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Women's rights in India: Recent reform in law and continuing challenges

Authored By- Keshav Jee Jha¹

Abstract

India is a country where male population is more than female population. Our society is based on patriarchal as well as male dominated. So when we research on history then we observe that male dominated society was always curtail the fundamental rights of women. At the present era women are taking a part in every field in our society another hand they also having been victims of various types of violence. These atrocities are not the culmination of the current situation, but they have been suffering from exploitation, insult, torture, sexual assault for centuries. Both social and family factors are active behind the problems of women. The research methodology used in this paper based first of all on the introduction of the Gender discrimination and offences against the women. Then second section deal with the gender bias laws. Also we will discuss whether these are fit or unfit with our society? Then we will discuss the grounds on which these laws are fit. If we will find that laws are unfit in our society then we will deal with the strategy and how these laws can be fit with the society? The third section will broadly elaborate the reason of increasing crime against the women and also will cover to the conclusive remarks.

Keyword: - Crime against women, Violence, Laws, Over criminalization

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“O mankind! Fear your Lord Who (initiated) your creation from a single soul, then from it created its mate, and from these two spread (the creation of) countless men and women.”

- (Al-Qur'an, 4:1)

Introduction

When we talk about the rights of women then first of all a term gender inequality comes in our mind. Gender inequality is a serious issue of this time for our country because we can see very easily in our society when a child born if it is a boy then we celebrates and if a girl is then we muted or no celebration of birth of a child. This situation is clearly refers that we are addicted to love for male child, because of most of the people of our society assumed by himself that the child who will be born, it should be male child because they have love for male child is so much.² Because of this we are killing our daughter at the time of her birth or before birth. Even if she was not killed by the any reasons then we searched a new way to discriminate herself by throughout of her life. The verses of Quran refers on the above clearly explained that man and women are created from a single entity and they are basically equal genders³. One gender is not having a superior entity from other one gender, so both the gender are equally treated. Similarly in Hinduism believes that women are avatar of a Goddess, and also make to Hindus for worshiping of Goddesses. But we are fails to treat as a human being first to the women. One side where we are worshiping of goddesses another side we hates to the girl child and exploit to her. And now takes the status of gender discrimination.⁴ Which is works in many forms like as sexual harassment⁵, family discrimination, and gender discrimination in education, gender discrimination in employment and unequal pay for women who does the same work as men. Hundreds of women before and after independence are those who have been or have been facing various kinds of violence. Although there has been an increase in the education and financial independence of

² Gender inequality in India, available at, <https://www.indiacelebrating.com/social-issues/gender-inequality-in-india/> (visited on 3rd Sep.2018)

³ Gender equality in Islam, available at, <https://www.minhaj.org/english/tid/13544/Gender-Equality-and-Islam-Shaykh-ul-Islam-Dr-Muhammad-Tahir-ul-Qadri-International-Women-Day-2011.html> (last modified on 8th March 2011)

⁴ Gender Discrimination, available at, <https://civilrights.findlaw.com/discrimination/gender-discrimination.html> (visited on 3rd Sep. 2018)

⁵ Means- *"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive work environment."*

women, they are playing a respectable role in the society, but in reality they are victims of human exploitation in some way or the other. Many actions are taken to prevent violence against women, it is necessary to activate them as a nationwide activist. Although many NGOs have been set up to curb violence against women⁶, courts have been created for them, but they are certainly not being effective because they also face many problems. We should pay special attention to this. The ideologies and institutional rituals practice in society have contributed immensely to their oppression. Her discrimination is at both social and family levels. When we look in the present scenario we found that the share of women in every field has increased. In the same way, the crime is being flown against them. The latest national crime records bureau data indicates of rapes having gone up to 12-15% while other have risen up to 3-5% in India.

