



A

DISSERTATION

ON

LEGAL STATUS OF WOMEN IN INDIA

**IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR
THE DEGREE OF**

MASTERS OF LAW

SUBMITTED BY: -

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CERTIFICATE

This is to certify that the entire work embodied in the practical title LEGAL STATUS OF WOMEN IN INDIA has been carried out by Mr. VALENTINE KUKAS under my supervision and guidance in the department of Law, New Law College, Bharati Vidhyapeeth Deemed University, Pune for the L.L.M (Trimester) 1 year course.

Place: - Pune

Signature

Date: -

Dr.U.S.Bendale

(ResearchGuide)

DECLARATION

I hereby declare that the entire work embodied in the particle paper title **LEGAL STATUS OF WOMEN IN INDIA** is written by me and submitted to New Law College, Bharati Vidhyapeeth, Pune. The present work is of original nature and the conclusion is based on the data collected by me. To the best of my knowledge this work has not been submitted previously, for the awards of any degree or diploma, to this or any other university.

Place: - Pune

Signature

Date: -

Mr. VALENTINE KUKAS

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I sincerely thank the faculty members and college librarian for their co-operation and assistance.

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IMPORTANCE:-

The status of women refers to the position of women in our society together with their rights and obligations. The various roles she performs in our society as a daughter, wife, mother and carrier women. In order to find out the answer, let us study her in the past with her present as well as the women of India with the women of other countries thereby finding a solution to enhance their legal status.

As per we recall, a women is always considered as the weaker gender of the two sexes, be that physically or mentally. What we observe in today's life is that even she has accepted this as her '*karma*' as if she has been labelled as "*to be taken for granted*" making her existence nearly invisible in the society of human beings.

SCOPE OF RESEARCH: -

The scope of this research includes the status of Indian woman, her history from pre-independence period, and her position in our constituent and under law as well as her importance in religion, kinship and family.

The challenges she has to face even before her existences in this world as a curse and burden till her last breath as a liability.

HYPOTHESIS:-

1. The legal status of women in India is deteriorating in spite of the efforts made by the legislation to sustain it.
2. Even being in the 21st century, the society has the same mind set towards women.
3. The laws and acts made by the legislation is only benefited by the high class society.

RESEARCH METHODOLOGY:-

This would be a Non doctrinal research including interviews and questionnaires thereby throwing a light on the legal status of women in India as is the title.

SOURCES OF DATA COLLECTION:-

In this Non doctrinal research, I have used interviewing method as well as questioner method of some great personalities in today's time.

I have also taken references from various books dealing with the same aspect and have collected some information from the internet.

CHAPTERISATION:-

| Sr. No. | Topic |
|---------|---|
| 1. | Introduction |
| 2. | Challenges for a woman. |
| 3. | Existence and Significance |
| 4. | Conceptual development of Legislation (constitutional provisions) towards protecting rights of women in India |
| 5. | Judicial approach |

INTRODUCTION:

According to the Indian constitution, women are the legal citizens of the country and have equal rights with men. Because of lack of acceptance from the male dominant society, Indian women suffer immensely. Women are responsible for bearing children, yet they are malnourished and in poor health. Women are also overworked in the field and complete the all of the domestic work. Most Indian women are uneducated. Although the country's constitution says women have equal status to men, women are powerless and are mistreated inside and outside the home.

India is a society where the male is greatly revered. Therefore women, especially the young girls, get very little respect and standing in this country. The women of the household are required to prepare the meal for the men, who eat most of the food. Only after the males are finished eating, can the females eat. Typically the leftover food is meagre, considering the families are poor and have little to begin with. This creates a major problem with malnutrition, especially for pregnant or nursing women. Very few women seek medical care while pregnant because it is thought of as a temporary condition. This is one main reason why India's maternal and infant mortality rates are so high. Starting from birth, girls do not receive as much care and commitment

from their parents and society as a boy would. For example a new baby girl would only be breast fed for a short period of time, barely supplying her with the nutrients she needs. This is so that the mother can get pregnant as soon as possible in hopes of a son the next time

Even though the constitution guarantees free primary schooling to everyone up to 14 years of age, very few females attend school. Only about 39 percent of all women in India actually attend primary schools. There are several reasons why families choose not to educate their daughters. One reason is that parents get nothing in return for educating their daughters. Another reason is that all the females in a household have the responsibility of the housework. So even though education does not financially burden the family, it costs them the time she spends at school when she could be doing chores. In addition, even if a woman is educated, especially in the poorer regions, there is no hope for a job. Most jobs women perform are agricultural or domestic which do not require a formal education. Another reason girls are not educated is because families are required to supply a chaste daughter to the family of her future husband. With over two-thirds of teachers in India being men and students predominately male, putting daughters in school, where males

surround them all day could pose a possible threat to their virginity

Because women are not educated and cannot hold a prestigious job, they take on the most physically difficult and undesirable jobs. A typical day for a woman in an agricultural position lasts from 4am to 8pm with only an hour break in the middle. Compared to a man's day, which is from 5am to 10am and then from 3pm to 5pm. Most women are overworked with no maternity leave or special breaks for those who are pregnant. Plus women do the majority of the manual labour that uses a lot of energy compared to the men who do mostly machine operating. Even though women work twice as many hours as men, the men say that "women eat food and do nothing." This is mainly because the work the women perform does not require a lot of skill and are smaller tasks.¹

Even if we take the situation of urban women who works in the office like any other ordinary man but still can't neglect her daily house hold courses like cooking, cleaning, raising children, and so on and so forth. This shows that no matter how educated a woman is, the class she lives in doesn't matter or the religion or the background she has come from doesn't disturb the male dominating thinking of the society.

