

# Nature of Human Rights Violation of Women in India: Critical Appraisal

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## Abstract

*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 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 continue to exist even today. The weak law enforcement and gender insensitivity of the various functionaries fail to check the growing violence against women. At the same time, the extremely poor levels of awareness amongst women themselves on their rights also perpetuate violence against them. Paper concludes with the suggestion that women themselves need to be made aware of the special legislations that are available for their protection and rights. For this purpose, awareness generation and dissemination of information on a sustained basis will need to taken up with special modules based on the region and group targets.*

"Woman does not possess the image of God in herself but only when taken together with the male who is her head, so that the whole substance is one image. But when she is assigned the role as helpmate, a function that pertains to her alone, then she is not the image of God. But as far as the man is concerned, he is by himself alone the image of God just as fully and completely as when he and the woman are joined together into one."

-Augustine

Women human rights defenders put themselves on the front line in the promotion and protection of human rights. In doing so, they face risks that are specific to their gender and additional to those faced by men. Frequently, the violence or threat against them is sexual in nature, or they face restrictions in their work on account of their gender. Furthermore, prejudice, exclusion and public repudiation by both state forces and social actors weigh heavily in their lives. Harassment and attacks against them may themselves take gender specific forms ranging from verbal abuse directed exclusively at women because of their gender, sexuality or gender identity to sexual harassment and rape. Indian civil society organizations have long called for laws on sexual assault to be reformed. Indian law does not recognize the offense of marital rape. It is especially difficult to prosecute members of the security forces implicated in sexual assault and other human rights violations. The Armed Forces Special Powers Act provides effective immunity to members of the armed forces who are accused of sexual assault and other abuses. Section 197 of the Criminal Procedure Code provides effective immunity to police and other security forces by making it mandatory for a prosecutor to obtain permission from the government to initiate criminal proceedings against public servants. Domestic violence is most common of our society. One of the reasons for it being so prevalent is the orthodox and idiotic mindset of the society that women are physically and emotionally weaker than the males. Though women today have proved themselves in almost every field of life affirming that they are no less than men, the reports of

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violence against them are much larger in number than against men. The possible reasons are many and are diversified over the length and breadth of the country. According to United Nation Population fund Report, around two-third of married Indian women are victims of domestic violence and as many as 70% of married women in India between the age of 15 and 49 are victims of beating, rape or forced sex. In India, more than 55% of the women suffer from domestic violence, especially in the state of Bihar, U.P., M.P. and other northern state.<sup>1</sup>

Considering the role played by women that of a mother, a wife and a daughter, they deserve to be treated as partners and not viewed as competitors. The Constitution of India, under Article 14, 15, and 16, might have guaranteed women equality before law, protection and opportunity to work without discrimination on the grounds of religion, caste, creed, and sex. This cannot happen if both men and women are reluctant to change their attitudes. Women have proved, time and again, that they are in no way inferior to men in all walks of life. The male dominated society is not yet ready to accept it. Women just need the necessary support and encouragement of the family and the society. Historically, women have been playing a paramount role in the socio-economic development of any country across the World. The high status that women enjoyed during the Vedic period gradually started deteriorating in the late Vedic period. The daughter was not greeted as was the son. The birth of a girl child, even today, is considered as an ill omen and the news papers are promptly reporting the killing of female infants. Even though women did challenge the world view of their periods, their immense contributions have not been recognized.<sup>2</sup> "Equal pay for equal work for both man and woman" has been accepted as a 'constitutional goal' capable of being achieved through constitutional remedies. Article 39 (d) of the constitution proclaims "equal pay for equal work". This Article and other like provisions in the Directive Principles of State Policy are "conscience of our Constitution". They are rooted in social justice. They were intended to bring about a socio-economic transformation in our society."

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 'enlightened' and 'civilized' 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. 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."<sup>3</sup>

The process of women's emancipation has gradually shifted the boundary between the two worlds. Not only have women gone out to work and study, but progress with human rights has led to standards and institutions concerning themselves with the private sphere so that they now regulate conjugal life, birth rates, gender violence and innumerable other aspects that have brought the rights principle into the heart of the family. Similarly, changing family structures —the shift from the extended to the nuclear and one-parent family— have altered economic and political arrangements and affected the organization of labour. Changes in

women's aspirations, as they increasingly seek greater economic, physical and political autonomy, need to be treated by policymakers as a genuine long-term shift since, for all the discrimination in the labour market, the region's women show no sign of wishing to go back to their traditional roles. The main concern of governments has been to change the way the market (including the labour market) functions and to find ways of promoting productive development and growth. In this context, unpaid female work has received no consideration other than a bare acknowledgement of its existence as a factor associated with an instinct for altruism or care. According to the data available, women in the labour market have mainly gone into care-related activities such as paid domestic work, which employed an average of 13.5% of women in urban areas and 10.7% in rural areas of the region around 2005 (ECLAC, 2007), followed by health services, education and, to a lesser extent, productive activities.<sup>4</sup>

