

A SOCIO-LEGAL STUDY ON STATUS AND POSITION OF WOMEN IN INDIA WITH SPECIAL REFERENCE TO HUMAN RIGHTS

Pankaj Kumar Garg

Assistant Professor,

Baba Farid Law College Faridkot

Law has shown an extraordinary interest in introducing various legislations in favour of women. Whether it is domestic violence, female feticide, sexual harassment, dowry, property rights, etc. almost everything one can think of it under the observation of law. But despite such expansive coverage of law on woman's issues we are still thinking, discussing, deliberating the same i.e. women's consistently low status. Sometimes it seems that we have moved from female infanticide to female feticide. And many a times it seems that we have done some blunder by encouraging women to come out of the house for work and earn, and made her a victim to both Domestic violence and sexual harassment at work place. Perhaps, lawmakers realized pitiable condition of women and gave her due attention by making laws in her favour. But unfortunately, law, one of the powerful instruments of change also, failed to produce the desired results with regard to women. The myriad number of problems woman faces on the one hand and social pressures on the other made it impossible for the legal machinery to function effectively. The present paper aims to explore the great obstacles in the way of any progress related to women. The ultimate pursuit of human knowledge is to establish the egalitarian society for mankind. Modernity, equality, justice and liberty are not discrete terms rather are relational. With the advancement of human knowledge, it appears that the society has fractured further simply because more and more people are being debarred of benefits of modernization and development. This elimination of large number of people from the social mainstream has been reflected in the form of strong reactions and unrest, especially from the deprived sections of the society, all across the world.ⁱ

Inequality between men and women is probably the most disturbing aspect of many of the modern societies. It is the most tragic part of the story of human development that major part of female population i.e., the other half of the total human population of present day civilization, is facing persistent hunger and abject poverty simply because of their subjugation, marginalization and systematic disempowerment. The institutionalized inequality is reflected not only in working of the political institutions but also in more elementary fields of social and economic life of the women such as poor, healthcare, malnutrition or under-nutrition, over work, unorganized and unskilled workforce, maltreatment and powerlessness. Such pathetic state of affair is prevailing at the time when the entire human civilization feels smug about its achievements especially in the fields of science and technology and democracy.ⁱⁱ

The status and position of women in India has been a controversial subject, as it reflects the contradictory and the paradoxical nature of the Indian society. While on the one hand, women have been called devi or goddess, the abode of gods, the perfect guide or guru of her children; on the other hand, she has been criticized for the weaknesses of her character, for her unpredictable and impulsive nature and has even been denied the basic right of existence as a human being. The opinions of different religious scriptures differ from each other, thereby giving birth to many contradictions. This difference of opinion raises many questions, as to the nature, and scope of free will enjoyed by women in different periods of Indian history.ⁱⁱⁱ

In order to have a better understanding of the present social structure and position of women therein, it is imperative to know the operation of various historical, political, cultural and economic factors which molded the society. It is also crucial to have a brief look at the past society, because some of the norms and values affecting women today have their roots in the past. In the vedic period (i.e. the period from 2500 B.C. to 1000 B.C. when the four Vedas- Rig veda, Sam veda, Yajur veda and Atharva veda were compiled) women were active participants in different spheres of societal activities.^{iv} In this period, women enjoyed all the rights in social, economic, political and religious domain, as were enjoyed by their male counterparts. Though the Vedas are essentially works of rituals, ceremonies and of philosophy and references to mundane affairs are very few;

yet they show a glimpse of the Aryan Society in all its colors and present the condition and the contribution of the women in that age.^v

Men at that time, were mostly engrossed in military and semi- military pursuits, hence they had to rely on the help and cooperation of women in other spheres of life. And as such women were not considered as parasites but were useful members of society for securing material prosperity in peace and victory in war women, too, used to take active part in production, agriculture and in manufacture. The girls were neither considered as unwanted nor inferior at that time and that they were accorded a status of absolute equality with that of a son at all levels religious, social and political. To impart education to all children and to help them in settling in life were the twin duties of the Vedic parents and in this there was initially no discrimination between a boy and a girl.^{vi}