¹ http://members.tripod.com/global_india1/current.htm

CHALLENGES FOR A WOMAN:

"You can tell the condition of a Nation by looking at the status of its Women." Jawaharlal Nehru, Leader of India's Independence movement, and India's first Prime Minister. India, being a male dominating country looks down on a girl child as a burden, liability or curse. Apart from striving to survive at the very birth, she has to take care of her family responsibilities of house hold works at the same time see to it that she doesn't put a shame to her family's name. She has to get married at an early age and has to act maturely towards her new family. She has to remain under her husband's word first and later of her son and if not, she has to accept her faith as it is.

Although India offers a lot of opportunities to women, it is still a male dominated society, where women are often seen as subordinate and inferior to men. This doesn't mean India isn't moving away from the male dominated culture, but discrimination is still highly visible in rural as well as in urban areas, throughout all strata of society. While women are guaranteed equality under the constitution, legal protection has a limited effect, where patriarchal

traditions prevail. These patriarchal problems can be listed as follows:-

India's Patriarchal Traditions

1.Dowry

Tradition

Much of the discrimination against women arises from India's dowry tradition, where the bride's family gives the groom's family money and/or gifts. Dowries were made illegal in India in 1961, however the law is almost impossible to enforce, and the practice persists for most marriages. Unfortunately, the iniquitous dowry system has even spread to communities who traditionally have not practiced it, because dowry is sometimes used as a means to climb the social ladder, to achieve economic security, and to accumulate material wealth. The model used to calculate the dowry takes the bridegroom's education and future earning potential into account while the bride's education and earning potential are only relevant to her societal role of being a better wife and mother. The bridegroom's demand for a dowry can easily exceed the annual salary of a typical Indian family, and consequently be economically disastrous especially in families with more than one or two daughters.

2. Women as a Liability

The Indian constitution grants women equal rights to men, but strong patriarchal traditions persist in many different societal parts, with women's lives shaped by customs that are centuries old. Hence, in these strata daughters are often regarded as a liability, and conditioned to believe that they are inferior and subordinate to men, whereas sons might be idolized and celebrated.

But why is that?

There are a couple of reasons, why men might be regarded an asset for a family:

- Considered capable of earning money
- Carry on the family line
- Able to provide for their aging parents
- Bring a wife (and with this a capable domestic helper) into the family
- Play an important role in death rituals in Hindu religion, which ensure, that the soul is released from the body and can go to heaven.

On the other hand, there are a couple of reasons why women might be regarded more of a liability for a family:

- Not considered capable of earning money

- Seen as economically and emotionally dependent on men
- While they help with domestic duties during childhood and adolescence, they go to live with their husband's family after marriage, which means less help in the household of their originating family, and most importantly loss of money due to the dowry tradition.

This might explain why the birth of a daughter may not always be perceived as equally blissful as the birth of a son, and why **“May you be blessed with a hundred sons”** is a common Hindu wedding blessing.

Discrimination ***against*** ***Women***

It should be noted that in a vast country like India - spanning 3.29 million sq. km, where cultural backgrounds, religions and traditions vary widely - the extent of discrimination against women also varies from one societal stratum to another and from state to state - some areas in India being historically more inclined to gender bias than others. There are even communities in India, such as the Nairs of Kerala, certain Maratha clans, and Bengali families, which exhibit matriarchal tendencies, with the head of the family being the oldest woman rather than the oldest man. However, many Indian women face discrimination throughout all stages of their life, beginning at (or even before) birth, continuing as an infant, child, adolescent

and adult. The stages can be divided in following sections:

- Before Birth / As an Infant
- As a Child
- After Marriage
- As a Widow

Discrimination against Women: Before Birth / As an Infant

India is one of the few countries where males outnumber females; the sex ratio at birth (SRB) – which shows the number of boys born to every 100 girls - is usually consistent in human populations, where about 105 males are born to every 100 females.

There are significant imbalances in the male/female population in India where the SRB is 113; there are also huge local differences from Northern / Western regions such as Punjab or Delhi, where the sex ratio is as high as 125, to Southern / Eastern India e.g. Kerala and Andhra Pradesh, where sex ratios are around 105. Though “prenatal sex discrimination” was legally banned in 1996, the law is nearly impossible to enforce and is not even familiar to all Indian families. Hence, the preference for a male child persists, quite often out of mere practical, financial concerns, because the parents

might not be able to afford the marriage dowry for (another) daughter. This leads to some of the most gruesome and desperate acts when it comes to gender discrimination:

- Selective abortions
- Murdering of female babies
- Abandonment of female babies

Prenatal tests to determine the sex of the fetus were criminalized by Indian law in 1994, but the above mentioned imbalances in the sex ratio at birth, clearly point to gender selective abortions. While abortion is officially illegal in India there are some exceptions to this rule such as the failure of contraceptive device used by a couple; if the woman was raped; or if the child would suffer from severe disabilities. In total 11 million abortions take place annually and around 20,000 women die every year due to abortion related complications.

Discrimination against Women: As a Child

Nutrition & Health

As a child, girls are often treated differently from male children in terms of nutrition and health care; where limited food or financial resources are available, the insufficient means are prone to be allocated unevenly in favour of the male offspring.

This imbalance results in insufficient care afforded to girls and women, and is the first major reason for the high levels of child malnutrition. This nutritional deprivation has two harmful consequences for women:

1. They never reach their full growth potential
2. Anaemia

Both consequences are risk factors in pregnancy, complicating childbearing and resulting in maternal and infant deaths, as well as low birth weight infants.

