

THE PLIGHT OF WOMEN'S HUMAN RIGHT IN INDIA: AN ANALYSIS OF THE STATUS QUO

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ABSTRACT

Despite being considered the epitome of goddess in religious literature, the reality of a woman in the Indian society is paradoxical. They start facing discrimination as soon as they enter this patriarchal world. When they are in a mother's womb, they face discrimination in the form of female foeticide. When young, she faces this disparity in the shape of female genital mutilation, child marriage and this disparity continues in her day to day life as she grows older but takes other forms such as honour killings, etc. This continues even when she gets married of which marital rape, domestic violence, dowry deaths are express manifestation of this gender-based discrimination. The main reason behind this inequality experienced by woman is the patriarchal norms prevalent in the Indian society which seeks to control women's sexuality in order to oppress and subjugate them. The present paper ventures to discuss the scope of these problems and the way, these practices are justified in the name of culture and religion by the cultural relativists. It describes the legal framework designed to eradicate all forms of discrimination against this weaker section of society. It forecasts the responsive job performed by the judiciary in the public sphere, however, disregards its role in the empowerment of women on religious grounds. Thus, the paper advocates for observance of principles of transformative constitutionalism by the judiciary in order to realise the aim of "gender equality" and recommends for sensitisation of all public authorities along with social institutions like the family, institution of religion and educational institutions.

Keywords: Gender discrimination, Patriarchal norms, transformative constitutionalism, sensitisation

INTRODUCTION

I measure the progress of a community by the degree of progress which women have achieved.

- **B.R. Ambedkar**

Mere commercialisation of Indian economy, new technological advancements and adoption of contemporary lifestyle would not amount to progress of individual and the country, unless the stereotypical notion prevalent in Indian society which confers a subservient role on women is not dismantled. This social group of women, which constitutes nearly half of the Indian population, is always discriminated against and considered inferior to their male-counterparts. Gender disparities often imprisons women in the loop of modesty, parochial mores, male superiority, lack of awareness, educational backwardness and no decision-making powers. A woman starts facing discrimination right from her birth which continues in her entire lifetime, in the form of female infanticide, female genital mutilation to dowry-related deaths and domestic violence. It is only when women will be empowered and can actively participate in all walks of life at par with men that the aim of gender equality can be realised in its essence.

Gender equality forms part of the 17 Global Goals that constitute the 2030 Agenda for Sustainable Development which India is also bound to achieve.ⁱ Goal 5 which imbibes gender equality advocates for empowerment of girls and women because ending all forms of discrimination against them is not merely a basic human right, rather is crucial for sustainable future as empowering them promotes economic growth and development.ⁱⁱ Only if women are given equal opportunities and their participation is encouraged in workforce, the GDP of India could improve and rise to more than 18%, thereby adding almost \$770 billion in the Indian economy.ⁱⁱⁱ Thus, the need of the hour is that more opportunities and participation of women should be encouraged in the field of education and employment.

The major obstacle against achieving gender equality is male chauvinistic notions which are deeply engraved, not only in the Indian society but also in the legal framework of the country, especially in the form of “personal laws.” Thus, the present paper forecasts the gender based legal restrictions and cultural norms as a major hindrance in achieving the goal of gender equality. As aptly remarked by Kofi Annan that, “Gender Equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance.”

SEED OF CONFLICT: UNIVERSALISM AND CULTURAL RELATIVISM

All human rights are universal, indivisible, interdependent and interrelated.^{iv} This universality of human rights is inherent in every individual irrespective of culture, race, ethnicity, gender, age and so on because each one of us is equal in rights and dignity. However, this universal character of human rights has often been criticised by cultural relativists, who assert that all religious, ethical, aesthetic and political beliefs of an individual are supposed to be understood in relation to his/her cultural context^v and urges “the need for tolerance and respect for all cultures.”^{vi} According to them, cultural relativism is a philosophical notion that validates all cultural beliefs and holds that truth is culturally contingent. They contend that since all standards and values are specific to a particular culture, the postulates and values of one culture can never be applied to the whole of mankind.^{vii}

Women have always been a disadvantaged social group, irrespective of the culture to which they belong, due to dominant patriarchal notions prevalent in the society. One of the major reasons for prevalence of gender based human rights violation is its legitimization in the name of preserving certain cultural particularities in a given society.^{viii}

