes of the acid attack area male ego and refusal of marriage.

Laxmi vs. Union of India<sup>156</sup> was the first landmark case that attracts the attention of legislature and judiciary towards crime like an acid attack. A minor girl was attacked by three men on a refusal to marry. Due to this attack, she faced unbearable pain both physically and mentally. Trail court convicted the accused but got bail from the High Court after that a PIL was filed to issue the appropriate direction related to compensation in such case and availability of acid. At the first instance a direction guideline was given to the Home Ministry and Ministry of Chemical & Fertilizers; to enact such provisions to manage the sale of acid in open; measures the proper treatment to the victims of such offense and most importantly compensation to them and creation of the separate fund for acid attacks victims. Court further directed that medical treatment to the victim should be provided at free of cost even at private hospitals too.

In “Parivartan Kendra vs. Union of India and Ors.”<sup>157</sup>, Highlighting the difficulty of acid attack victim a PIL was filed in the Apex Court regarding the inadequate amount decided by the court, the reaction of society towards attack victims, lack of legal and medical

---

<sup>154</sup> Proposal for the inclusion of acid attack as specific offences in the Indian Penal Code and a law for compensation for victims of crime, 226<sup>th</sup> Law Commission of India,3(2008)

<sup>155</sup> Senthilir S, Acid is not the Answer to Anything, 48 Economic and Political Weekly, 35(2013)

<sup>156</sup> A.I.R 2015 SC 3662

<sup>157</sup> 2016(1) ALD70

attention. A Non- Government Organization (NGO) filed a PIL in concern of two acid attack victims of Bihar. Four assailants pour acid on the face and body of girls at midnight while sleeping. Accused used to harass the elder sister. This incident also highlights humanity's concern in society as when the victim was taken to hospital at night only but the doctor arrived the next morning and didn't provide proper treatment to the victim. Compensation was announced by the Government to the victim near above 2.5 lakh but before filling this PIL 5 lakh was already spent on the cure and still victim require more treatment. Now Court held that "at least 3 lakhs must be paid to the victims by the Government but in a particular case, minimum compensation should be 6 lakh." Apex Court further directs that "All States and Union Territory should take appropriate measures to include the victim of acid attack under disability list."

In *Ravada Sasikala vs. State of Andhra Pradesh & Ors.*<sup>158</sup>, the elder brother of the accused wants a marriage agreement between the accused and appellant but the family of the appellant was unwilling to do so. Concerning the same and unable to accept the rejection from the family member, the accused trespass into house and pour acid over her head. Matter went to court and the session judge found accused guilty under Section 326 of Indian Penal Code<sup>159</sup> and awarded a year sentence and a fine of Rs.5,000/- and after that, an application made to Higher Court; to an utter shock, Higher Court reduced the sentence. To this Apex Court also shown concern and observed that considering the seriousness of crime the reduction of sentence by High Court was shocking one so Apex Court overruled the decision of Higher Court and restored the direction of the lower court. Besides Court

---

<sup>158</sup> A.I.R 2017 SC 1166

<sup>159</sup> "Voluntarily causing grievous hurt by dangerous weapons or means"

states that as attack resulted in disfiguration in some parts of the body so Apex Court directed accused to pay Rs.50,000/- and State to pay Rs.3 Lac as compensation.

Despite being such guidelines by the Apex Court in different cases the illegal marketing of Acid in open is still practice at many areas in the country. Even today India tops among the numerous country when it comes to acid attack. The fluctuant disposal rate of the Court reflects the side of Judiciary who is unable to ensure rapid justice in this matter. Data of NCRB showed that only<sup>160</sup> :

| Acid Attack          | 2016 | 2017 | 2018 |
|----------------------|------|------|------|
| Cases went for trail | 407  | 442  | 523  |
| Case Disposed        | 27   | 44   | 32   |

Table 3

Source: NCRB Data “Crime in India”

### 3.4 RIGHT TO EQUALITY AND DISCRIMINATION

Article 14 of the Constitution guarantees “Right to equality” to each & every citizen and Article 15 and Article 16 prohibits the “discrimination on the basis of sex, caste, religion, and so on.” Despite such provisions, the dimensions of inequality have increased to the extent that it is difficult to measure whether our country developing or degrading in the subject of gender equality. Even in the current position of women equality is not only desirable but an important factor of survival.<sup>161</sup> Legislature tries to fill the lacuna by enacting laws that ensure equality and protect the women from discrimination. Problems begin at the time of implementation of all those things, it feels sad to say that all these laws

---

<sup>160</sup> Supra 149

<sup>161</sup> Bhattacharya M, Can Law Help Women to Survive?,42 Social Scientist, 3(2014).

are mostly leaving an impact on papers only. Although the government formed commissions at both central and state levels for the women; with the main objective to look out on the issues connected to women and look after the civil liberties of women.