Education

India's constitution guarantees free primary school education for both girls and boys up to age 14. This has been repeatedly reconfirmed, but primary education in India is not universal, and often times not seen as really necessary for girls. Their parents might consider it more important, that they learn domestic chores, as they will need to perform them for their future husbands and in-laws. Another disincentive for sending daughters to school is a concern for the protection of their virginity. When schools are located at a distance, when teachers are male, and when girls are expected to study along with boys, parents are often unwilling to expose their daughters to the potential assault on their virginity, that

would ultimately result in an insult to the girl's family's honour.

This results in one of the lowest female literacy rates in the world.

- Literacy Rate for Women: 54%
- Literacy Rate for Men: 76%

As a comparison, female literacy per 2009: Pakistan: 60%, Peru: 89%, Indonesia: 93%. Mothers' illiteracy and lack of schooling directly disadvantage their young children. Low schooling translates into poor quality of care for children, consequently in higher infant and child mortality and malnutrition, because mothers with little education are less likely to adopt appropriate health-promoting behaviors, such as having young children immunized.

Social sector programmes e.g. "Sarva Shiksha Abhiyan" (Education for Everyone) are promoting girls' education to equalize educational opportunities and eliminate gender disparities, but these initiatives will take time to unfold their whole effect.

Child

Marriages

The Prohibition of Child Marriage Act 2006 bans marriage below age 18 for girls and age 21 for boys, but some 80 % of Indians live in villages where family, caste

and community pressures are more effective than any legislature. According to UNICEF's "State of the World's Children 2009" report, 47% of India's women aged 20–24 were married before the legal age of 18, with 56% in rural areas. The report also showed that 40% of the world's child marriages occur in India.

Why does it happen?

- Financial Benefit
 - As outlined above, due to the dowry tradition women are prone to be a (financial) burden for their families, thus seen as a liability.
 - If the match is made at an early age, the dowry is usually much lower, as the dowry is calculated on the future husband's societal status and education, which – obviously – would be much lower at an early age.
 - Common Hindu phrase: “The younger the groom, the cheaper the Dowry”

In addition marrying off girls at an early age, ensures, that they marry as virgins, thus protecting the girl's and their family's honour.
- Historical Origins
 - Child marriages started during the invasions of Northern India around 1,000 years ago, when unmarried girls were raped by invaders.

- To protect their women from abuse, family members began marrying their daughters at young ages.
- Religious origin
 1. Copying the myth that the goddess Parvati had decided to marry god Shiva when she was only eight, girls were married off as young as eight or nine years old.

The consequences

Girls between 15 and 19 are twice as likely to die of pregnancy-related reasons as girls between 20 and 24. Girls married off as children sometimes stay in their parents' house until puberty, but it is just as common, that they move in with their husband and in-laws right after marriage. In that case, many child wives are inclined to experience domestic violence, marital rape, deprivation of food, and lack of access to information, healthcare, and education. Thus, the vicious cycle of illiteracy and abuse is likely to be continued and passed on to their own daughters.

Discrimination against Women: After Marriage

There is mainly a bias towards men and their superiority in marital relationships: while women ought to be respected, protected and kept happy by their husbands – their happiness being vital for the

prosperity, peace and happiness of the whole family – they should also be kept under constant vigilance, since they cannot be completely trusted or left to themselves. Whereas as a child a girl is supposed to remain in the custody and care of her parents, after marriage she becomes the property and responsibility of her husband, who is supposed to take care of her and keep her in his custody.

Under the existing cultural and social ethos of India a married girl / woman is no longer considered to be part of the family of her birth, instead she has become part of the family of the groom. Hence, after marriage the woman leaves her parental home and lives with her husband's family, where she is required to assume all household labour and domestic responsibilities.

In certain parts of Indian society, women are conditioned from birth to be subservient not only to their future husbands, but also to the females in their husband's family especially, their mother-in-law. Accordingly, the surrounding society mandates a woman's obedience to her husband and her in-laws. Any disobedience would bring disgrace to both, the wife herself and her originating family, and might lead to the woman being ostracized and neglected by her very own family and in her own home.

Discrimination against Women: After Marriage

There is no cultural or religious tradition behind one of the most ghastly incidents of female oppression, but the prevalence of the dowry tradition has supposedly lead to “Bride *Burning*” (or other form of murdering) of the newly-wed wife by the husband and his family, who would claim, that she died in a domestic accident, so that the widowed husband would be free to marry again and collect another dowry. Indian law demands a formal criminal investigation when a newly married woman dies within the home within 7 years of marriage. According to Indian National Crime Record Bureau, there were 8,239 dowry death cases, 1,285 cases of attempted dowry deaths, and another 4,890 cases with pending investigations in 2009. The punishment for dowry deaths is a term of 7 years, which may extend to life imprisonment. Indian law clearly distinguishes the offence of dowry deaths from the offence of murder, for which a death sentence might be declared.

Discrimination against Women: As a Widow

Indian government has enacted numerous laws to protect widow's rights, including prohibitions against traditional practices for which India has been

discredited, such as the burning of widows (Sati). Whereas in India's contemporary culture, especially in the modern urban middle-class, these societal norms have given way to a more righteous conduct, the enforcement of the law continues to be challenging, where there are regional, religious or caste variants of family law, which tend to escape government jurisdiction. Hence, a widow is still seen as a liability in some part of the Indian society, which might result in her being abandoned by her in-laws. As her originating family is often unable or unwilling to take her back as well, she might be left on her own, without any education, skills, or financial assistance. Instead, she is subjected to many restrictions, and might be required to shave her head permanently, or to wear white clothes for the rest of her life; thus, stigmatized, she is not allowed to enter in any celebration e.g. weddings, because her presence is considered to be inauspicious. Moreover, a widow might face trouble securing her property rights after her husband's death, nor be allowed to remarry, disregarding at what age she became a widow. As the described discrimination against widows is likely to occur in the same societal surroundings as the above mentioned child marriages, this might lead to child or teenage widows, who are bound to be isolated and ostracized for the rest of their lives.

