

WOMEN RIGHTS IN INDIA AND THEIR IMPLEMENTATION

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INTRODUCTION

“Welcome to the 21st century, it will be a century where women will have rights, they were exposed to many hardships but now the time has changed leaders like Indira Gandhi, Mother Teresa, Indra Nooyi and many others are a source of this development” These lines look really encouraging don’t they, but we need to know for how long are we going to tell these lines to our children while they see the same number of crimes being committed against the women they are living with. The dreams, aspiration of a modern day society which will provide equal rights to women don’t they look far-fetched.. The following paper presents in front of you some of the harsh realities of today’s India and its comparison with other countries. It provides for a brief outlook how even after providing women with so many rights in our statues, how we fail to implement them. The paper has used data extensively for the educating purpose and the author has tried to provide maximum transparency while explaining them. What is most disheartening to see is the fact that there is a vast difference between the Number of crimes committed and Number Of crimes reported. I have tried to cover each and every sector where women can face instances of harassment be it their workplace or home, I have given special emphasis on the cases of Vishaka v State of Rajasthan and the recent famous case of shyara bano or what we call the Triple Talaq case. While discussing this we need to understand that the crimes committed against women are not just mere crimes but offences which have been committed against a particular gender, and it’s the gender biasing which is operating at a vast level. We have also used a report by the OHCHR and have explained the gender injustice and the role of International Law in it. The author has also stressed on the steps taken by different countries and laws they have to ensure gender equality and the success thereof. At last we have taken a look at a most heinous crimes which for many of the Indian is normal or it’s ok for

them i.e Marital Rape, a rape which is defined nowhere, no punishment has been prescribed for it though it is a crime which violates Article 21¹ of our Constitution.

LEGISLATION AND STATUES ON WOMEN'S RIGHT

After Independence it was thought that in order to ensure equality with respect to gender it was important that certain laws be drafted which will ensure this, for long our legislators have been trying to frame rules which would not only be explicit in their approach but would also be making sure that justice is served to meet all ends. In the following paragraphs various laws have been discussed which aims to seek equality and close down gender-biasing. These have been divided into two parts- pre and post-independence laws.

- I. Bengal Sati Regulation, 1829- Sati a practice where it was expected from a woman to kill herself after the death of husband was considered as a barbaric practice by the Islamic ruler. So for the very first time in 1829 governor-general William Bentinck passed a regulation banning this practice.
- II. Female Infanticide Act, 1870- Since there was a growing voice by the Christian missionaries against the Female Infanticide, this act was passed to regulate the killing of female child in the regions of Punjab, Oudh and North-West Provinces
- III. Child Marriage Restraint Act 1929-To stop the heinous act of child marriage, the child marriage restraint act was implemented in 1929, it fixed the age of marriage for girls at 14 years and the age for boys was fixed at 18 years.
- IV. Women's Right to property- With the change in position of women in the Islamic period, which decorated the women as a commodity, it ruined their image and what was needed was the law to implement and make sure that the rights of women are never violated and for the same reason in the year 1937 a act was passed which was known as the Hindu women's right to Property Act 1937 basic interest that led to this act was that after the death of her husband every woman is entitled to a share in his property and would not be denied of this right anyhow.
- V. Special Marriage Act 1954-The main purpose of this act was to make sure that no individual is bullied on the basis of religion cast creed. There were conditions set for

¹ Art .21, the Constitution of India

these kind of marriages--The age of the couple should be in consonance with the Indian majority Act-Both of them should be unmarried-They must not have a blood relationship within them-They must be sane at the time of marriage. Looking at the diverse culture of Indian territory this act not only aims to promote national integrity but also peace among the citizen as it basically aims to provide them with the right to choice

- VI. Amendment in the Hindu Succession Act²- The supreme court has clarified that even the daughters have a right to ancestral property if the property was divided after 2005 however now the apex court has clarified that if the suit is lying in the court of law and that the suit commenced before 2005 then it will be treated as legal binding and the daughter's will also enjoy share in it.³

JUDICIAL DECISIONS AND LANDMARK JUDGEMENTS

Triple Talaq- A Bane for the equality

A age old practice where a muslim man would say- Talaq, Talaq, Talaq three times and it shall mean that they are no more husband and wife. The man is free from all the liabilities of a husband and is allowed to re-marry while the women is left in agony. After a petition by the Shayara Bano in Supreme Court of India over this issue, the highest body of law ruled in favour of all women and banned this age-old practice considering it to be unethical, derogatory and unconstitutional.