When it comes to access to justice judiciary plays a crucial role to achieve that along with there were many instances where the judiciary creates a path for fairness and non-discrimination. One of the landmark judgments of the judiciary regarding the same was *Air India vs. Nergesh Meerza*<sup>162</sup>; there was a breach of Article 14 of the Constitution. Some discriminatory rule was made by Air India like women have to retire at the age of 35 or on wedding within the first four years of service and on first pregnancy or any of them which is earlier. Apex Court held all these rules unconstitutional and void. Further states that “Rules were arbitrary in nature and violation of Article 14 of the Constitution”. This rule of Airline Company clearly shows the discrimination of the equality as it is a dynamic notion along with several dimensions and it can’t limit to a certain extent.

In *Mary Roy vs. State of Kerala and Ors.*<sup>163</sup>, result of patriarchal mindset in the society, woman from the Syrian Christian Community faced discrimination due to such provisions in the Travancore Christian Succession Act 1916. In this case after the death of father Petitioner brother denied sharing the property and she comes to know that she can claim only five thousand Rs. Even after her father property was of cores. Then she appeals against the constitutionality of the “Travancore Christian Succession Act 1916”. After hearing both the side Apex Court finally gave a verdict that becomes a pronouncement to the history in the aspect of gender equality. Court held that “Interstate Succession to the property of the Indian Christian in the territory of Travancore will be governed by the

---

<sup>162</sup> A.I.R 1981 SC 1829

<sup>163</sup> A.I.R 1986 SC 1011



provisions of Indian Succession Act, 1925.” This judgment ensures equality in society and a strong statement towards women rights.

Recently Indian Apex Court makes a milestone verdict on women in the army, as Apex Court “all women army officers are now eligible for permanent commissions”.<sup>164</sup> An American political counselor Will Henry once said “Nature gave women too much power; the law gives them too little”. In *The Secretary, Ministry of Defence vs. Babita Puniya and Ors.*<sup>165</sup> Government while arguing said that “The composition of rank and file being male, and predominantly drawn from a rural background, with prevailing societal norms, the troops are not yet mentally schooled to accept women officers in command” in reply Apex Court rejected same and said, “Right to equality is a right to rationality.” This rule praised as “Great leap” towards equal opportunity in the army. This judgment of the court termed as one of the landmark step towards the equality. The direction of court was strict to form the women commission as soon as possible.

Another landmark judgment towards equality was the “Indian Young Lawyers Association and Ors. vs. The State of Kerala and Ors.”<sup>166</sup> known as Sabrimala issue. Apex Court allowed the entry of women of all age groups within temple. A PIL was entered by the IYLA to challenge the dispute old custom banning the entry of females in menstruating age inside the temple. Apex Court observed “devotion cannot be subjected to gender discrimination” Justice R.F.Nariman states “The Customs and Usages of Sabrimala temple must yield to the fundamental right of women to worship in the temple.”

---

<sup>164</sup> Indian Supreme Court makes landmark ruling on women in army, BBC News 17<sup>th</sup> February 2020, <https://www.bbc.com/news/world-asia-india-51528141> (last visited 5th July 2020)

<sup>165</sup> A.I.R 2020 SC 1000

<sup>166</sup> (2019) 11 SCC 1

#### **4. OTHER LANDMARK JUDGMENT**

In *Sheela Barse vs. State of Maharashtra*<sup>167</sup>, a Petition was entered in the matter of custodial violence and condition of female inmates. The petitioner who is journalist wrote a letter and it entered into court as writ petition as per the provision of Article 32 in the Constitution. Some guideline was issued by the Apex Court to ensure protection to the women inmates who are under trial and also reiterated right to legal aid to prisoners.