Discrimination against Women: For Inheritance

While in the educated, urban middle class women's rights continue to improve; there remains a strong bias against gender equality in those societal parts of India, where patriarchal traditions prevail. Consequently, in these strata any inheritance of a deceased husband or father would be passed down to the oldest son, while his wife or daughters would not receive any financial benefit. There are laws in place to ensure legal protection for women's right to inheritance, but the enforcement of the law is challenging, when the woman is refused her right by the family, and when she is not confident or educated enough to claim her right²

² http://www.sarthakindia.org/womens_situation_India.html

EXISTENCE AND SIGNIFICANCE:

21st century women have risen to great positions in various key sectors. Women in today's society have certainly gained influence when we compare them to the females of yesterday there by making a significant contribution to the global economy. More and more women are looking at newer opportunities to exhibit their abilities but yet there is still far to go until a complete balance between the genders is achieved and therefore I say, in spite of the evident progress of women, there is a lot to be done for the uplift and emancipation of women. The startling and glaring incidents of women being dehumanized shows that they still need to see the light of day.

Women do play a very vital role in the society. A family, who educates their girls, educates the next generation. Girls mature into women who for the most part oversee learning in the home and at school. When girls do not receive a well-rounded education, they cannot impart the same to their offspring. It is a simple, yet a profound truth. Woman of today needs to get her own identity because identity is the key for all human beings. It is imperative that a woman knows her strengths as well as her weaknesses so that she may be the best team member working cooperatively with all around her whether she is playing a game "at home" or "away".

Women have always and will always be “working women”. Women nurture on the home front as they have done throughout time, but now women are stepping outside of the home to contribute in corporate, educational, social service, medical, financial, and a varying and endless list of career paths. Women have played important role in the society. So many women have impacted today’s society for the better. There is an endless list where many unsung women in various parts of our nation have changed lives and shaped destinies giving new direction to so many in the country. However, women have always had a challenging task to be in the forefront in a number of male-dominated sectors. Even though certain societal norms may not always be able to accommodate women in leadership, they have created opportunities for themselves to serve in the least likely places. Women definitely bring to the fore different skill sets as leaders with their multi-tasking, tremendous networking abilities.

The highest priority for our country to grow during this time is to cling to the rich value system and ensure human dignity all through. India has such depth of diversity and every citizen has to uphold and support the aspirations of women that they live with dignity and reach their rightful place in society.

Being a woman translates into hard work, determination and, quite naturally, comes with a calling from above to

invest a lifetime into encouraging all those with whom a woman comes in contact. The woman is the foundation of the family and of society itself. Women today need to have faith in themselves and believe in their own God-given abilities and accept one's unique skills and talents learn to own them, and to use them fearlessly and contribute to the world.³

Just because the majority of top jobs are reserved for men it does not mean women cannot have careers. The traditional jobs such as midwifery or nursing, which were once dominated by females, are now open to men and therefore women have been allowed to enter into the job vacancies left by men. A fine example of a successful woman with a career is portrayed in the American TV show "Sex and the City". The programme revolves around 4 dominant females whilst the men featured are merely accessories. An average episode would show a man being used and then his personality heavily scrutinised for the women's entertainment. The particular show provides evidence that that women can do just as well or even better in the workplace than their male companions. On a completely different line some women have no freedom. For example those who until

³ Grace Pinto, Managing Director, Ryan International Group of Institutions,
http://www.daijiworld.com/news/news_disp.asp?n_id=221846

recently were under the control of the Taliban. The Islam religion on its own without being made more extreme is still damaging to women; millions of women and girls are forced to marry. Muslim women have little say and cannot even ask for a divorce if they are unhappy. Some men are permitted to have four wives so you could argue that he views women as possessions. Muslims follow a life pattern set out in the Quran, which has been around for thousands of years and the treatment of women has changed very little.

Women are important in our society. They are nurses, teachers, lawyers, police officers, jailers, writers, sales clerks, managers, accountants, business leaders, and so much more. Women make a difference. Women get involved. Women volunteer more than men do. Much of what has been accomplished in communities is due to the women that volunteer for different groups. These women get things done. It could be part of their nurturing instinct to hold close what is important to them and work for a better world. Women juggle many things in everyday life. For those who are married, or have children, it is even more of a balancing act. According to Virginia Sapiro, "Not surprisingly, given the relatively low levels of support women receive for juggling family, personal, and employment obligations, employed wives have less time for themselves and less

leisure than employed husbands do, so they experience more stress,"⁴

⁴ Sapiro, *Women in American Society: An Introduction to Women's Studies*, 5th ed., 2003, New York, NY: McGraw-Hill, p. 474.

CONCEPTUAL DEVELOPMENT OF LEGISLATION (CONSTITUTIONAL) PROVISIONS TOWARDS PROTECTING RIGHTS OF WOMEN IN INDIA:

The exalted status of Indian women in ancient days suffered a setback in the medieval period. Social economic and political factors played a major role in their suppression. Social inhibitions and discriminatory practices against them continued to exist during the 'enlightened' and 'civilised' imperial rule. The leadership of independent movement was, however, committed to accord an equal status to women and give them a place of honour, and dignity in the society. Accordingly, the constitution - the fundamental law- as emerged out of the constituent assembly, treated both men and women equally and also provided for protective discrimination for women in view of their peculiar position in the human society.

Constitutional and Legal Provisions for Women in India –

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles.

Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women's advancement in different spheres.

India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.⁵

Constitutional Provisions -

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment.

Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

Constitutional Privileges -

(i) Equality before law for women (**Article 14**)

⁵ http://borjournals.com/Research_papers/Ap_2013/1184M.pdf

(ii) The State not to discriminate against any citizen on grounds only of religion, race, caste, **sex**, place of birth or any of them **(Article 15 (i))**

(iii) The State to make any special provision in favour of women and children **(Article 15 (3))**

(iv) Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State **(Article 16)**

(v) The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood **(Article 39(a))**; and equal pay for equal work for both men and women **(Article 39(d))**

(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 **(Article 39 A)**

(vii) The State to make provision for securing just and humane conditions of work and for maternity relief **(Article 42)**

(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 **(Article 46)**

(ix) The State to raise the level of nutrition and the standard of living of its people **(Article 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

(Article 51(A) (e))

(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

(Article 243 D(3))

(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 **(Article 243 D (4))**

(xii) 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

(Article 243 T (3))

(xiii) 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 **(Article 243 T (4))**

Though the constitution has provided equality of both the sexes man and women but biological condition of the female and developed sense of subordination demand extra protection for them. The reason is that "women's physical structure and the performance of certain functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of public interest and care in order to preserve the strength and vigour of the race". Thus the law and justice demands additional privileges and safeguards for maintaining proper socio-legal status of women in the society.

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women.

Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc, the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. These are broadly classified under two categories.

Legal Provisions –

(1)The Crimes Identified Under The Indian Penal Code (IPC)

(i)Rape (Sec. 376 IPC)

- (ii) Kidnapping & Abduction for different purposes (Sec. 363-373)
- (iii) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- (iv) Torture, both mental and physical (Sec. 498-A IPC)
- (v) Molestation (Sec. 354 IPC)
- (vi) Sexual Harassment (Sec. 509 IPC)
- (vii) Importation of girls (up to 21 years of age)

(2) The Crimes Identified Under The Special Laws (SLL)

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

- (i) The Employees State Insurance Act, 1948
- (ii) The Plantation Labour Act, 1951
- (iii) The Family Courts Act, 1954
- (iv) The Special Marriage Act, 1954
- (v) The Hindu Marriage Act, 1955
- (vi) The Hindu Succession Act, 1956 with amendment in 2005
- (vii) Immoral Traffic (Prevention) Act, 1956
- (viii) The Maternity Benefit Act, 1961 (Amended in 1995)
- (ix) Dowry Prohibition Act, 1961
- (x) The Medical Termination of Pregnancy Act, 1971

(xi)The Contract Labour (Regulation and Abolition) Act, 1976

(xii)The Equal Remuneration Act, 1976

(xiii)The Prohibition of Child Marriage Act, 2006

(xiv)The Criminal Law (Amendment) Act, 1983

(xv)The Factories (Amendment) Act, 1986

(xvi)Indecent Representation of Women (Prohibition) Act, 1986

(xvii)Commission of Sati (Prevention) Act, 1987

(xviii)The Protection of Women from Domestic Violence Act, 2005 State Initiatives for Women National Commission for Women

Special Initiatives for women –

In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

Reservation for Women in Local Self -Government -

The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

The National Plan of Action for the Girl Child (1991-2000) -

The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

National Policy for the Empowerment of Women, 2001

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The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.⁶

Women’s Security: Indian Scenario Policies relating to women's rights have had a positive trajectory in the past few decades with the central government articulating many progressive measures to advance gender equality in social, Economic, and political arenas. Inequality between men and women runs across the board, including in education, economic opportunities, representation in governance, and other state and private institutions. The multiple forms of violence experienced in the household, at the community level,

⁶ <http://nldr.org/womens-rights-initiative/legislations-laws-related-to-women/constitutional-and-legal-provisions-for-women-in-india>

and in some instances by the state, threaten women's security in India.

JUDICIAL APPROACH:

A judge is an eyewitness to a real-life drama—how the script written by the legislature is played by real-life characters. The parties while critically evaluating the laws may tend to have a partisan look; a judge can make a correct and realistic evaluation of the laws and find out authoritatively the difficulties in implementation of or lacunas in legislation. Today we propose to identify and catalogue such difficulties and lacunas. Secondly, and which is more important, a judge while administering the laws, if deprived of requisite sensitivity may frustrate the objectives sought to be achieved by the best of the laws.

However, one thing shall have to be clearly borne in mind i.e. the role of the judiciary, in the vindication of gender justice. According to Justice V.R. Krishna Iyer, **"case-law, creative, imaginative and gender-friendly, has its logic and limitation. Judges cannot make law but only interpret it and decide specific cases and controversies within defined bounds although in that process they do make law interstitially. But legislation is essentially a wider function covering vaster spaces and free to weave fabrics of fundamental mutation. So it is substantive codification, radical in transformation of the social order, that we need, an avant-garde**

operation Parliament must perform. Magnificently as the judiciary has acted, they have not and could not usurp legislative functions."

Landmark decisions delivered by the Indian judiciary, in particular during the last two decades, bear testimony to the fact that judges cannot be accused of gender injustice. They have shown the requisite sensitivity expected of them. However, all that can be said is that such sensitivity is individual and needs to be institutionalised. The purpose of this meeting is to share the experiences, have an exchange of views and to learn and devise by our experiences a model of gender-justice-sensitisation.⁷

Judicial Initiative towards Empowerment of Women:

Though plethora of legislations exists, due to ineffective enforcement, women are exploited by the male dominated society. Male dominated society has found ways to circumvent the provisions of the Act and act as a blockade against women empowerment. Due to the failure of the legislations to protect women, judiciary has come forward to protect women.