The Constitution of India deals with the various type of women rights like i.e. the state shall not discriminate to the any citizen on the ground of sex⁷, the State can make any law or any provision for empowering to the women⁸, All the citizen are equal no one shall be declared ineligible for the job or employment or any office of profit under the state government on the ground of sex⁹, the state shall be secure that the citizens men and women equally have to right to an adequate means of livelihood¹⁰, the state shall be secure that the equal pay for equal work for both men and women,

Role Of Religion

According to Juris Religious laws are govern by the morality and natural law. But law is governed by reasoning, morality, ethics that's why religious law did not giving the scientifically reason. The major religions in this area - Christianity and Hinduism - support the belief that Husband is the head of the family. Most of the main churches in the Pacific region have not played an active role in condemning gender inequalities or violence against women and girls.¹¹ Women are facing many atrocities like female gentile mutilation, child marriages, rape and sexual assault in day to day. From a long time male societies have been enjoying religious superiority in respect to women and justified the violence against women and female child on basis of religious excuse, for example triple talaq, nikahhlala in the Muslims in India, not entering to women in temples for worshipping in

⁶ Women's NGOs are changing the world – and not getting credit for, available at, <http://theconversation.com/womens-ngos-are-changing-the-world-and-not-getting-credit-for-it-88360> (visited on 3rd Sep.2018)

⁷ Constitution of India, Article 15, clause 1

⁸Constitution of India, Article 15, clause 3

⁹Constitution of India, Article 16, clause 2

¹⁰Constitution of India, Article 39, clause (a)

¹¹ Ending Violence Against Women And Girls, <https://www.unicef.org/pacificislands/evaw.pdf>, (visited on 13th September, 2018)

the during period of menstruation cycle in Hindus and female genital mutilation in Bohra community in India, Basically this practice is not a part of Islam, it is part of the Middle-east culture which is not in Islam. In Islam there are four types of school of thought, The Hanafi school of thought, The Maliki school of thought, The Shafi school of thought, The Hanbali school of thought, In India the Hanafi school of thought have more influence under the Indian Shariat Act 1937, some parts of The Shariat Act 1937 is very controversial now a days in India which is entertain with talaq e biddat and nikahhalala as well as muta marriage in Shias. Most of the Islamic Scholar criticise this issue of triple talaq. In India male member of Muslim societies interpreted these laws which is more beneficial for himself but these are the evil practices is very unfair and unjust for women and these are not the part of religion. When we talk about the situation of women in Hinduism, first we need to read the Vedas, Rig Veda confirms that women are completely equal compared to men and limited to the most notable education. There is even information about the total Brahma. Yajurveda expresses that the little girl who crosses her Brahmacharya should also stop it for the things learned. Atharvaveda refers to women qualified by Brahmacharya, the disciplined life of the studentship, is fit for married life in the second ashram i.e. a householder (ghrahashta) ashram. In India, the main part of religion, Hinduism gives a lower status to women. An ancient law written by Manu states that "a woman should never be independent." According to Manu, the life of the best Hindu spouse is to spend in the administration of his better half, she should be 'pavitra' or 'pure'. A Hindu woman should be a respectful girl. Marriage was the single imperative occasion in her life and it occurred not long after adolescence. As a result, tyke marriage became a standard that suggested that young women were not involved in the basic leadership process of selecting their spouse. Despite the remarriage of Sati, remarriage of dowry, when she becomes a widow as a widow, emphasizes settlement and after this a Hindu woman becomes a non-person. The more rebuttal of interreligious and inter-station relational unions constrained a few women into prostitution or to commit a suicide

Gender Inequality In India & Crime Against Women

Gender inequality in India is reflects to the poor condition of India in the global ranking of countries based on gender equality:-

- **World economic forum's Global Gender Gap Score index-2017:-** India having 108 rank out of 144 countries in the world. This gender examine four major areas which are given below¹²-
 1. Economic participation and opportunity
 2. Educational attainment
 3. Health and survival
 4. Political empowerment
- **UNDP's Gender Inequality Index 2017: -** India's ranking is 125th out of 159 countries in the world in the Gender Inequality Index (GII)¹³.