The aims of the marriage in vedic times were dharma, praja (progeny), and rati (pleasure) and the ideal marriage of the vedic period was a religious sacrament which made the couple joint owners of the household. Considerable freedom seemed to be given to the girl and boy for selecting a Match. In this period, the practice of child marriage was not prevalent in India. Position of the wife was honorable in the family. She was the centre of the domestic world and on empress or samrajini. Without her, a man was incomplete and imperfect. A wife was considered as ardhangani i.e. the better half women actively participated in the religious ceremonies and without them the religious ceremonies were considered as incomplete and unfruitful. The vedic age was the golden age of Indian womanhood as she had a say in the socio-political affairs and had full and equal opportunities for the development of the self. She enjoyed all the privilege, which were enjoyed by the men of her society and was considered a partner in all affairs, whether domestic or religious.^{vii}

But in spite of that, there developed a school of thought in the vedic times, which believed that women were inferior, untrustworthy, hypocrite, unfaithful and disobedient. Gradually, the ideas of this school were beginning to penetrate into the hearts of common men. But this status deteriorated when the injunctions of Manu codified Hindu life and propounded the theory of perpetual tutelage of women. Manu, for example, believed and insisted that women should never be allowed a free and independent status. In her childhood, she should remain under the control of her father, in her youth, she should remain under the control of her husband and in her old age, she should remain under the control of her sons. However, Buddhism tried to restore the position of women in social life and opened avenues for their socio-cultural attainments. During the periods of Islam and Mughal rule, the position of women slumped. It touched the lowest ebb during the British Raj.^{viii} It was not until the 19th century however, that serious efforts were made by social reformers to give women an honorable position in the society. Many social reformers of the century, the foremost among them being Raja Ram Mohan Roy, made persistent efforts for the introduction of female education, re-marriage of Hindu widows, prevention of childhood marriage and removal of polygamy. The national movement under the leadership of Mahatma Gandhi provided further impetus towards restoration of position of women in Indian society. Gandhi's vision of freedom and equality for women came to be firmly established in the constitution of independent India.^{ix}

The position of the women after independence has changed considerably. The constitution of India guaranteeing Indian citizens and non-citizens certain basic rights called as fundamental rights. The Constitution of India ensures liberty, equality and fraternity of all citizens of India. To ensure this equality the Indian constitution eliminated almost all discrimination based on caste, creed sex or religion. It accepted the principle of equality of men and women in the political economic and social sphere. Article 15(3) provides the protective discrimination in favour of women. Constitution also imposes a fundamental duty on every citizen to renounce practice derogatory to the dignity of women. To make this de-jure equality into a de-facto one, many policies and programme were out into action from time to time, besides enacting enforcing special legislation in favour of women.

A large number of legislation has been passed by the parliament to improve the social economic status of women like The Hindu Marriage Act, 1955, The Hindu Minority and Guardianship Act 1956, The Dowry Prohibition Act 1961, The Medical Termination of Pregnancy Act 1971, The Family Court Act 1984, The Commission of Sati (Prevention) Act 1987, The National Commission for Women Act, 1990, The Hindu Succession (Amendment) Act 2005, The Constitution (73rd and 74th) amendment Act 1992. The legislation for economic empowerment of women include the factories Act 1948, The Minimum Wages Act 1948, the Maternity Benefit Act 1961, The equal Remuneration Act 1976 etc. Legislation is one of the weapons in the armory for social change. Struggle against patriarchy and gender hierarchy and attitudinal changes coupled with political will are the pre-requisites towards total emancipation of women. The approach of our Supreme Court is favorable to women and it has given many landmark decisions to improve the socio-economic status of women.

The classic example of this approach is Vishaka case. In Vishaka v. State of Rajasthan^x a writ petition was filed for the enforcement of the fundamental rights of working women under Article 14, 19 and 21. It was brought as a class action by certain social activists and NGOs with the aim of assisting in finding suitable methods for realization of the true concept of “gender equality” and to prevent sexual harassment of working women in all workplaces through judicial process and to fill the vacuum in existing legislation. The Supreme held that each incident of sexual harassment of women at workplace results in violation of the fundamental rights of “Gender Equality” and the “Right to life and liberty”. It is a clear violation of the rights under Articles 14, 15 and 21 of the constitution. Gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The reliance can be placed on the international convention and norms for the purpose of construing the nature and ambit of constitutional guarantee of gender equality in our constitution. In this case Supreme Court has laid down guidelines for the protection of women at work place. In other leading case Chairman, Railway Board v. Chandrima Das,^{xi} the Supreme Court held that Right to life includes right to live with human dignity. Rape violates this right of women. Right to life is recognized as a basic human right. It has to be read in consonance with Universal Declaration of Human Rights, 1948, preamble and Arts 1, 2, 3, 5, 7, 9, declaration on elimination of violence against women, arts 1, 2, 3 as also declaration and covenants of civil and political rights and covenants of Economic, Social and Cultural Rights to which India is a party having ratified them. State has vicarious liability to pay compensation for tortious acts of its employees. Doctrine of sovereign power is not applicable in welfare state where functions of the state now extend to various fields which cannot be strictly related to sovereign power. In the case of State of Uttar Pradesh v. Pappu,^{xii} Supreme Court held that even assuming that the victim was previously accustomed to sexual intercourse, that is not a determinative question. On the contrary, the question which was required to be adjudicated was did the accused commit rape on the victim on the occasion complained of even if it is hypothetically accepted that the victim had lost her virginity earlier, it did not and cannot in law give license to any person to rape her. Even if the mother of the prosecutrix has accepted that character of her daughter was not good, that does not dilute the offence. It is the accused who was on trial and not the victim. Even if the victim in a given case has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. In this case High Court’s view that the girl being of loose morals and easy virtue the accused were entitled to acquittal is indefensible.