In “*S.P.S. Rathore vs. C.B.I. and Ors.*”<sup>168</sup>, a girl was molested by the IG of Police in the office of the Haryana Lawn Tennis Association. Girl and her family member filed a complaint against the accused and an initial inquiry took place and recommends registration of the FIR but no action was taken. The girl was unable to deal with the trauma of the incident committed suicide in 1993. Case went to CBI and filled the charge sheet in 2000. Finally in 2009 CBI court convicts him under Section 354 of Indian Penal code and pronounces rigorous imprisonment of six months and Rs.1000 as fine. CBI and one petitioner filed an appeal before additional session judge and in that accused was awarded with one and a half imprisonment. Now HC dismissed the appeal so the accused went to Apex Court. Court held that “accused is guilty under Section 354 of the Penal Code and looking on accused age court modify the sentence to the period already undergone.” Now to an utter shock even after so many things the accused was invited on the auspicious occasion of Republic Day by the Government. This shows the approach of the government towards the women, a man who molested a girl was invited and honored.

---

<sup>167</sup> A.I.R 1993 SC 378

<sup>168</sup> A.I.R 2016 SC 4486

In many instances judiciary played a crucial role to protect the constitutional and safeguarding the statutory rights. In “Mohammed Ahmed Khan vs. Shah Bano Begum,”<sup>169</sup> there was conflict over maintenance to Muslims married women after the divorce under the section 125 of CrPc 1973 Apex Court observed that “Even if there is a conflict, section 125 of CrPc is a secular law and it applies to all women, irrespective of their religion.” Court Further added that if there is conflict than Section 125 will overcome the Muslim law.

Recently in “Shayara Bano vs. Union of India”<sup>170</sup> Apex Court acknowledged that practice of triple talaq unconstitutional. Court observed that "Triple talaq may be a permissible practice but it retrograde and unworthy. Since triple talaq is instant it is irrevocable and the marital tie gets broken, it violates the right to equality." Court further directs government to bring legislation for the same within six months from the date of judgment. Concerning same government enacts “The Muslim Women (Protection of Rights of Marriage) Act 2019” contains the provision of the imprisonment if husband pronounces triple talaq any more.

In Charu Khurana vs. Union of India<sup>171</sup>, there was a rule of “Cine Costume Make-up Artists and Hair Dressers Association” that it only allowed men to be make-up artists, and to become a member of association it requires 5-year domicile of Maharashtra. Due to this provisions petitioner was prohibited to practice as make-up artists and membership was also denied. Petitioner saw that there was a violation of her rights so she knocks the door of Apex court. Court entrained her petition under the prescribed provisions of Article 32

---

<sup>169</sup> A.I.R 1985 SC 945

<sup>170</sup> A.I.R 2017 SC 4609

<sup>171</sup> A.I.R 2015 SC 839

in the Constitution. Court held that “There was a clear violation of the right to equality; prohibiting women to practice as make-up artists and the requirement of 5 years violate fundamental rights of individuals as promised by the Constitution provisions.” Now question come under as association doesn’t come under the definition of State under Article 12, it is a private entity then it is appropriate to allow in writ jurisdiction. Court by giving reasoning said that any bye laws of the association come under trade union and is registered under the same it can not violate fundamental rights.

From above all cases, it is to a certain extent visible that only Apex Court comes to rescue the rights of women. From Mathura to Unnao we saw so many ups and downs related to the rights of women. Legislature and judiciary tries to uplift the position of women by numerous enactment and judgments. One thing we can easily figure out that the response of police towards the victim is not so commendable. In many instances it may be possible due to past horrible experience; they feel panic to register a complaint. Its right time to understand a Sanskrit Shloka which means “All action become unproductive in place, where they are not treated with proper respect and dignity”

“यत्र नार्यस्तु पूज्यन्ते रमन्ते तत्र देवताः।  
यत्रैतास्तु न पूज्यन्ते सर्वास्तत्राफलाः क्रियाः।”

## **CHAPTER 6**

### **CONCLUSION AND SUGGESTION**

#### **6.1 CONCLUSION**

The Phrase “all are equal in eyes of law” seems contradictory at this stage of my thesis. International Women’s Day 2020 had the theme “I am Generation Equality: Realizing Women’s Rights”. This is a testament to the fact that we still have a long journey to make to ensure security and protection and to women without discrimination. One day in a year does not suffice to highlight and discuss the problems and issues related to rights of women. Discrimination against women is not a new phenomenon for a society that is plagued with a patriarchal mindset. Even today in 18 countries women need their husband's permission to get a job, in 32 countries to get a passport. It seems like the road to women’s right are paved with stones just like heaven’s is, we know it exists, we just don’t know how to get there.