Gender Bias Laws In India And Recent Reform In Laws

When we talks about equality for every genders of our country then some figures of gender bias law comes automatically in our mind. Some gender bias laws are given below:

- The Hindu Succession Act of 1956.
- Hindu adoption And Maintenance Act, of 1956.
- 4th Point of Section-375 of the Indian Penal Code.
- 6th Point of Section-375 of The Indian penal Code.
- Section-37 of Special Marriage Act of 1954.
- Section-304B of the Indian Penal Code.

WOMEN'S RIGHT IN OUR SOCIETY

Basically Hindus law has considered from the 'Dharma Shastra' which is the traditional part of the religion.¹⁴Before the codification of Hindu Marriage Act, 1955 & Hindu Succession Act, 1956 women were not having any right similarly as given to the men, like as the Hindu women cannot be inherit the property from the property of intestate. And if she was having property under the joint

¹² World Economic Forum, Reports on Global Gender Gap 2017,

¹³ Express Web desk, "India ranks 131 in HDI index: Where do we stand on gender inequality, maternal mortality, schooling?" , *The Indian express*, (22nd March 2017)

¹⁴ParulChaudhary, "Gender inequalities in Hindus and Muslim Personal laws in India", *International Journal of Home Science* 2015; 1(1): 34-37

family property in that condition she was not capable to sell to own property to other because she was not an absolute owner of the property. She was only having some restricted rights on the property. But after commencement of Hindu Succession Act, 1956 women have an unrestricted right now she was full owner of the property. And after Act, 1956 women could be sell of his property. But until 1956, the woman had no right to demand her share of property in her father's house. After the Amendment Act, 2005, the girls are also the coparcener in the Hindu family, and she can claim of his property right in father's property. But some part of this Act, 2005 still remain discriminatory, for example if a woman dies without making a will than his will goes to her husband's heir if there are no spouses or children. The law assumes that the women become a part of the husband's family. **Section-6** of the Hindu minority and Guardianship Act, 1956 are also curtails the rights of the women because this provision of Hindu law, considers the father to be a 'natural guardian' of a Hindu Child. The mother is considered as a guardian only in the absence of the father or if the child is under five year age. When we talk about the violence against women in the Muslim community then we find many types of violence are actually being done against the women basically in India is more than others. But when talk about the rights of women under the Islam then we find that there are various kind of rights women having in Islam but not in practice. The Prophet Muhammad (PBUH) Set directs of these ideals of marital relationship in his personal life¹⁵. The Prophet Muhammad (PBUH) saying about the responsibility of husband towards wife:-

Give her food when you take food, clothe her when you clothe yourself, do not revile her face, and do not beat her.

In Parsi law also discriminated against the women because if a Parsi women marry some other religion and if she have a children than children does not consider Parsi and they did not get inherent right in under Parsi law and if a Parsi man marry some other religion of women than women does not get inherent right completely his property, only she get part of property and does not consider as Parsi but the children of a Parsi man get completely right in property and consider as Parsi. Same things happened with prohibition of marriage act 2006. Because this marriage act is talk about marriage age where written men age is will be 21 and the women age will be 18, why? This is show the narrow thought of the law maker because we live in male dominated society and we have a mind-set that the wife must be younger than her husband. Now a days divorce law is controversial issue when we study about the personal law in every religion law then we found the divorce matter is highly discriminate and against the women. Under the Hindu Marriage Act, 1955 the process of divorce is very tough and also take a very long period of time if women having

¹⁵ What Islam actually says about domestic violence, <https://theconversation.com/explainer-what-islam-actually-says-about-domestic-violence-77245> (Visited on 11th September, 2018)

domestic violence then she have to suffer more and more until and unless taken the divorce from her husband. If a women wants divorce from her husband than she have proven that cruelty is being with her. Under the Muslim Law was a very controversial process for divorce (talak-e-biddat) which was declared unconstitutionally by the Supreme Court in recently. If we study Christian divorce here its mentioned only husband have a right to give divorce of her wife in matter of adultery but wife does not have right to give divorce in the matter of adultery. Moreover in personal law after divorce women does not entitle for property in the when she contributed in to acquiring it. But she only claim for maintenance under section 125 of the code of criminal procedure.¹⁶