The practice of female genital mutilation has been justified on a combination of cultural, religious and social factors including patriarchy, religion, social cohesion, sexual considerations and economic concerns.^{ix} The practice is based on the belief that it regulates the sexual behaviour of a female and thereby, averts females to stray out of their marriages. These societies equate FGM with cultural ideals of femininity and modesty because they consider clitoralhood (qalfa) as a source of impure thoughts and sexual desires from which women need protection. Ironically, this perceived protection extends beyond the protection of the girl herself to the protection of the whole family’s reputation.^x In stark contrast, the Universalists advocate that FGM should be abolished as it is a “harmful cultural practice” and it violates various human rights of a woman including the right to bodily integrity of a female. Organizations such as WHO have also declared that FGM constitute a blatant violation of human rights.^{xi}

Again, the legalisation of marital rape is primarily based on the “doctrine of unity” which regards husband and wife as one legal entity and disregards the independent personality of a married woman. Further, a woman could not be raped by her husband as she is presumed to have consented to all marital sex. It is an explicit manifestation of gender inequality and

discrimination which sought to inhabit in the shield of patriarchy and sexism. In fact, the recent statement made by the Union Minister of Women and Child Development, Maneka Gandhi in this context, reflects how cultural relativism has been used as a defence for non-criminalisation of this heinous act. She stated that marital rape “cannot be suitably applied in the Indian context due to various factors like levels of education/illiteracy, poverty, myriad social customs and values, religious beliefs, mindset of the society to treat marriage as a sacrament, etc.”^{xii} Thus, the social factors like illiteracy, lack of education, staggering rates of poverty along with social customs and values and religious beliefs are considered as obstacles for illegalisation of marital rape. On the other hand, the Universalists advocates for criminalisation of marital rape as it constitutes gross violations of human rights of a married woman like her right to dignity and sexual autonomy.

Even practices such as forced and early marriage, polygamy, domestic violence and honour killings which constitute “harmful cultural practices” are often justified in the name of culture and religion by the cultural relativists. However, according to a strict radical universalist position, these practices should be abolished as they constitute flagrant violation of human rights of a woman.^{xiii} Thus, it has been aptly remarked by Arati Rao, “no social group has suffered greater violation of its human rights in the name of culture than women.”^{xiv}

VARIOUS FORMS OF VIOLATION OF WOMEN’S RIGHTS

i) Female Genital Mutilation

Female Genital Mutilation (FGM), as defined by the World Health Organisation, means a “procedure that involves partial or total removal of the external female genitalia or other injury to the other female organs for cultural or non-therapeutic reasons.”^{xv} It is practised amongst the Dawoodi Bohra community in India, where the ritual is referred to as “Khatna” or “Khafz/Khafd.” It is often justified on the ground that clitoral head is a “source of sin” which develops sexual desires in a female from which they require “protection,” thereby, seeking to control the sexuality of a woman. Besides these perceived notions which seek to justify the practice of FGM, the threat and fear of ostracism or excommunication for any form of protest or disobedience, prevents the members of the community to raise their voice against the practice of FGM.^{xvi}

Since FGM treats women and girls as objects whose sexual desires are required to be controlled in order to prevent their violation from other men, it is violative of Article 14 and 15 of the Constitution as gender stereotyping is against the principles of equality. Thus, FGM, a practice which subjects females to abuse in the name of culture and religion, is a gross human rights violation, as stated by organisations such as WHO^{xvii}, as it violates various human rights of a woman including the right to bodily integrity of a female, right to dignity, right to health and right to privacy. The UN General Assembly unanimously banned FGM and declared it as “harmful traditional practice” rather than a “healthen custom.”^{xviii}

ii) Honour Killings

Honor Killings is one of the tenacious forms of gender violence which seeks to curb a woman’s autonomy, especially with respect to her sexuality and marriage. Honor Killings, as defined by Human Rights Watch, refers to “acts of vengeance, usually death, committed by male family members against female members, in response to a belief that the woman has offended family’s honor and has brought shame to the family unit.”^{xix} Since women are regarded as the repository of family honor, transgressions in the form of eloping with a lover to rejecting an arrange marriage to simply wearing revealing clothes in public is “seen as polluting not just herself but also her domestic group.”^{xx} These orthodox etiquettes to be followed on part of a woman in order to preserve the honor and reputation of the community seeks to justify the act which is in stark contrast to the fundamental right of a woman to choose her partner and her right to sexual autonomy.^{xxi}

iii) Marital Rape

Marital Rape, an abhorrent form of masochism in Indian society, is yet not criminalized under the Indian Penal Code, 1860 because it is concealed behind the iron curtain of marriage. This makes India one of the 36 countries where marital rape is not a crime. This idea of exclusion of marital rape from criminal sanction dates back to 17th century England, when Chief Justice Hale argued that “the husband cannot be guilty of rape committed by himself upon his lawful wife, for by the mutual matrimonial consent and contract, the wife hath given herself in this kind unto a husband, which she cannot retract.”^{xxii} It was by virtue of this enigmatic pronouncement of Chief Justice Hale that the marital rape exemption clause was incorporated in Exception 2 to section 375 of the Indian Penal Code, 1860 which reads as follows:

