

INTERNATIONAL JOURNAL OF INTEGRATED LAW REVIEW

Volume 1 | Issue 1

2020

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Evaluation of Laws Protecting Rights of Women

ADV AYUSH MANGAL GUPTA¹ AND ADV TRISHALA ARORA²

ABSTRACT

Women in India are worshiped as goddesses. The oriental tradition of India “MAATRI DEVO BHAVA” affirms the same as it means worship your mother; and women should be honored with great reverence like goddess. All human beings are born free and equal in dignity and rights. Women in India, since 2500 BC i.e. from Vedic period to present day have gained many rights but there has always been a question mark on the safety of women. Until women were given equal rights as men, they were subject to crime throughout the world at various stages. They were always suppressed and abused.

ed both sexually and mentally and therefore protection of women has always been an issue of global concern. Various International Organizations, States, Non-Governmental Organizations have taken various steps in curbing the problem both collectively and individually. As per the Indian Constitution, no citizen shall be discriminated on the grounds of sex, religion, caste and also guaranties its citizen Right to equality and therefore the state has always taken necessary steps by making strict laws for the protection of the rights of women.

The paper focuses on evaluating how effective the laws are for protecting the Rights of Women. to protect the rights of women. Also, it tries to criticize the implementation of present laws and provide for its suggestions to plug-in the loopholes in the system.

Keywords: *United Nations, United Nations Declaration of Human Rights, CEDAW, Indian Constitution, laws in India, Protection of women.*

I. INTRODUCTION

Traditionally, an Indian woman have four-fold status role sequences. These roles were of a daughter, wife, housewife (homemaker), and mother. The women, whose status and role traditionally were well defined and almost fixed in the society, is now experiencing far-reaching changes. The women in modern times are entering into certain new fields that were unknown to women’s sphere of role-sets. There is an active participation of women in social, economic and political activities in today’s scenario.

Men and women are two halves of the humanity. Neither can achieve its highest creative

¹ Author is the Co-founder and Associate at Mangal & Mangal Law Offices, India.

² Author is an Associate at Mangal & Mangal Law Offices, India.

excellence without the co-operation of the other. Despite the fact that just like wheels of chariot, men and women together can run the society effectively, despite of all the evils are practiced against women. History bears testimony to the fact that men have subjected women to their will and used women as a means to promote their self-gratification, also to minister to their sexual pleasures and to be instrumental in promoting their comfort. However, men never had the desire to elevate women to the rank they were created to fill..

Custom is considered as a source of law and as customs grow out of the habits and beliefs of specific people of the society, rather than expressing those of an abstract humanity giving rise to legal changes which are codifications of customs, and they can only be national and never universal.

There are two contrasting views on this relationship:

- i. Law is determined by the sense of justice and the moral sentiments of the population, and legislation can only achieve results by staying relatively close to the prevailing social norms.
- ii. Law and especially legislation, is a vehicle through which a programmed social evolution can be brought about. In general, a highly urbanized and industrialized society like the US law does play a large part in social change, and vice versa, although much more than the traditional societies or in traditional sociological thinking.³

Since it is a well-accepted norm that change in law is due to change in the custom or society. The same was witnessed in making laws for protection of women. Revolution for women and their equal rights started in United State of America. The Women's Rights Movement marks July 13, 1848 as its beginning. This was the first step as it defined the Rights of Women. This emerged as a landmark move and gradually it spread all over the world making women aware of their rights. Gradually women were also given the right to vote in the year 1920. Since then, rights are subject to protection only when they have been provided so giving equal rights to women also gave the responsibility to the state to take steps in order to protect their rights. Various steps were taken by various Organizations and States for protecting the Rights of Women. The paper focuses on discussing the role of United Nations and India in protection of Rights of Women. The steps taken by United Nations and India are discussed below.

³ *Law and Social Change*, AUKNOTES, (Jan 07, 2021, 19:55), <https://sites.google.com/a/g.rit.edu/auknotes/law-and-society/chapter-7-law-and-social-change>

II. UNITED NATION'S INITIATIVE

The condition of women throughout the world was not good and it became an issue of global concern and therefore it saw the need of all the nations to join their hands in order to achieve this goal. The following propaganda resulted in formation of the United Nations in 1945. United Nations is an International organization with an international membership, scope, or presence. The role of United Nations is to set the international agenda, mediating political bargaining, providing place for political initiatives and acting as catalysts for coalition-formation. UN has also played a major role in climate control. From the introduction of United Charter in 1945 to establishing CEDAW⁴ in 1979, United Nations has taken various steps to give women equal rights and keep a check on the enforcement of laws so formed.

UN Charter is the treaty that forms and establishes United Nations. It was signed by various nations which are known as member states. It is considered as the Constitution of United Nations which talks about the aim of establishing United Nations. It is considered as an important step in providing equal rights to women it proposes 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'⁵. This clarifies the intent of the organization that will be abided by all the nations.