Legal Chenges We Need

As we discuss in above the violence against women are done by socially and by family when we talk about the family violence against women then we have found a major role of violence which works as marital rape in our society. It's a big failure of Our Government or Judiciary because both are fail to fulfil the promise of the PREAMBLE of The Constitution of India.¹⁷Section 375 of Indian Penal Code 1860, gives a power to Husband to commit a sexual intercourse against the willor without the consent of his wife and it is not an amount to rape. Even we see the means of Rape then we have to study that Rape word are derived from which word then we found that Rape is taken from the Latin term 'Rapio' which means to seize.¹⁸ Thus, rape means a forcibly seizing to the body. But the word Rape is meaningless in the situation of marriage womenbecause in The Indian Penal Code 1860, marriage is an exception to the Rape,¹⁹ even if the husband forcibly seized to body of his wife and enjoying to sexual intercourse then it's not an amount to the Rape. Now the question is arises that which word should be used for the referring to forcefully intercourse with wife. The answer is that we uses the word marital rape but marital rape is decriminalised in The Indian Penal Code 1860, if the wife is above 15 years old. Another question is whether the marital rape should be allow or not? The Answer is there cannot be 'good rape' or 'bad rape', there cannot be gradation based on the relationship between the victim and offender, Thus, we can say that marital rape also having a same status as rape, So marital rape should not be allowed it should be criminalised in India. So there is an urgent need to eliminate marriage as an exception to rape so that it can be ensured that women have the same agency on their body and in spite of such a

¹⁶Law on Maintenance of Wives & Others,

<http://ecourts.gov.in/sites/default/files/Sec%20125%20CrPC%20Maintenance%20by%20Sri%20S%20Upadhyaya.pdf> (visited on 5th September, 2018)

¹⁷"JUSTICE, social, economic, and political"

¹⁸ What is Rape? <http://www.lawyersclubindia.com/articles/What-is-Rape--1163.asp> (visited on 12th September, 2018)

¹⁹ Exception of Section 375 of The Indian Penal Code, 1860(45 of 1860) —Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.

conversation within or outside of marriage, there is autonomy to decide their sexual conversation. There is a need to amend the law to include both actual and procedural laws to include marital rape in the form of a crime.

Laws Are Unfits With The Society

There are various laws available which are unfits with our society like as dowry act 1961, because many of peoples of India does not respect of our laws and also they don't having the fear of Law because of this they don't despise dowry. One of the biggest reasons behind the non-ending of dowry practice is that the people who have been given the responsibility to stop them have the highest participation in it. Whether it comes from any Judicial Function or Administrative function. Like as Police officer, D.M., S.D.M, S.P., Etc. Whenever any person gets the job even it was governmental job or it was the non-governmental job, then starts to demand for dowry before marriage. If the bride are on government job then the demands is always high and high. That is why we can say that one of the greatest reasons for not prevent of the dowry system in India is that people who work to stop it take dowry themselves and also gives dowry to others in the marriage of his daughters. Because they also comes from the society and our society's mentality about women that they are the sub-ordinate of the man and socially oppressing from the time immemorial.²⁰ Still, in our society, the practice of discrimination against women continues. The most important aspect to show this is that Indian women have to pay dowry for the practicing of marriage even today. If the women does not be capable to give dowry or for completing any demand of her husband or family members of her husband. In that condition starts domestic violence against that women who didn't gave dowry in her marry. In the starting they starts with the small violence, like as going out from home without telling his partner, don't eat food properly at home with his partner, slowly starts talking less with his partner, slowly and slowly these things taken the nature of domestic violence. But in the Legislature intended to bring only domestic violence which one was habitual in nature or repeatedly taking place. It means a women would have to subject herself to repeated assault and torture to prove that her husband beats or use violence against her. When we read Section 3(iii) (b) of the Protection of from Domestic Violence Act, 2005²¹. We find that it's a legal plea of *alibi* which enough to give licence to domestic violence. When we see the National Family Health Survey Report then we are surprised to knowing the results of domestic violence in India.