Section 375. Rape –

Exception 2 – Sexual intercourse by a man with his own wife, the wife not being under eighteen years of age, is not rape.^{xxiii}

Marital Rape is often justified through traditional theories such as doctrine of unity which disregards the independent personality of a woman, thereby, assigning women subservient position in a marriage or modern theories such as existence of adequate legal remedies such as section 498A, etc. Marital Rape as a concept inhabits in the shield of patriarchy and sexism and this patriarchal mindset can be evidenced by the statements of Virender Bhatt, J., who remarked that, “sex between husband and wife even if forced, is not rape.”^{xxiv} However, these justifications have become irrelevant in present times as marriage, in present times, is considered as a union of equals and thereby, separate and independent legal identity is attributed to the husband and wife. Also, the threshold of conviction under section 498A is very high which makes it almost impossible for a case of marital rape to fall within its ambit unless it causes danger to life or limb of the victim. Further, the significant difference in the punishment of the two offences forecasts that §498A is inadequate to deal with cases of marital rape.

iv) Dowry Death

The custom of giving dowry is deeply engraved in the Indian societal framework. The practice devalues the position of women in society by subjecting her to physical and psychological torture by her husband and in-laws who wish to acquire more property out of dowry. This torture has often led to unnatural death of the married women which in legal parlance, is termed as “dowry death.”

According to the 2018 Crimes in India Report, there has been insignificant decrease in the crime rate from 1.2% in 2016 to 1.1% in 2018.^{xxv} In 2018, 7166 dowry death cases have been registered across India.^{xxvi} Despite having a law which criminalized taking or giving dowry in any form, the practice is still prevalent amongst all sections of the Indian society.

Section 304B of the Indian Penal Code defines dowry death and punishes the husband or any of his relative, if sufficient evidence is available to determine that the wife was subjected to ill treatments by them before her death. However, the law fails to take into account cases of suicide by self-immolation of married woman which, in majority of the cases, is abetted by her in-

laws. Thus, the section provides a limited perspective of the crime and offers a room to the offender to dodge such criminal charges. Thus, one may ascertain that though the criminalization of the act may have been proved to be politically useful symbol but it has not curtailed the practice.^{xxvii}

v) Domestic Violence

A major instance of human rights violation of a woman within the contours of the house is Domestic Violence. Unfortunately, the housewives are abused physically and sexually which affirms the image of a man as an “aggressor” which is encouraged by the norms widespread in the Indian society. Perhaps, sexual inequality and cultural norms crucially contributes to the infliction of such abuses on the wives. To combat this evil, the Protection of Women from Domestic Violence Act, 2005 was enacted.

vi) Acid Attacks

Throwing of acids, referred to a Vitriolage, is a form of violent assault.^{xxviii} This barbaric crime against women, which has emerged as a new form of gender-based crime, has proven to be tragic and dreadful. These attacks, which takes only few seconds to be carried out, usually leaves the victim at the verge of death and scarred for life. It causes a lifelong disability by permanently disfiguring vital body parts of the victim.

In India, almost 72% of the acid attack victims are women.^{xxix} In April 2014, the United Nations Special Rapporteur on Violence Against Women, its Causes and Consequences expressed consternation about India’s “high incidence of acid attacks on women...despite the development of new measure.”^{xxx} She noted, “Victims of acid attacks are mainly females those who dare to challenge patriarchal norms, including by opposing marriage or partner proposal.”^{xxxi} This horrific act is carried out to exhibit their everlasting control over the fate of a woman as has been rightly remarked in the 226 Law Commission Report that, “acid attacks are used as a tool to silence and control women by destroying what is constructed as the primary constituent of her identity.”^{xxxii} Thus, acid attacks are used by men to establish male dominance and keep a woman in a state of terror and control.