In Anuj Garg and Others v. Hotel Association of India and other,^{xiii} the constitutional validity of section 30 of the Punjab Excise Act, 1914 prohibiting employment of “any man under the age of 25 years” or “any woman” in any part of such premises in which liquor or intoxicating drugs were consumed by the public was challenged. Declaring both sex and age bar under the said section 30 as unconstitutional, the Supreme Court held when the original act was enacted, the concept of equality between two sexes was unknown. The makers of the constitution intended to apply equality amongst men and women in all sphere of life. In framing articles 14 and 15 of the constitution, the constitutional goal in that behalf was sought to be achieved. When discrimination is sought to be made on the purported ground of classification, such classification must be founded on rational criteria. The criteria which passed new term having regard to the societal conditions as they prevailed in early 20th century may not be rational criteria in the 21st century.

The rights of women as individuals rest beyond doubt in this age. Gender equality today is recognized by the European court of Human Rights as one of the key principles underlying the European Convention on Human Rights and a goal to be achieved by member states of the council of Europe. Instead of prohibiting women employment in the bars altogether the state should focus on factoring in ways through which unequal consequence of sex difference can be eliminated. It is the States duty to ensure circumstances of safety which inspire confidence in women to discharge the duty freely in accordance with the requirements of the profession they choose to follow. Any other policy inference (such as the one embodied under section 30) from societal conditions would be oppressive on the women and against the privacy rights. So the women empowerment would be a more tenable and socially wise approach rather than putting curbs on women’s freedom. This empowerment should reflect in the law enforcement strategies of the state as well as law modeling done in this behalf

In another important judgement Shabana Bano v. Imran Thdn,^{xiv} Supreme Court again adopting favourable approach to weaker section held that divorced Muslim Wife’s maintenance petition against ex-husband filed under S.125 Cr.P.C. before family court is maintainable. Such application can be filed by Muslim women till she remarries irrespective of absence of any application under Muslim Women (Protection of Rights on Divorce) Act, 1986. The family courts have exclusive jurisdiction’ to adjudicate upon applications under s.125 Cr.P.C.

Family courts Act, 1984 is beneficial legislation, hence, its benefit must accrue even to divorced Muslim wife. A bare perusal of Section 20 of the Family Courts Act makes it crystal clear that the provisions of this Act shall have overriding effect on all other enactments in force dealing with this issue. The Supreme Court again reiterated that Muslim woman entitlement to maintenance continues even in post- iddat period as long as she does not remarry. The husband in this case contended that wife application under family Act did not lie due to the section 5 of Muslim women Act, 1986. But Supreme Court rejected this contention of husband.

In another important case *Ardn Kumar Ajrawal and Another V. National Insurance Company Limited and Others*,^{xv} Supreme court held that it is against the principle of gender equality by not taking into consideration the value of services rendered by wife to mother of the family, in paying just compensation to her family dependent, in case death of house wife/mother not having regular income, in Motor accident.