The Supreme Court in *Muthamma v. Union of India* (1979)4 SCC 260 and *Air India v. Nargesh Mirza* AIR 1981 SC 1829 Struck down discriminatory service conditions requiring female employees to obtain

⁷ Delivered on the occasion of the release of the book by Justice R.C. Lahoti "*Search for a Vision Statement on Women Empowerment vis-...-vis Legislation and Judicial Decisions*" prepared by the Indian Trust for Innovation and Social Change and published by the National Commission for Women

government permission before marriage and pregnant women the right to be employed.

In *Vishaka v. State of Rajasthan* AIR 1997 SC 3011 the Supreme Court observed that quality in employment can be seriously impaired when women are subject to gender-specific violence, such as sexual harassment in work place. Therefore, the Supreme Court issued Guidelines to ensure that the women have equal working conditions and are protected from sexual harassment. *Vishaka* was a public interest class action and came up before the Supreme Court of India at the instance of certain social activists and NGOs seeking to prevent sexual harassment of working women in all work places. Their grievance was that while working women remained vulnerable to this, neither the legislature nor the executive government was taking any effective preventative measures in this behalf. There the plaintiffs approached the SCI for the enforcement of the fundamental rights of the working women as guaranteed by the constitution.

This was endorsed in *Apparel Export Promotion Council v. A.K.Chopra* AIR 1999 SC 625 in which disciplinary proceedings for sexual harassment leading to dismissal from service was upheld by the Supreme Court.

In cases relating to public Employment, the courts have quashed the discriminatory provisions that gave

advantage to men and imposed disabilities on women. In *Maya Devi v. State Of Maharashtra* 1986(1) SCR 743 where the requirement of husbands consent for wife's application for public employment was struck down as an anachronistic obstacle to women's equality and economic justice.

Since article 15(3) itself hints substantive approach, its application for giving special educational facilities, for giving representation in local bodies and for protection in places of work has substantive dimension. Upholding a service rule that preferred women in recruitment to public employment to the extent of 30% of posts, the Supreme Court stated in *Government of A.P. v. P.K.Bijayakumar* AIR 1995 SC164 to say that under Article 15(3) job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this Article. Making special provisions for women in respect of employment or posts under the state is an integral part of article 15(3)

The subordinated position of Christian woman, who was denied equal right in the matter of divorce against her husband, was brought to the limelight by way of anti subordination interpretation in *amine E.J. v. Union of India* air 1995 ker 252 referring to the life Christian wife being compelled to live as wife against her wish the high court of Kerala observed, it will be humiliating and oppressed life without freedom to

remarry and enjoy life in the normal course. It will be a life without freedom to uphold the dignity of the individual in all the respects.... the court quashed the impugned provision as violation to article 14, 15, and 21. In *Mackinnon Mackenzie and co. Ltd v. Audrey D' Costa* AIR 1987 SC 1281. The court observed that there was discrimination in the payment of wages to lady stenographers and such discrimination was being perpetuated under the garb of settlement between the employees and the employer. The court finally not only made it mandatory to pay equal remuneration to lady stenographers as their male counterparts but also observed that the ground of financial incapability of the management cannot be a ground to seek exemption from the equal remuneration act 1976.

Interpretation of the guardianship law in the light of article 15 by the Supreme Court in *Geetha Hariharan v reserve bank of India* AIR 1999 SC 1149 could equate the position of mother to the act of father in the matter of guardianship.

In protecting the women, the Indian Judiciary has removed all the procedural shackles and has completely revolutionised constitutional litigations. The judiciary has encouraged widest possible coverage of the legislations by liberal interpreting the terms. The judiciary has shifted from doctrine approach to the pragmatic approach, which was conducive to all

interests in the society. The Courts have shown greater enthusiasm in granting the constitutional provisions for all women. The judiciary by its landmark judgments had filled up the gap created by the Legislative machinery. The judiciary had extended helping hands to women. When the legislature had denied it. The higher judiciary has shown concern for women's right in recent times; it also had been greatly influenced by the international declaration and covenants on women's rights. The vibrant judiciary has recently exalted the dignity of women by its golden judgments. In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)* (AIR 2000 SC 1274), the Supreme Court extended the benefits of the Maternity Benefit Act, 1961 to the Muster Roll (Daily Wagers) female employees of Delhi Municipal Corporation. In this case, the Court directly incorporated the provisions of Article 11 of CEDAW, 1979 into the Indian Law. In *Chairman, Railway Board v. Chandrima Doss* (AIR 2000 SC 988), the Supreme Court awarded compensation of 10 lakhs to an alien woman under Article 21 of Constitution, who has been a victim of rape. In *Githa Hariharan v. Reserve Bank of India* (AIR 1999 SC 1149), the Supreme Court interpreted Section 6(a) of Hindu Minority and Guardianship Act, 1956 and Section 19(b) of the Guardians and Wards Act, 1890 in such a way that father and mother get equal status as guardians of a

minor. In *Mohammed Ahmed Khan v. Shah Bano* (AIR 1985 SC 945), the Supreme Court granted equal right of maintenance under Section 125 of Cr. P.C. 1973 to a divorced married woman notwithstanding the personal law. The Supreme Court also held that "large segments of society which have been traditionally subjected to unjust treatment, women are one such segment." In *Charansingh v. Union of India* (1979 Lab IC 633), the Delhi High Court expressed that women are a backward class as compared to men. In *Government of Andhra Pradesh v. P. B. Vijay Kumar* (AIR 1995 SC 1648), the Supreme Court has held that the issue of reservation for women in State services was upheld under Article 15(3) of the Indian Constitution. In *Municipal Corporation of Delhi v. Female Workers* (AIR 2000 SC 1274, 1281), the Supreme Court held that a just social order could be achieved only when inequalities are obliterated and women, which constitute almost half of the segment of our society, are honoured and treated with dignity. In *Uttarakhand Mahila Kalyan Parishad v. State of Uttar Pradesh* (AIR 1992 SC 1695), the Supreme Court struck down the discriminatory rules of Education Department of Government of Uttar Pradesh. In *Air India v. Nargis Mirza* (AIR 1981 SC 1829), the Supreme Court struck down the discriminatory Rules of Indian Airlines. In *Bodhisattwa v. Ms. Subhra Chakraborty* (AIR 1996 SC

922), the Supreme Court held that rape is a crime against basic human rights.