The author somehow agrees with the hypothesis that there has always been a challenge to protect the status of women against discrimination despite constitutional and legal

safeguards. It is considered an issue at large in India and has been a concern since the inception of the constitution. After 73 years of independence, Indian women still strive hard to get rid of social evils surrounding them. It's a fundamental duty of state to protect citizens. Author views that despite of such provisions the main thing is that there is a need to change the mindset of the society. We need to think beyond the patriarchal nature. This ongoing pandemic situation shows the condition of the women in society at large. During this lockdown as per report there is ninety four percent rises in the domestic violence against women. Even when we look at the latest reports we came across the harsh reality and we can't deny the fact that we still have to go a long way. Recently MP High Court while granting bail to accused order him to get rakhi tied from victim of molestation. Apart from this at any instance accused approach to court with a reasoning to marry survivor instead of facing imprisonment. This shows the approach of both the judiciary and society towards females.

Under Section 376 of Indian Penal Code 1860 protection to women was ensured against rape, despite which India witnessed the most brutal incidents of rapes in Nirbhaya, Unnao, Kathua, case. Current National Crime Record Bureau report shows "one woman reported rape in every 15 minutes" on an average in India. Delhi, as the capital of the country, is worldwide known as a rape city now. Dowry prohibition act came in 1961 to combat dowry deaths and prohibit dowry practices, but reports constantly differ and show rapid growth in dowry deaths in India. Similarly, acid attack survivors are striving hard for the timely delivery of justice and severe penal actions against attackers. Domestic violence as another but the vital evil of society which is the biggest reason for the increase in deaths of women, divorces, etc. In a country full of social evils, women being the marginalized section of the

society are suffering from a timely justice delivery system, lack of awareness, availability of resources, and immediate response from local administration at the grassroots level.

From Mathura to Unnao, many new laws enacted but this leads to failure to protect. A woman with her mother burned herself in front of the chief minister house, why? Because despite her several complaints against the perpetrators no action was taken because they are on the high post. On the other side, it took 8 years to get justice to a deceased victim of brutal gang rape.

We live in a country where a young girl on her way home experienced problems with a broken vehicle and when she sought help, she got brutally raped and smothered to death. Numerous incidents reflect the miserable condition of women in new India. Recently a State High Court granted bail to an accused because his victim fell asleep while he tried to rape her and after the act, they called it the “unbecoming of an Indian Women”. This has been termed and the author agrees as misogynistic remarks by many activists. These things reflect that there has always been a tough challenge to protect the dignity of the women despite such stringent constitutional provisions and legal frameworks.

Due to a lack of awareness amongst women are unable to use their rights and are constantly subjected to violence. The road map to women’s rights in the justice delivery system does not exist & even if it does, there are miles to go to reach there. The unequal status of women compared to men is offensive to human dignity and can be consider as a gross violation of human rights and gender inequality.

Police are believed to help the aggrieved people but as we saw there are numerous instances where how police violate the “rights of women in the justice system” and due to such bad experience there is fear in women in seeking help from the police.

Furthermore, the judiciary in availing access to justice to women. As we have seen throughout this paper that the Apex court took serious cognizance and have tried to protect the dignity of a woman's faith in the judiciary. Despite such effort in many instances due to the slow process of the judiciary, there's a delay in justice, and as it is universally affirmed "Justice Delay is Justice Denied". Several reasons make the list such as slow and improper investigation by police, lack of evidence, not proper witness testimonies, etc.

The creation of deterrence in the society in the matter commission of offence or violence against women is only due to loopholes and lacuna in the system and that accused can easily getaway. With the proper awareness programs that facilitate educating women of their basic rights, cooperation from the law enforcement agencies and implementation of law in such a way that it creates deterrence can then we say we are putting our foot in the right direction to address the issues of women's rights.