The UNCSW⁶ was established in 1946 as a mechanism to promote, report on and monitor issues relating to the political, economic, civil, social and educational rights of women. It was a unique official structure for drawing attention to women concerns and leadership within the UN. During its first session, the Commission declared one of its guiding principles as:

"To raise the status of women, irrespective of nationality, race, language or religion, to equality with men in all fields of human enterprise, and to eliminate all discrimination against women in the provisions of statutory law, in legal maxims or rules, or in interpretation of customary law."

One of UNCSW's first tasks was to contribute to the drafting of the Universal Declaration of Human Rights (UDHR). The principles laid down under UDHR, has a jus cogens effect that is to say even if the laws of a country do not protect the basic rights of an individual they will be protected under UDHR as adopted by UN in 1948. It covers both civil and political rights & economic, social and cultural rights. UDHR at the time of adoption was not a legally binding agreement but overtime it has evolved to the extent that some of its provisions

⁴ Convention on Elimination of all kinds of Discrimination Against Women, 1979

⁵ Article 1(2), Chapter 1: Purposes and Principles, Charter of United Nations, 1945

⁶ United Nations Commission on the Status of Women

constitute customary laws and general principles of law and has also been accepted by International Court of Justice. Adoption of UDHR reaffirms that “All human beings are born free and equal in dignity and rights⁷” and that “everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, birth or other status.⁸”

Member states who signed the declaration had to abide by the Articles by making laws for the enforcement of the same in their municipal laws. These were initial steps taken by the UN. Later on, in 1979 the General Assembly adopted the CEDAW, which is often described as an International Bill of Rights for Women. In its 30 articles, the Convention explicitly defines discrimination against women and sets up an agenda for national action to end such discrimination. The Convention targets culture and tradition as influential forces shaping gender roles and family relations, and it is the first human rights treaty to affirm the reproductive rights of women.

Apart from this UN system continues to give particular attention to the issue of violence against women. The 1993 General Assembly Declaration on the Elimination of Violence against Women contained “a clear and comprehensive definition of violence against women [and] a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms”. It represented “a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women”.

III. INDIA’S INITIATIVE

India has always tried to protect the Rights of Women in every possible way. India is based on three pillars i.e. Legislature, Executive and Judiciary. All the three organs have to abide by the Constitution which is the supreme law of the land. Legislature has the duty to make laws, executive have to implement the laws and see whether laws are being followed or not and the judiciary resolves disputes in case of any dispute arises and also keeps a check on laws passed by legislature on ground of their constitutional validity. All the organs cannot interfere in the working of each other but they keep a check on the working of one another. to understand the steps taken by India to protect women’s rights it is necessary to analyse the constitutional and legal provisions laid down by various competent authorities.

⁷ Article 1, The Universal Declaration of Human Rights, 1948

⁸ Article 2, The Universal Declaration of Human Rights, 1948

(A) Constitutional Provisions

India got its independence on 15th August, 1947 and its Constitution came into force from 26th January 1950. Through the Constitution, the citizens were guaranteed various Fundamental Rights under Part III of the Constitution. The preamble talks about EQUALITY and therefore there was no discrimination in providing equal rights to women as well. The constitutional provisions and privileges provided for women are as follows:

- (i) Equality before law for women.⁹
- (ii) The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.¹⁰
- (iii) The State to make any special provision in favour of women and children.¹¹
- (iv) Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.¹²
- (v) The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood¹³; and equal pay for equal work for both men and women.¹⁴
- (vi) To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.¹⁵
- (vii) The State to make provision for securing just and humane conditions of work and for maternity relief.¹⁶
- (viii) The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation.¹⁷
- (ix) The State to raise the level of nutrition and the standard of living of its people.¹⁸

⁹ INDIA CONST. art.14

¹⁰ INDIA CONST. art.15(1)

¹¹ INDIA CONST. art.15(3)

¹² INDIA CONST. art.16

¹³ INDIA CONST. art.39(a)

¹⁴ INDIA CONST. art.39(d)

¹⁵ INDIA CONST. art.39(a)

¹⁶ INDIA CONST. art.42

¹⁷ INDIA CONST. art.46

¹⁸ INDIA CONST. art.47

- (x) To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women.¹⁹
- (xi) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat.²⁰
- (xii) Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women.²¹
- (ix) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality.²²
- (x) Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide.²³

(B) Legal Provisions

Apart from the Constitutional provisions, legislature has taken initiative and passed numerous legislations for providing women with the equal rights as men, for example: they have been given right to vote, equal right in the property, right to divorce, right to equal remuneration, laws against abortion and many more. But there have been some landmark legislations passed for protection of women, which are:

1. The Immoral Traffic (Prevention) Act, 1956
2. The Dowry Prohibition Act, 1961 (28 of 1961)
3. The Indecent Representation of Women (Prohibition) Act, 1986
4. The Commission of Sati (Prevention) Act, 1987 (3 of 1988)
5. Protection of Women from Domestic Violence Act, 2005
6. The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013

¹⁹ INDIA CONST. art.51A(e)

²⁰ INDIA CONST. art.243D(3)

²¹ INDIA CONST. art.243D(4)

²² INDIA CONST. art.243T(3)

²³ INDIA CONST. art.243T(4)

7. The Criminal Law (Amendment) Act, 2013

If we carefully go through the titles of these acts, they are criminal in nature. This means that, a lot of crime was being committed against women because of which these legislations had to be enacted. The cases of crimes against women during the year 2015 have decreased by 3.1% over the year 2014 and increased by 43.2% over the year 2011. The IPC component of crimes against women has accounted for 96.1% of total crimes and the remaining 3.9% were SLL crimes against women²⁴. This decrease is due to the strict implementation of laws.