The Supreme Court further said work is very vital to the system of gender reconstruction in societies and in this context masculine and feminine work is clearly demarcated. Women are generally engaged in homemaking, bringing up children and also in production of goods and services which are not sold in the Market but are consumed at the household level. Thus, the work of women mostly goes unrecognized and they are never valued. India is a signatory to CEDAW and ratified it on 9.7.1993. But even then no law has been made for proper evaluation of the household work done by women as home makers. One has to admit that in the long run, the services rendered by women in the household sustain a supply to the economy and keep human societies going by weaving the social fabric and keeping it in good repair. If these services are taken for granted and no value is attached to this, this may escalate the unforeseen costs in terms of deterioration of both human capabilities and social fabric. This lack of sensitiveness and recognition of their work mainly contributes to women's high rate of poverty and their consequential oppression in society as well as various physical, social and psychological problems.

Supreme Court suggests that the time has come to scientifically assess the value of the unpaid homemaker both in accident claims and in matters of division of matrimonial properties. The courts and tribunals should do well to factor these considerations in assessing compensation for housewives who are victims of road accidents and quantifying the amount in the name of fixing "just compensation". The time has come for parliament to have a rethinking for properly assessing the value of homemakers and householders work and suitably amending the provisions of the motor vehicle Act and other related laws for giving compensation when the victim is a woman and a homemaker. Amendments in matrimonial laws may also be made in order to give effect to the Mandate of Article 15(1) in the constitution.

All these cases show that our courts are very sensitive and particular about the rights of women and their position in the society. Our courts have issued guidelines and suggestions to improve the social, economic and political status of the women.

But, there still exists a wide gulf between the goals enunciated in the constitution, legislation, policies, plans, programmes, and related mechanism on the one hand and the situational reality of the status of women in India on the other. The women rights scenario in the country continues to be dismal and depressing women are being brutalized, commoditized and subjected to inhuman exploitation and discrimination. In the words of justice Krishna Iyer, "ours is a sacred soil where women are venerated as Shakthi and Goddess. There are more women deities in our pantheon than male divinities. Nevertheless, we squeeze the life out of infant girl immediately after birth. Even before the umbilical cord that links the womb to the infant is severed; life is snuffed out of the new born by administering cactus milk or by, forcing a paddy seed into its mouth. In the land of the birth of Jhansi ki Rani, Kasturba Gandhi, Indra Gandhi and Lakshmi Pandit and in a country where Mother Teresa dwelt, where everyone speaks of compassion to animals where movements are launched against cow slaughter, when it comes to the question of female child the attitude passes understanding."^{xvi}

However, the state has responded positively to protect women and women rights. But, none of them responses have resulted in positive action at the grassroots level. Dowry continues to exist today and even the dowry rates have experienced a threefold increase in the last five years. Bride burning, honour killing, domestic violence cases are increasing day by day. Though India may be taking giant strides economically but socially it has to cover miles of backwardness. On gender issues, for instance, we lag behind alarmingly. Be it the skewed sex ratio or the number of crimes against women, statistics again and again remind us about the distance, we need to cover.^{xvii} On paper, we have enough laws to tackle every social menace. But that is clearly not enough what we really need is a massive campaign, involving both state and civil society to bring about a collective change in values. This task cannot be left to the government alone because India's pathetic record on gender equality involves us all and aims each one of us. So we should take steps to restrict these discriminatory social values from transmitting in our future generations.

Reference

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- ^{iv} M.W. Pinkham, ' Women in the Sacred Scriptures of Hinduism', p- 1 (1952).
- ^v S.R. Shastri, Women in the Vedic Age, at 65 (1952).
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- ^{vii} Vijay Sharma, "Women Empowerment: Illusion or Reality" in P.R. Bhardwaj, (ed.) Gender Discrimination Politics of Women Empowerment, (2005) .
- ^{viii} Ibid.
- ^{ix} (1997) 6 SCC 241.
- ^x (2000) 2 SCC 465.
- ^{xi} (2005) 3 SC 594.
- ^{xii} (2005) 3 SC 594.
- ^{xiii} (2008) 3 SCC 1.
- ^{xiv} (2010) 1 SCC 666.
- ^{xv} (2010) 9 SCC 218
- ^{xvi} V.R. Krishna Iyer, The Indian Lay Dynamic Dimensions of the Abstract, at 310 (2009).
- ^{xvii} UNICEF's state of the world's children 2011 Report, "Adolescence an age of opportunity" has disclosed that in India, 56% adolescent girls are anemic. Such large proportion being underweight and anemic have serious implications during pregnancy, which is a significant risk since about 30% of the girls aged 15-19 years are married or in a Union. Despite laws against child marriage, the prevalence of among urban girls is 29% and 56% a Piongiral girls. Also, over one in five women in India aged 20-24 had given birth before the age of 18.