## **6.2 SUGGESTIONS**

- Most Important thing is that efficient actions should be taken to implement the existing laws. The creation of Deterrence in respect of violation of laws is necessary. Awareness of the rights should be reached to every female at a vast level.
- There should be some stringent laws if Police refused to register or delay the complaint of the women especially in the Sexual Offence. With that more women officers should be appointed in the law enforcement department.
- It should be Mandatory to include a course at School and University level which deals with the provisions of violence against women and awareness camps should be organized on a daily basis.



- Family plays a crucial role in anyone's life somehow the consequences of the future in society depends on the upbringing of the child. There should be equal treatment in the family, no biasness based on gender. Approach towards girl child should be just like a boy and there should be involvement of them in decision-making matters. Now it a time when have to look beyond the Patriarchal culture.
- Rapists are rapists irrespective of the relation with the victim; Wife is not a mere sex object for the husband. If she doesn't want intercourse with her husband at a particular time then one should respect her feelings. Need to enact stringent law related to marital rape.
- A separate wing in each police station which deals with the complaint of violence against women only which will be headed by a woman police officer. By doing this there will be a proper data of the cases and women will feel more comfortable while describing the incident.
- A department or branch of State Women Commission (SWC) should be established in every district so that even rural areas women can avail of the services. As rural or remote areas women are illiterate and unaware about their basic rights. With the help of NGOs, SWC should form a small group of activist who works at the block level and create awareness and encourage women to raise their voice against violence.
- A medical counselor should be appointed by the court to rape survivor until the verdict of the case.
- Enactment of the "The Indecent Representation of Women (Prevention) Amendment Bill" 2012.

- Women education should be encouraged at the grassroots level i.e. villages of India. Despite Government policies, Child marriages still practice in the country along with that education of girls also comes to an end. There should be a cell in the organization with the help of volunteers and NGOs who visit the village minimum twice in a month and organized camp and some educational trip.
- In heinous crime like rape, the provisions of mercy petition should come to end. As already our justice system tilts towards the accused. The concept of Speedy trial should be of utmost concern in this kind of offence.

## **BIBLIOGRAPHY**

### **ARTICLES**

- Bai Z, The International Protection of Women's Human Rights: With Emphasis on UN Convention on the Elimination of All forms of Discrimination against Women, 7 Human Rights, 30 (2008)
- Basu S, Position of Women in Pre-Independence Era: A Socio-Political Perspective" in Rathin Bandopadhyay, Sanjay Kumar Singh et al (eds), „Women Rights Human Rights“, R. Cambray & Co Pvt Ltd, Kolkata, 2010, 76
- Bhattacharya M, Can Law Help Women to Survive?,42 Social Scientist, 3(2014).
- Bunch C, Women's Right as Human rights : Towards a Re-Vision of Human Rights, 12 Human Rights Quarterly, 486 (1990)
- Champan A, A Violations Approach for Monitoring the International Covenant on Economic, Social and Cultural Rights, 18 Human Rights Quarterly, 23(1996)
- Crime in India 2018, Vol.1 National Crime Records Bureau (Ministry of Human Affairs), 195(2018)
- Das.J, Reflection on “Human Rights and The Position of Indian Women”, 64 The Indian Journal of Political Science, 203 (2003)
- Dev. S. Gender Injustice in India: A Feminist Jurisprudential Perspective, 10 Tattva- Journal of Philosophy 69 (2018)

- Dixit V, The Criminal Law (Amendment) Bill, 2013- A Critical Analysis, 2 Rostrum's Law Review , 111(2013)
- Dr. Malik P.S , Socio- Cultural status of Women in India : A Historical Perspective, 04 Research Review Journal, 1524- 1528 (2019)
- Dr.Singh V.,The Position of Women in Medieval India, 7, Bhartiya Bhasha Shiksha Sahitya evam Shodh, 13 (2016)
- Galey M, Promoting Nondiscrimination against Women: The UN Commission on the Status of Women,23 International Studies Quarterly, 273(1973)
- Government of India, Committee on Reforms of Criminal Justice System Ministry of home Affairs, New Delhi March 2003
- Guggenheim M, The Implementation of Human Rights by the UN Commission on the Status of Women: A Brief Comment, 12 Texas International Law Journal, 239(1977)
- J. Manhor S, Contemporary Women's Issues, Marginalised Women and Human Rights, 12 Journal of the National Human Rights Commission,1 (2013)
- Kapur .J, Challenges of Gender Equality in the New Millennium and Guru Granth Shaib, 37, P.P.P, 62 (2005)
- Kapur N, Workplace Sexual Harassment: The Way Things Are, 48 Economic and Political Weekly, 27 (2013)
- Kathree F, Convention on the Elimination of All Forms of Discrimination against Women, 11 South Africa Journal on Human Right, 421 (1995)