Summary of the Case

Shayara Bano the petitioner in the case was married in the year 2001. After 15 years of her marriage she was pronounced talaq-i-bidat by her husband in the year 2016. She pleaded in front of the court that triple talaq , polygamy and nikah halala are all the practices which infringe the rights of women. Other than Triple talaq and polygamy she also pointed on the practice of nikah halala, a practice where a women can only remarry her ex-husband after she

² Sc. 15, Hindu Succession Act, 1956

³ Sc.15, Hindu Succession Act, 1956[2005 Amendment]

marries another man and then divorces him so as to qualify her to marry him (the 1st husband).⁴ It turned out that she was not the only woman who was suffering but there were thousands like her who could not do anything other than to live in misery and suffering. The amount of compensation or what we call Mehr(a amount that is fixed at the time of marriage) was not sufficient to make them sustain. The main contention was that her rights guaranteed under these Articles have been violated-

- Article 14- Right to equality in the sense that it takes away the right of Muslim Women to Divorce her Husband
- Article 15- Discrimination on the basis of gender
- Article 21- Right to life
- Article 25 -Right to Religion

According to her this not only deprive women of their natural Human Rights but also deny them social, economic and cultural Rights. A custom can't ever become a law if it is against the wish and will of the State and its people. The Petition included that there needs to establishment of a precedents for the coming generation to see and understand that any practice against and not in consonance of the rights enshrined in our Constitution will be struck down as being illegal and unconstitutional. The Court gave a exceptional Judgement in August, 2017 and made this historic in the books of Law. The five Judge Bench by majority of 3:2 ruled in favour of the petitioner. The majority elaborated its judgement and explained in the most blissful way, out of the three in favour, two held it as completely unconstitutional while the other judge established his reasoning on the past cases. The majority expressed that the practice is unconstitutional when it undergoes the test of Article 14 read with Article 13(1). Though it was contended by the Wakf Board that the Supreme Court was trying to interfere in its personal laws, the court that the said practice which is accepted by the board as completely legal is actually a action which negates equality and provides for unresponsive attitude towards women and can't be in anyway accepted. The Majority ruled that the Article 13(1) explicitly states that "any law which is in force before the commencement of Constitution will he held as Illegal if it abridges the basic idea of the Constitution. The Court to explain this further checked that whether making this practice unconstitutional will abridge the Right guaranteed under Article 25 and came to a reasoning and it is not even slightly abridging the right and is perfectly legal.

⁴ Shyara Bano v. Union of India, WPC 118 SC 2016

The significance of this judgement can be understood from the facts that many activists and leaders who were fighting for years finally got justice. A study also revealed the same when it came that out of 1 in every 11 Muslim Women is facing this social evil.⁵ It needs to be understood that a country where we have such strong judicial system why were we lacking to implement this earlier and why did the Board could not understand the plight of these Women and had Shayara Bano not taken a stand we would still have suffered with the practice. The move is welcomed by every person who aspires for equality within the gender, which looks towards a women not a piece of meat but as a equal partner and most importantly as a human, as an individual who has rights which needs to be respected by the society.

Vishaka v State of Rajasthan⁶

This is a landmark case which provided guidelines and was aimed to stop sexual harassment at work place. The facts of the case truly reflect the actual face of the society, how a women is subjected to violence and deterrence, how nepotism is favoured in our society and how the government officials don't listen to a common man because of political pressure and money power.

Summary of the case

A social worker Bhanwari Devi tried stopping a child marriage happening in her village, but never succeeded in the same and the marriage eventually happened, but incidents which happened after that were not only cruel but there was grave injustice involved in it. She was gang raped by five people in front of her husband and nobody stood for her. The doctor of the village did not examined her and under peer pressure the doctor in Jaipur City did not make any disclosure of the same in his public report. She was subjected to cruelty even at police station and since there was lack of evidence the trial court acquitted all the accused. The women groups inspired by her never die attitude filed an application in the High Court but it also ruled that the "rape was committed out of vengeance"⁷. This actually provoked different groups in and around the country and as a result they filed a case in the apex court under the name of

⁵ A Vidyathanan, 'Triple Talaq Unconstitutional, says Supreme Court in majority judgement'
<http://www.google.co.in/amp/s/www.ndtv.com/triple-talaq-judgement-1740371>> accessed on 7th September 2018.

⁶ Vishaka v. State of Rajasthan, AIR 1997 SC 3011

⁷ Tarun Ghai, Vishaka v. State of Rajasthan, Vol No.4 , Journal on Contemporary issues of Law, 4, 19(2018)
<http://jcil.lsyndicate.com/wp-content/uploads/2018/08/Case-Commentary-On-Vishaka-v.-State-of-Rajasthan-3.pdf> last seen on 28th August, 2018.