The Constitution of India being the paramount law of the country, has declared fundamental rights e.g. Right to Equality and mandated the State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Though the Constitution has provided equality of both the sexes, biological inferiority of the female and developed sense of subordination demand extra protection for women. The reason is that "Women's physical structure and the performance of maternal 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 vigor of the race."<sup>5</sup> Thus justice demands additional privileges for maintaining proper socio-legal status 'of women to give dignity in the society. The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favours of women. 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.'<sup>6</sup>

**Randhir Singh Vs. Union of India,**<sup>7</sup> The S.C. held that the principles of equal pay for equal work, is not expressly declared by our constitution to be a fundamental right but it certainly is a constitutional Goal which must colour the interpretation of Art. 14 and 16 so as to elevated to the rank of fundamental rights, denial of which must result in an 'irrational classification'.

**Bhagawandas Vs State of Haryana,**<sup>8</sup> the view of the Supreme Court was that, (i) persons doing similar work cannot be denied equal pay on the ground that mode of recruitment was different: and (ii) a temporary or casual employee performing the same or similar duties and functions is! entitled to the same pay as that of a regular or permanent employee. Keeping in line with the combined spirit of juridical equality plus protective legislation for women, and ideal set forth in Art. 14 plus Art. 15 (3), are the other secular laws applicable to all citizens, enacted for eradicating various social evils working against women in general. There is a long list of such benefit provisions in various social reform legislations and penal enactments which confer special rights on women discriminating them favourably against men folk. These are meant for protecting the fair sex from social, economic, physical exploitation which is the demand of the day in our present custom bound transitional society. An analysis of such legal measures in social reform and penal laws, All Indian Women are the beneficiaries under the provisions.

1. Child Marriage Restraint Act, 1929; This Act prescribes punishment for contracting child marriages makes an exemption that no women can be punished under this Act.

2. Section 497 I.P.C.: Under section 497 of the I.P.C. a man having sexual intercourse with a married woman without the consent or connivance of her husband is guilty of the offence of adultery and, therefore, punishable in such cases, however, the woman is not punishable as an abettor. Special treatment for women was justified on the basis of constitutional protection under Article 15 (3) of the constitution.<sup>9</sup>

**Coralie Mullin Vs. Union Territory Delhi,**<sup>10</sup> Administrator, and the Supreme Court stated, any act which damages or injures or interferes with the use of any limb or faculty of a person, either permanently or even temporarily, would be within the inhibition of Article 21. This right is incorporated in the Act through the definition of physical abuse, which constitutes domestic violence (and is hence punishable under the Act). Physical abuse is said to consist of acts or conduct of such nature that they cause bodily pain, harm, or danger to life, limb or health, or impair the health or development of the aggrieved person. Apart from this, the Act also includes similar acts of physical violence and certain acts of physical violence as envisaged in the Indian Penal Code within the definition of domestic violence. By adoption of such an expansive definition, the Act protects the right of women against violence.

**Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan,**<sup>11</sup> the Supreme Court emphasized the fact that the right to life included in its ambit the right to live with human dignity, basing its opinion on a host of cases that had been decided in favour of this proposition. The right to dignity would include the right against being subjected to humiliating sexual acts. It would also include the right against being insulted. These two facets of the right to life find mention under the definitions of sexual abuse and emotional abuse, respectively. A praiseworthy aspect of the legislation is the very conception of emotional abuse as a form of domestic violence. The recognition of sexual abuse of the wife by the husband as a form of violation to the person is creditable, especially as such sexual abuse is not recognized by the IPC as an offence. These acts would fall within the confines of domestic violence as envisaged by the Act, though the definition would not be limited to it.

**Pannalal Pitti Vs. State of A.P.**<sup>12</sup> This case dealt with validity of provisions of A.P. Charitable Hindu Religious and Endowments Act, 1987 and the argument was that laws should be made which are uniformly applicable to all religious or charitable endowments run by persons professing all religions. It was in this context that the Supreme Court observed that in a pluralistic society like ours making uniform laws cutting across religions could only be achieved in a phased manner and it was inappropriate to think "all laws have to be made uniformly applicable to all people in one go." **Madhu Kishwar Vs. State of Bihar.**<sup>13</sup> Certain provisions of Chotanagpur Tenancy Act, 1908 were challenged as being discriminatory towards women. While Court in this case refused to declare tribal customs en masse offending fundamental rights it kept the doors of such challenge open by holding, "...under the circumstances it is not desirable to declare the customs of tribal inhabitants as offending Articles 14, 15 and 21 of the Constitution and each case must be examined when full facts are placed before the court." In this case, the Court went into the Constitutionality of the law and read down the provisions so as to bring them in line with women's' right to livelihood under Article 21 of the Constitution.