²⁰Mr. N.A. Palkhivala, "AN OVERVIEW ON DOWRY PROHIBITION", Legal India law news and law resources portal, 25th January 2011.

²¹ Section 3(iii)(b)- repeated threats to cause physical pain to any person in whom the aggrieved person is Interested.

For example- NFHS-3 shows that more than 37.2 per cent married women experienced to spousal violence in the age group of 15-49 years old. Out of this ever-married women, who have experienced violence, it is committed by their husbands in 85.3 per cent of cases of physical violence and in 87.5 per cent cases of sexual violence.²²

Women Empowerment Scheme

- 1) Beti Bachao Beti Padhao Scheme
- 2) One Stop Centre Scheme
- 3) Women Helpline Scheme
- 4) UJJAWALA : A Comprehensive Scheme for Prevention of trafficking and Rescue, Rehabilitation and Re-integration of Victims of Trafficking and Commercial Sexual Exploitation
- 5) Working Women Hostel
- 6) Ministry approves new projects under Ujjawala Scheme and continues existing projects
- 7) SWADHAR Greh (A Scheme for Women in Difficult Circumstances)
- 8) Support to Training and Employment Programme for Women (STEP)
- 9) NARI SHAKTI PURASKAR
- 10) Awardees of Stree Shakti Puruskar, 2014 & Awardees of Nari Shakti Puruskar
- 11) Awardees of Rajya Mahila Samman & Zila Mahila Samman
- 12) Mahila Shakti Kendras (MSK)
- 13) NIRBHAYA
- 14) Mahila police Volunteers
- 15) Mahila E-Haat²³

²²Sakti Golder, Research Coordinator, "Measurement of Domestic Violence in NFHS Surveys and Some Evidence", <https://www.oxfamindia.org/sites/default/files/WP-Measurement-of-Domestic-Violence-in-National-Family-Health-Survey-surveys-and-Some-Evidence-EN.pdf> (visited on 12th September, 2018)

²³Women empowerment scheme, "Ministry of women and child development, GOI", <https://wcd.nic.in/schemes-listing/2405>, (13:57, 28th April, 2019)

Concluding Remarks

As we discuss in the above Violence against women in India is a very old social issue whose roots have now solidified in the form of social rules and economic dependence. According to this research, women are the first victims of violence at their home in their initial stage. Especially women in the rural areas are tortured by their families, male relatives and others. Nature has made women equal to the men. Even the cells of the human body are made up of both the mother and father's sperm. We should not understand to the women as weak. Today, women have improved by educationally, economically in society, the crime against them is also increasing. It is the responsibility of everyone involved in the prevention of violence. Governments, private enterprises, civil society groups, communities and individual citizens can make all necessary contributions. Men and boys should be active in zero tolerance for respect and violence against women. We need to awaken spirit of compassion in all men and women. However, we have to understand the most important fact that the main cause of social evils is the collapse of human values. Each of us has to come forward and put together the spiritual values of our sense of belonging, the feeling of being together and being committed to the service, which is the fundamental basis for creating a healthy, happy and harmonious society.

Similar to murder, rape is an evil act that defiles the body. However, rape victims are not like killing victims; they win the event and release. Worse, they can never leave the scene of crime. Mental pain of rape victim in marriage or outside marriage cannot be described in legal terminology. If we believe that this issue can only be solved by removing the marital rape exception, then we will deceive ourselves. One big question of changing patriarchal social norms is how? For example, in the NFHS survey, 54 percent of women said that it is fair to say that violence by husband is justified. The law alone cannot solve the plight of women, unless there is a change in patriarchal mind and economic empowerment of women.