- Khan A.S, Human trafficking, Justice Verma Committee Report and Legal Reform: An Unaccomplished Agenda, 56 Journal of Indian Law Institute, 567(2014)
- Kumar. S, Position of Women in Colonial Era, 1, International Journal of Education Research and Technology, 109 (2010)
- Leonard, K., Women in India: Some Recent Perspectives, 52(1), Pacific Affairs, 95 (1979)
- Margaret P, The Status of Women under International Human Rights and Law and the 1995 UN Conference on Women: Beijing China, 84 Kentucky Law Journal, 1249(1995)
- Margaret.B, Work on the United Nation Relating to the Status of Women, 4 Human Right Journal, 365 (1971)
- Marwah V, Human Rights and Role of Police, 40 Journal of Indian Law Institute, 138 (1998)
- Mertus J, A Perspective on Women and International Human Rights after the Vienna Declaration: The Inside/ Outside Construct, 26 New York University Journal of International Law and Politics, 201(1994)
- Morsink J, Women's rights in the Universal Declaration, 13 Human Rights Quarterly (May 1991)
- Ngaba S, CEDAW: Eliminating Discrimination against Women, 27 Agenda : Empowering Women for Gender Equality, 81 (1995)
- Om Prakash Sharma, Equality and Protective Discrimination under the Constitution of India, 1 Indian J.L. & Just. 92 (2010)

- P.Abhishek, A Critical Analysis of Status of Women in India, 5 International Journal of Pure and Applied Mathematics, 4853 (2018)
- Pal .B, The Saga of Women's status in ancient Indian civilization.23,Miscellanea Geographica- Regional Studies on Development,180 (2019)
- Pande, R, 26(3), the History of Feminism and Doing Gender in India. Estudos Feministas, 1, (2018)
- Pramila B, A Critique on Dowry Prohibition Act 1961, 76 Proceedings of the Indian History Congress, 844(2015)
- Rania. P, Feminist Jurisprudence: An Evolution from Fixed Mindset to A Growing Mindset,5 Amity International Journal of Juridical Sciences 32 (2019)
- Reanda L, Human Rights and Women's Rights : The United Nation Approach, 3 Human Rights Quarterly, 11 (1981)
- Saxena G.K, Position of Women in Vedic, Post- Vedic, British, And Contemporary India.4, International Journal of Legal Development and Allied Issues, 372 (2018)
- Senthilir S, Acid is not the Answer to Anything, 48 Economic and Political Weekly, 35(2013)
- Shingal.A., The Devadasi System: The Temple of Prostitution in India, 22(1) UCLA Women's Law Journal, 107 (2015)
- Shoal S.R., Role of Police in Indian Criminal Justice Administration,21 Journal of Gujarat Research Society, 238 (2019)
- Singhvi A, India's Constitution and Individual Rights: Diverse Perspectives, 41 Geo.Wash.Int'L.Rev. 327 (2009)

- Srivastava S.C, Sexual Harassment of Women at Work Place: Law and Policy, 39 Shri Ram Centre for Industrial Relations and Human Resources, 364(2004)
- Sullivan D, Women's Human Rights and the 1993 World Conference on Human Rights, 88 The American Journal of International Law, 152(1994)
- Swaminatahn A, Fundamental Rights and Directive Principle: Twin Pillars of Constitution, Selected Speeches of Women Members of The Constitution Assembly, 1 (2012)
- Tang K, Women's Struggle against discrimination: The UN Women's Convention and the Optional Protocol, 34 The British Journal of Social Work, 1173 (2004)
- Tharakan, S., & Tharakan, M. (1975). Status of Women in India: A Historical Perspective. Social Scientist, 4 115
- Towards Equality-The Unfinished Agenda-Status of Women in India 2001", "The National Commission for Women's Right ,4
- Yadav P, Criminal Law (Amendment) Act, 2018- A Critical Evaluation,5 International Journal of Research and Analytical Reviews, 1770 (2018)