Vishaka and asked the Supreme Court to lay guidelines on the matter. It lead to these guidelines-

- It is the duty of the employer to make sure that they work responsibly and make sure that there is no kind of sexual biasness at the workplace. Sexual Harassment will include any kind of unacceptable behaviour, actions and advances.
- Any kind of misconduct by any Government employee will lead to start of proceeding against him and he will be dealt with appropriate laws.
- If any kind of misconduct is recorded by the concerned authorities and the same is defined by the Indian Penal Code then he will be tried by the procedure defined in the code only
- The authorities should make sure that the people who have actually suffered should not be subjected to any kind of discrimination or immoral act, or they should be not be pressurized to change their statement.
- There should be establishment of complaint mechanism which will make sure that there must be fast redressal of the complaints filed against any government employee.
- Employees will have the option of standing for the right by taking the issue directly to the worker's meeting and it shall be duty of the employer to hear for the same.
- The employer will have to make sure that the women employees working knows about their rights and these guidelines.
- If the women employee faces against kind of sexual harassment by a outsider, then it is the duty of the Employer to make sure that he/she will stand with the victim and make sure that she is not unheard.⁸

GENDER EQUALITY: PRESENT AND A STUDY OF DIFFERENT COUNTRIES

Gender equality in United Kingdom

When gender equality at work comes into discussion, Britain has one of the worst records. Researchers gave Britain 11th rank out of 18 countries surveyed, behind Sweden, Spain, United

⁸ Rashmi Singh, Sexual Harassment at Workplace, <http://sexualharassmentatworkplace.indianworkingwoman.org/summary-vishaka-case-supreme-court-1997-sexually-harassed-women-india> last seen on 29th August, 2018.

States, France, in a league table which took into account the pay gap between both the genders and also included other factors such as board level representation. On a brighter note for the United Kingdom, proportion of female managers is lot higher than other countries and is at 35 per cent, which puts it at 3rd position behind Norway and Sweden.⁹

Gender equality in Australia

Gender inequality gap has been reduced in recent times in Australia. Australian women have made necessary strides towards gender equality and their rights. Leadership positions, which were never taken by women are now taken in almost equal proportion such as in workplaces, in government offices, in universities and in boardrooms. Sexual harassment and sex discrimination were legal before 1984 and were made against the law by Sex Discrimination Act 1984. Despite all the advancement and all the government acts and laws, women in Australia still face discrimination and inequality when it comes to many major roles in their lives, which reflects on their future as well.¹⁰

There are several commissions that help women and protect women against discrimination of different kinds, such as Australian Human Rights Commission help women to resolve the complaints of gender inequality under Sex Discrimination Act.¹¹

Gender equality in New Zealand

The bigger goal for New Zealand in the field of employment is improving prosperity in the economy, and it is linked with employment equality for both men and women, allowing women in receiving higher number of opportunities and choices which helps them in their economic success and maximize their social life. Despite all the efforts made by the New Zealand government, the gender pay gap is quite low, rather lowest in the Asia Pacific region. In 2014, it was calculated to be 9.9%. Special family violence courts have been implemented by the New Zealand government.¹² Victims of domestic violence are treated more seriously than other

⁹ Daniel Boffey, 'UK gender inequality as bad as 10 years ago' <https://www.theguardian.com/inequality/2017/oct/11/uk-no-further-forward-on-tackling-gender-inequality-eu-league-table-shows>> accessed on 17th August 2018.

¹⁰ Elizabeth Broderick, 'The State of Gender Equality in Australia' <https://www.humanrights.gov.au/news/speeches/state-gender-equality-australia>> accessed on 11th August 2018.

¹¹ Brooke Wylie, 'Australian Women Reports shocking level of inequality, sexual harassment revealed'(6th March 2018) www.abc.net.au/news/2018-03-06/australian-women-reveal...inequality.../9516642> accessed on 23rd August 2018.

¹² Nicholas Jones, 'World economic forum ranks New Zealand on 9th in gender equality' https://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid> accessed on 13th June 2018.

offences. There are even many legal aid services provided to the victims for the advocacy and the support which helps them in the proceedings. On average, women in New Zealand have a higher life expectancy and have a better health outcome than men.

Gender Equality in United States of America

Justice is not also guaranteed by the courts, there have been a lot of legal cases in which transgender parents have lost their parental rights and custody based on their gender. Education, which is our most fundamental right is also violated based on gender. Researchers at California State University, Northridge conducted a research that when an applicant applies at the University for a Position with a PHD degree, that applicant is more likely to be offered a higher degree of appointment considering if that individual is a male when compared to a woman with similar qualifications.¹³

WOMEN RIGHTS UNDER THE INTERNATIONAL ARENA

International organizations have always strived to work for the betterment for the betterment of women and to make sure that they always get equal rights. After the United Nation came into force in 1945 the basic objective of it was to restore peace and equality. Article 1¹⁴ of the Charter explicitly provides that the basic idea of it is to promote respect for Human Rights and to make sure that nobody is denied of their fundamental rights irrespective of their race gender, caste, creed and religion. The most historic step after this was the adoption of UDHR(United Declaration of Human Rights) in the year 1948 which has in it 30 Articles for the promotion of Human Rights and set out the path for the world to follow. Though it is for all human being there are instances where women rights have been discussed. Article 2 of UDHR talks about the freedom given to every individual without any kind of distinction like the one based on colour, caste, creed and sex. Then in Article 16¹⁵ one gets to know that everyone has the right

¹³ Saadia Zahidi, ' America is falling behind other countries in gender equality'
<https://www.weforum.org/agenda/2016/10/global-gender-gap-2016-usa-saadia-zahidi>> accessed on 13th June 2018.