#### **The Delhi Case**<sup>14</sup>

The recent gang rape and death of a young student in Delhi has raised the discussion on the question of sentencing and punishment yet again. The first set of questions had to do with the nature and quantum of punishment. Treading this issue with care, the committee enhances

the minimum sentence from seven years to 10 years, with imprisonment for life as the maximum. On the death penalty, the committee has adopted the abolitionist position, in keeping with international standards of human rights, and rejected castration as an option. The second question had to do with the reduction of age in respect of juveniles. Despite the involvement of a juvenile in this incident, women's groups and child rights groups were united in their view that the age must not be lowered, that the solution did not lie in locking them up young. Given the low rates of recidivism, the committee does not recommend the lowering of the age, recommending instead, comprehensive institutional reform in children's institutions.

The report contains comprehensive recommendations on amendments in existing criminal law, which cannot be detailed here except in spirit. The significance of the report lies, not so much in its immediate translation into law or its transformation of governance (although these are the most desirable and urgent), but in its pedagogic potential — as providing a new basis for the teaching and learning of the Constitution and criminal law and the centrality of gender to legal pedagogy.

Women in all cultures need to have their voices heard and their views of their cultures recognized and taken seriously. In this way, universal standards can be made truly universal by being defined in a way that encompasses all the members of society. When women choose, for example, to dress in a particular way that reflects their cultural and national heritage, while at the same time having complete and autonomous access to all aspects of their society, cultural differences are celebrated while fundamental rights are protected. Though a large number of women related legislation are in place, it is seen that the efficacy of these laws are not satisfactory primarily on account of poor implementation. A major reason for this is the lack of adequate knowledge regarding these special legislations and also absence of gender sensitivity on part of the functionaries such as law enforcement, police, prosecution, medical profession, judiciary etc. The eleventh plan needs to give a very high priority to training and capacity building of these stakeholders not only to educate them about the nuances of the laws but also to inculcate gender sensitivity in the system. The women themselves too need to be made aware of the special legislations that are available for their protection and rights. For this purpose, awareness generation and dissemination of information on a sustained basis will need to be taken up with special modules based on the region and group targets. The changing socio economic scenario and the phasing out of the joint family system along with poor community based protection systems are some of the reasons why women are becoming increasingly prone to violence and abuse. The weak law enforcement and gender insensitivity of the various functionaries fail to check the growing violence against women. At the same time, the extremely poor levels of awareness amongst women themselves on their rights also perpetuate violence against them. The lack of adequate rehabilitation and reintegration facilities is another crucial factor that finds victimized women further victimized or ostracized by the community. The media too does not reflect gender issues with sympathy and sensitivity; instead there is a tendency to glorify patriarchal traditions or to depict women as objects of sexual entertainment.

### Notes & References

<sup>1</sup>*Final Report BVO 1998 "Violence Against Women in Developing Countries" –ICRH (International Centre for Reproductive Health)- August 1999*

<sup>2</sup> S. Balasubramanyam “Problems and Concerns Status of Women in India” Mar 2012 SME WORLD Magazine.

<sup>3</sup> Dr. C. L. Patel “Empowerment Of Women and Law” (2012) p. no. 52-551.

<sup>4</sup> In Argentina, the health sector provides about 8% of all female employment and 65% of all health workers are women (Pautassi, 2006). In the productive sector, women make up the bulk of unpaid family workers. In Latin America, 18% of female workers in the agriculture and fishing sectors were unpaid in 2004, as compared to 5.5% of men (Rico and Marco, 2006).

<sup>5</sup> Muller Vs. Oregon, 52 LEd.551.

<sup>6</sup> [mospi.nic.in/Mospi\\_New/upload/women\\_man\\_p.../Rights.doc](http://mospi.nic.in/Mospi_New/upload/women_man_p.../Rights.doc)

<sup>7</sup> AIR 1982 SC 879.

<sup>8</sup> AIR 1987 SC 2049

<sup>9</sup> Yusuf Abdul Aziz Vs. State of Bombay AIR 1954 SC 321, also see Smt. Soumithri V/shnu vs. Union of India (1985) 1 SCC 360.

<sup>10</sup> (2006)1 SC 2010

<sup>11</sup> (2007) SCC 7735

<sup>12</sup> (1996) 2 SCC 498

<sup>13</sup> (1996) 5 SCC 125

<sup>14</sup> 16 December 2012

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*“Before God we are all equally wise - and equally foolish.”*

- Albert Einstein