In *Vishakha v. State of Rajasthan* (AIR 1997 SC 301), the Supreme Court took a serious note of the increasing menace of sexual harassment at workplace and elsewhere. Considering the inadequacy of legislation on the point, the Court even assumed the role of legislature and defined sexual harassment and laid down instruction for the employers. In *Apparel Export Promotion Council v. A. K. Chopra* (AIR 1999 SC 625), the Supreme Court found all facets of gender equality including prevention of sexual harassment in the fundamental rights granted by the Constitution. In *C. B. Muthamma v. Union of India* (AIR 1979 SC 1868) : 1979 Lab IC 1307, a service rule whereby marriage was a disability for appointment to foreign service was declared unconstitutional by the Supreme Court. In *Shobha Rani v. Madhukar* (AIR 1988 SC 121), the Supreme Court held that dowry demand was held enough to amount to cruelty. In *Prathibha Rani v. Suraj Kumar* (AIR 1985 SC 628), the Supreme Court upheld women's right to the Stridhana. In *State of Punjab v. Gurmit Singh* (AIR 1996 SC 1393), the Supreme Court held that rape was held to be violative of the right of privacy. In *Bodhisathwa Gowtham v. Subhra Chakaraborty* (AIR 1996 SC 622), the Supreme Court observed that rape was not only an offence under the

criminal law, but it was a violation of the fundamental right to life and liberty guaranteed by Article 21 of Indian Constitution. In *Saveetha Samvedhi* case ((1996) 1 SCR 1046), the Supreme Court held that a married daughter was allowed accommodation in parental house. In *Delhi Domestic Working Women's Forum v. Union of India* ((1995) 1 SCC 14), the Supreme Court suggested the formulation of a segment for awarding compensation to rape victims at the time of convicting the person found guilty of rape. The Court suggested that the Criminal Injuries Compensation Board or the Court should award compensation to the victims by taking into account, the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape. In *Gourav Jain v. Union of India* (AIR 1997 SC 3012), the Supreme Court laid down guidelines including the necessity of counselling, cajoling, and coercing the women to retrieve from prostitution and rehabilitate them.⁸

⁸ <http://www.airinfotech.in/article3.html>

Question Bank:-

1. Has India come to a stage where, according to article 14, we can say that the status of women is equal to that of a man? If no, what are the hindrances? Even when we see women being successful in almost each and every sector of the society, why is this society still believed to be as a male dominating society? Whom to blame, our culture or our society?
2. As we know, if we compare Indian women to the women of other countries, we find the other country women more bold and confident with regards to the aspect of looking at life. How can this be implemented in India? Is it even possible?
3. The status of women in India differs from state to state, has the 2005 act really secured its purpose? Are there any lacunas in it? Even when law has come up with so many acts and made so many amendments for the protection and development of women, why then do we find her still so helpless when it comes to family responsibility?
4. All these years we have been developing country, will this position upgrade if the command of the Indian chariot be given in the hands of women?
5. From where and when did the concept come, “women, a weaker gender in the society”? What is the reason for this bias thinking? If we have to change this, from where have we to start?
6. The Indian Laws differ from religion to religion, state to state, region to region. Does this hamper the motive of our preamble? Few decades back, we pity the legal status of women in the past; will the future generation also pity the legal status of today’s women?

ANALYSIS OF ANSWERS:

Analysing the result of the answers where majority of the ratio given by all the answerers can be clubbed as follows-

1) In the first answer, most of them state that the male dominating society concept comes from our ancestors, through our rituals, customs and traditions where a man is placed above a woman in all aspects of life. Therefore, no matter how hard a woman tries to lift her status in the society, she will be always placed below a man and hence our culture is a hindrance.

2) In the second answer, it is believed that every woman is equally capable to be confident and bold enough to match herself with the world. The thing that holds her back is the shyness and lack of moral boost by her kin and kith relations. We do have examples of great personalities that have sparkled the name of India at the international level in every field by fighting through all odds. All that was required was family support. It is becoming possible. What is required is time.

3) The domestic violence act 2005 no doubt has been a boon for the woman in India, but is brought into action only by a hand full of women. The reason behind this is the upbringing of a girl and the teachings she gets. She is taught to protect her husband's family no matter what

and to sacrifice all her wishes and wants. This results to tolerance and acceptance to the cruelty and sufferings given to her by her inlaws. Therefore family responsibility is her priority among all.

4) After so many years of independence, we still are in a state of developing country. Being a democratic country, our laws are based on trial and error basis. So it is worth giving a try to put women in power as we all are aware of their determination, sincerity and emotions towards their work.

5) "Women, a weaker gender in the society", this is a long carried forward concept that is fixed in the mind of society. This can be only changed through educating the society from family level. In states like Delhi, Mumbai etc where we find woman in a better position where as if we see the scenario of women in U.P, M.P, etc. they are still tied up to their bias thinking.

6) The society changes from time to time and so does the law. The laws that were a part of the society in the past are now banned due to being illegal and are pitted by today's generations. For Example: Sati, ban on widow remarriage, no right in partition of property, etc

So no doubt, in future, when the laws will develop, there will be the same situation.