¹⁴ Art.1,Charter of United Nation, 1945

¹⁵ Art.16, United Nation Declaration of Human Rights, 1948

to marry to the person he/she likes to marry which includes both man and women. Article 25 of the same declaration states that every women has the right to protective motherhood¹⁶

Marital Rape- “A Rape which is totally legal”

A rape is a rape irrespective of the fact who commits it, but what if it is not defined anywhere or what if the person committing it is your own husband. How legal is it to have intercourse with a women without her consent, surely it’s not, but what if the person committing it is your own husband, a person you have committed yourself to stay for the rest of your life, shocking are the statistics which reveal that we have entered 21st century but our minds are yet to reach this. Even today we treat her like a commodity, a thing we can buy, a body we can use whenever we have satisfy our thirst.¹⁷ A US study reveals that every 6 hours a women is subjected to intercourse where she is not consenting to.

The most heinous thing is that India, a country known for its protective laws is one of the 36 countries which have no laws which could define Marital Rape and prescribe the punishment for the same. A country aspiring to be the world leaders does not have minimum laws to define a type of Rape or is the patriarchal nature which is not allowing it to make one is the most debatable issue. It is estimated that over 2.6 billion women reside in the countries where a rape committed by the husband is not a rape at all. The most debatable issue that though Rape is being explicitly defined under Section 375 of the IPC, yet Marital Rape does not fall in this category. Let’s look at the definition given in Section 375 it says-

“A man is said to commit Rape if he-

- Penetrates his penis, to any extent in the vagina, mouth, anus.....and any of the seven description mentioned in the Act.”¹⁸

The only ‘Exception’ is the exception 2 of this Section which states that these are actually private affairs between a husband and his wife and are not in violation to any of the fundamental

¹⁶ UNFPA, ‘The Human Rights of Women’[2006] 21

¹⁷ Roli Srivastava, ‘Marital Rape: Statistics show how real it is’
<http://www.thehindu.com/news/cities/mumbai/Marital-rape-the-statistics-show-how-real-it-is/article14410173.ece>> accessed on 14th August 2018.

¹⁸ Sc. 375, Indian Penal Code, 1860

Rights defined under Article 14 to Article 21¹⁹. The intelligible differentia behind this goes unheard, there is nothing which can actually give a reasoning as to why we are differentiating between a women who is married to a women who is unmarried. Justice Verma and his fellow companions in the year 2013 came up with a report that the exception to Section 375²⁰ needs to be repealed immediately, otherwise the crimes against women will increase at a very fast rate. We don't provide these women their rights we will be hampering them with the most basic fundamental right that is Right to Equality enshrined in Article 14. A study conducted by NFHS revealed that about 54% of the women believe that it is completely legal for their husbands to beat them, abuse them or for instance have intercourse with them without their wish or will. We don't need to bring any big reform, all we need to do is just elaborate and increase the ambit of Section 498-A²¹ and make it just not limited to dowry but also to physical abuse against women and make sure that the punishment is defined, to make people understand that they can't act according to their wish and will and women are not a piece of meat.

CONCLUSION

This paper has everything structured when comes to the issue of gender equality. Through this research we got information from various sources about the kind of rights that every women has and how they can be made aware of it. Through this paper we have tried to explain the grassroots of the problem gender biasing. The laws which were discussed in this paper make us believe to the fact that the thinking of the society towards women need to change because only that can make sure that gender issues are discussed properly and elaborately. By taking the help of landmark cases like the Triple talaq and Vishaka Case we have reflected how through mass awareness and information everything can be achieved. After this we have discussed the problem of Marital Rape and how it takes toll over hundreds of families and yet we find no solution to this. The patriarchal thinking makes every man believe that he is superior to the women and that he is the master of everything and the wife is just a child-bearing body. I have reflected that through various studies and tried our best to compare it with the situation in other countries. The author is of the viewpoint that India needs proper implementation of laws and that can be done by making a separate body which would make sure that the other

¹⁹ Art. 21, Constitution of India, 1950

²⁰ Supra 18

²¹Section 498-A, Code of Criminal Procedure, 1973

bodies who would be answerable to it work in a effective way to sure that the faith of the people stays in the law and its processes.