## **BOOKS**

- Gaur .K.D., 2018 Criminal Law and Criminology New Delhi, Deep and Deep Publication Pvt. Ltd.
- Jain. M.P. 2017 Indian Constitutional Law, Wadhwa and Company, Nagpur

## **STATUTES**

- CONSTITUTION OF INDIA, 1950

- INDIAN EVIDENCE ACT, 1872
- INDIAN PENAL CODE, 1860
- INFORMATION TECHNOLOGY ACT ,2000
- PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005
- THE CRIMINAL PROCEDURE CODE, 1973
- THE DOWRY PROHIBITION ACT, 1961
- THE IMMORAL TRAFFICKING (PREVENTION) ACT, 1956
- THE INDECENT REPRESENTATION OF WOMEN (PREVENTION) ACT, 1986
- THE PREVENTION OF SATI ACT, 1829
- THE SATI (PREVENTION) ACT, 1987

#### **WEBSITES**

- Unbecoming of Indian women to sleep after rape; Mirror Now, <https://www.timesnownews.com/mirror-now/in-focus/article/unbecoming-of-indian-woman-to-sleep-after-rape-observes-karnataka-high-court-while-granting-bail-to-accused/611572> (Last Visited 10th July 2020)
- Bhattacharya D, NCRB Data Shows 16% increase in crime against women in modi govt's terms, 24<sup>th</sup> Oct. 2019 <https://www.newsclick.in/NCRB-data-shows-16-increase-crimes-women-modi-govt>. (last visited 2nd July 2020)
- Commission on the Status of Women, <https://www.unwomen.org/en/csw> (Last Visited 9th July 2020 )



- <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25818&LangID=E> (last visited 18<sup>th</sup> July 2020)
- <https://www.thehindu.com/opinion/lead/The-equality-of-entry/article14626846.ece>(last visited 19th June 2020)
- <https://www.yourarticlelibrary.com/women/status-of-women-during-british-period/47393> (last visited 10 June 2020)”
- Indian Supreme Court makes landmark ruling on women in army, BBC News 17<sup>th</sup> February 2020, <https://www.bbc.com/news/world-asia-india-51528141> (last visited 5th July 2020)
- International Convention on Civil and Political, Canadian Civil Liberties Association, 27<sup>th</sup> Oct. 2015, <https://ccla.org/summary-international-covenant-on-civil-and-political-rights-iccpr/> (Last Visited 8<sup>th</sup> July 2020)
- Kaur A, Shakti Mills Gang Rape Case – 2013, <https://blog.ipleaders.in/shakti-mills-rape-case/> (last visited 2<sup>nd</sup> July 2020)
- Kumar S.M, Status of Women in Vedic Period , <https://www.speakingtree.in/blog/status-of-women-in-vedic-period> (last visited 04 June 2020)
- Monda.P,“Women: Essay on the position of women in India”, <https://www.yourarticlelibrary.com/essay/women-essay-on-the-position-of-women-in-india/31314> (last visited May 31, 2020)”
- NCRB data 2018: One rape reported every 15 minutes in India, 11<sup>th</sup> January 2020 <https://www.indiatoday.in/india/story/ncrb-2018-woman-reports-rape-every-15-minutes-in-india-1635924-2020-01-11> (last visited 22nd June 2020)

- Rana.U, The revolt of 1857: When gender barriers crumbled, woman fought as equals, TOI, May 9, 2016, <https://timesofindia.indiatimes.com/city/meerut/The-revolt-of-1857-When-gender-barriers-crumbled-women-fought-as-equals/articleshow/52193240.cms> (last visited 10 June 2020)
- Reddy D. Special Committee for status of women, Telangana Today Nov. 19<sup>th</sup> 2018 <https://telanganatoday.com/special-committee-status-women> (last visited 12th June 2020)
- Beijing Declaration and Platform for Action (September 1995), <https://www.unsystem.org/content/beijing-declaration-and-platform-action-september-1995> (Last Visited 9th July 2020)
- <https://lawandsocialengineeringinindia.blogspot.com/2017/06/feminist-jurisprudence-and-gender.html> (last visited 16th June 2020)