The paper further aims to discuss about the one such legislation i.e. The Sexual Harassment of Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013. For better understanding it is important to know the objective and history of the legislation.

- Objective of the Act

The Act is enacted by the Indian Parliament to provide protection against sexual harassment of women at workplace and prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto. Sexual harassment is termed as a violation of the fundamental rights of a woman to equality under Articles 14 and 15 of the Constitution of India and right to life and to live with dignity under Article 21 of the Constitution of India.

- History

The brutal gang rape of a Rajasthan State Government employee brought the issue of sexual harassment at the workplace to the forefront of national public debate. The woman, who was a worker of the Women Development Programme, tried to prevent the occurrence of child marriage. The men who repeatedly raped her described her as “a lowly woman from a poor and potter community”. In the legal battle that subsequently ensued, the Rajasthan High Court did not hold the rapists responsible and the survivor did not get justice. Vishakha, a women’s rights group, vehemently opposed this decision and filed public interest litigation in the Supreme Court of India. In its landmark decision in the case of Vishakha vs. State of Rajasthan²⁵ the Supreme Court recognized the absence of domestic law occupying the field and the need to formulate effective measures to check the evil of sexual harassment of working women at all work places. As a result, the SC issued a comprehensive list of guidelines about how employers should deal with cases of sexual harassment at the

²⁴ *Crime Against Women*, NATIONAL CRIME RECORDS BUREAU, (Jan 07, 2021, 19:55), <http://ncrb.nic.in/StatPublications/CII/CI2015/chapters/Chapter%205-15.11.16.pdf>

²⁵ 1997(7) SCC 323

workplace. It also stated that these guidelines would only be applicable until the enactment of a law by the legislature to curb this menace.

Almost 10 years later, in 2007, the then women and child development minister, Krishna Tirath, introduced a bill known as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill.

It is dismaying to note that this bill was approved by the Union Cabinet only in January 2010. It was tabled in the Lok Sabha in December 2010 and referred to the Parliamentary Standing Committee on Human Resources Development. The committee's report was published on 30 November 2011. It was finally approved by the Lok Sabha in September 2012 and the Rajya Sabha in February 2013. The aforementioned data clearly shows the lackadaisical approach of the legislature while dealing with such a crucial issue of national importance. This delay can also be attributed somewhat to the failure of NGOs working for the rights of women in effectively asserting the rights of working women and lack of attention from the mainstream media and political parties.

Even after the law has been passed, it is an uphill battle – as most of India's employers are far from implementing the law that has been made. Government has not taken any step yet to ensure that employers implement the law. The law, however, imposes an INR 50000 fine for non-compliance on employers. There are little resources and few experts available even for those employers who are willing to allocate resources towards implementation of the anti-sexual harassment law.

Though the laws have shown a decrease in the crime rate still there are few loopholes that need to be plugged in for which change in laws should be brought.

IV. CONCLUSION

Law reform should start with a comprehensive review of laws and their impact on women's ability to claim justice for violence. Justice sector reform processes should advocate for changing discriminatory laws by including provisions that support the human rights of women and amending provisions which discriminate against women. Specific strategies include:

- Support the reform of procedural and evidentiary policies and laws.
- Abolish the requirements of corroboration, force, and physical evidence for crimes of sexual assault.

- Defenses such as and provocation should not be allowed in cases of violence against women.
- Recognize and account for the context of violence when women use violence against their abusers. Incorporate claims of self-defense and a requirement to discern the primary aggressor.
- Perpetrators who are under the influence of alcohol or drugs should not be absolved of responsibility in cases of violence against women and girls.
- Ensure that courts can protect women through orders for protection and restraining orders, and that violation of protective orders is criminalized.
- Ensure that constitutional protections against discrimination in marriage are codified in statutory law to ensure effective protection of women and girls. For example, divorce or custody laws should comply with constitutional provisions that guarantee equality to women in marriage and family relations.
- Ensure that courts can address economic concerns of women and girl victims of violence, including maintenance, alimony, and child support. Economic justice is an important foundation for independence from battering.
- Ensure that reforms address inconsistencies among and within laws.
- Improve the status and opportunities of girls and women who do not have official identification documents. The lack of such documents creates lifelong problems in claiming such basic rights as education, participation in economic life, participation in political life, and claiming property rights through inheritance.
- Ensure that reforms address marginalized women such as migrant women who are often subject to violence. Permit access to justice to women independently of their immigration status and do not punish them (e.g. denounce them to the immigration authorities) for coming forward for redress from gender-based violence.
- Support the reform of inequalities which exist in property and land ownership laws, citizenship laws, inheritance laws, family laws, marriage laws, divorce laws, dissolution, adoption, and employment laws. Laws that codify women's subordinate status in the community and family are directly related to problems of violence against women.