CONCLUSION

Swami Vivekanand had aptly remarked: "Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind." The modern Indian woman is working throughout the country at all levels and virtually in all professions at different positions.

She is not only visible as the top politician as seen above in politics. Even as managers in industrial firms, director of

Nationwide operating banks, top bureaucrats, active members of micro-credit groups or as independent fashion designers. As bearers of values and cultural heritage -

sometimes quite objectified - indeed women are also visible and valued as female heroines in Bollywood films and nationally ubiquitous in daily performances of classical Indian dance and song. On the other hand, one also sees women as servants, laundresses, porters on construction sites or even as beggars. The complete spectrum is covered in urban and rural India. It is the social culture, which is strong and rich on ancient traditions, is exerting pressure on successful women and cuts them on their career or on the way to self-realization

Thereby, this social pressure arises not only from the male side. Whether they live as members of the 50

million female tribesmen in the forests of India or as one of the 400 million women in one of the 640 thousand Indian villages or city residents in slums, in poor or ordinary dwellings or opulent villas, it has no significance to the role which women have to newly define and design by themselves in the course of a changing society. Despite some movements in which women, locally restricted, since 1882 and especially since 1920 consistently merged there are no strong national women's movements in India. A movement of sexual education and emancipation, as we could observe in Europe especially since the sixties, is also missing in India. Prospects The previous absence of these two important components in an equal living together of sexes raises the fear that India is still far away to give women the role in society as it is in the ancient scriptures, as well as in the Indian Constitution and in other laws of the fledgling Union already reserved and set out for them. A humanitarian vision of an efficient society is undoubtedly based on equality and recognition of both sexes who do not interfere themselves in their self-realization, but support themselves and develop further as individuals but also in the family unit. One will not approach closer to this vision only with tighter laws against violence. They are only an important step on the way to unite the sexes. The turning point in India can only be achieved through

active participation of women in national movements in which education must precede. Education and freedom, as well as its acceptance by the male side would arrange a new self-confidence, a newly defined image and a role of women, who no longer let herself be subordinated but operates on an equal height with men in society. But as long as the introduction of a nationwide new educational system does not arise, or at least, a landmark education reform, which would lead to the regular participation and development of girls in class across the country, the great majority of women in India will mostly remain suppressed in their traditional role as submissive creatures without a voice in the society. Man and woman are still trying to find their place in a society which balances along spiritual tradition and market-based modernity. Nevertheless, the hope remains that India would reflect and even use its old values on the way to modernity. The woman is and will remain a source of strength and love. She will always remain the embodiment of the values Dharma (righteousness) and Kama (love, care).

What do we do? According to "Search for a Vision Statement on Women Empowerment vis-...-vis Legislation and Judicial Decisions" prepared by the Indian Trust for Innovation and Social Change and published by the National Commission for Women

Justice R.C. Lahoti suggests the following principles to be kept in mind by the judges to achieve the goal of gender justice:

(1) Be informed of the historical and cultural background in which the women have lived over the ages and understand their feelings and have regard to their needs as a class;

(2) Because the women are weaker sections of the society, strike a balance in your approach in dealing with any issue related to gender, or where a woman is victim, in such a way, that the weaker are not only treated as equals but also feel confident that they are equals;

(3) Treat women with dignity and honour and inculcate confidence in them by your conduct, behaviour and ideology whenever they come to you as victims or seekers of justice;

(4) Do not allow them to be harassed and certainly do not do anything yourselves which may amount to harassment of a woman; and

(5) Make efforts to render a woman victim quick, speedy, cheaper and effective justice—true to its meaning.

Some tips which he himself follows as a trial court judge and also as a member of the higher judiciary. These are:

1. Women to be treated with courtesy and dignity while appearing in the court. Any comment, gesture or other

action on the part of anyone in or around the courtroom which would be detrimental to the confidence of the women is to be curbed with a heavy hand.

2. Any gender bias is carefully guarded against in the courtroom and this protection should be extended to any female present or appearing in the court either as a member of the staff or as party or witness or member of legal profession. A message should clearly go that any behaviour unbecoming of the dignity of woman shall not be tolerated by the court.

3. Court proceedings involving women must begin on time and proceeded with in an orderly manner and with dispatch so that they are concluded as expeditiously as possible avoiding the need for repeated appearance of women in the court.

4. The examination and cross-examination of women witnesses, in particular in cases relating to violence against women shall be conducted under the supervision of the presiding judge with such care and caution as to avoid prolixity and any harassment to the witness.

5. The female members of the Bar need to be encouraged in the profession, maybe by giving assignments as Court Commissioners for inspections and recording statements of witnesses.

6. Preference may be given to female lawyers in the matter of assigning legal aid work or amicus curiae

briefs so that they have more effective appearances in courts.

7. Crime against women ought to be dealt with on priority basis so as to be decided finally at an early date lest the delay should defeat the justice.

Finally, two precautionary observations. Let the issue of gender injustice not be perceived as a war between the two sexes. Long before, when consciousness in society towards gender injustice was not present then resentment on the part of women was justified; but now the approach should be of complementing each other rather than competing on perceptions, which may not be real or may be non-existent. Societal bonds are based upon integration, mutual dependence and respect. They are not just contractual but based on deep organic unity. It is true that the male sex is most of the time blamed as the inflictor of gender injustice; but it cannot be ignored that the male sex also suffers from and feels pained at gender injustice, as the woman subjected to injustice is sometimes his mother or his daughter or sister or wife. Therefore, perception change is needed for greater social awareness and sensitisation which breeds equality of the sexes and not rivalry of the sexes.

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