LEGAL FRAMEWORK ON WOMEN

i) Crimes under the Indian Penal Code

- Section 376 IPC for Rape
- Section 326-A/326-B IPC for Throwing Acid and its attempts.
- Section 363-373 IPC for Kidnapping and Abduction for different purposes
- Section 302/304-B IPC for Dowry, Dowry Death and their attempts
- Section 498A IPC for Cruelty in any form.
- Section 354 IPC for Molestation
- Section 354-A for Sexual Harassment.
- Section 354-B IPC for Disrobing.
- Section 354-C IPC for Voyeurism.
- Section 354-D IPC for Stalking.

ii) Crimes under Special Laws

- Immoral Trafficking (Prevention) Act, 1956
- Dowry Prohibition Act, 1956
- Indecent Representation of Women (Prohibition) Act, 1986
- Commission of Sati (Prevention) Act, 1987
- National Commission for Women Act, 1990
- Protection of Women from Domestic Violence Act, 2005
- Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

SIGNIFICANT JUDICIAL PRONOUNCEMENTS ON GENDER EQUALITY

D. Velusamy v. D. Patchaiammal,^{xxxiii}

In the case of The Hon'ble Supreme Court in its verdict gave a wider meaning to the definition of "aggrieved person" under Section 2(a) of the Domestic Violence Act. Hence, the couples in a live-in-relationships who,

- a. Live like husband and wife in the eyes of the society.
- b. are of legal age to marry.
- c. Qualified to enter into a marriage
- d. Voluntarily cohabited for a significant period of time
- e. Must have lived together in a single household.

are bestowed with the benefits of this Act. Therefore, the live-in-relationships who satisfy the above-mentioned conditions shall qualify under the relationship in nature of marriage to get the benefits of Domestic Violence.

Lalita Toppo v. State of Jharkhand & anr^{xxxiv}

In a historic judgement, in this case, The Hon'ble Supreme Court held that maintenance can be claimed under the provisions of the Protection of Women from Domestic Violence Act, 2005 (Domestic Violence Act) even if the claimant is not a legally wedded wife and therefore not entitled to claim of maintenance under Section 125 of Code of Criminal Procedure.

V.D. Bhanot v. Savita Bhanot^{xxxv}

In this case the apex court upheld the Delhi High Court's view that, "even a wife who had shared a household before the Domestic Violence Act came into force would be entitled to the protection of the Domestic Violence Act.

Lata Singh v. State of Uttar Pradesh^{xxxvi}

In this landmark case, unhappy with the petitioner's marriage in a lower cast her parents maliciously filed a false complaint of abduction on the husband's family. Aggrieved by it in order to drop the charges she filed the petition. The Hon'ble Supreme Court in its historic judgement gave women the right to marry any man of her choice.

Laxmi v. Union of India^{xxxvii}

This case was filed by an acid attack victim seeking a regulation on the sale and purchase of Acids. Taking cognizance in 2013, the government included acid in Poisons Act, 1919 making

very stringent policies on the sale of acid and completely illegal to sell acid to a person below 18 years of age.

Kaur v. Kaur^{xxxviii}

The Delhi High Court firmly observed that, “Introduction of constitutional law in home is most inappropriate. It is like introducing a bull in a china shop. It will prove to be a ruthless destroyer of the marriage institution and all that it stands for.”

JUDICIAL TRENDS ON GENDER EQUALITY

The first legal battle for gender justice was fought in the Mathura rape case^{xxxix} wherein a 16-year old tribal woman, Mathura was raped by two policemen in the premises of the police station. The sessions court acquitted the policemen holding that since Mathura had eloped with her boyfriend, she was “habituated to sexual intercourse” and hence, could not be raped. The court went next step when it held that Mathura was of “loose morals” and hence, the sexual intercourse was with her consent. The High Court reversed the judgment. However, Supreme Court set aside the judgment of the High Court and acquitted the accused. It was held that since “no marks of injury” were found on Mathura’s body and since she had not “raised any alarm” for help, she “consented to sex”. This judgment constituted the death of gender justice and stirred up a massive protest pivoting attention on the role of courts in respect of women’s issues.

In due course, with the amendments in Criminal law, the perspective of judiciary towards victims of sexual offences has changed remarkably. It was in the case of *Bharwada Bhogibhai Hrijibhai v. State of Gujarat*^{xl} wherein the Court forecasted an extraordinary sensitivity towards the issue of sexual violence against women. The Court firmly observed that “in the Indian context, a refusal to act on the testimony of the victim of sexual assault in the absence of corroboration is ‘adding insult to injury.’”

The Supreme Court in the *Visakha* case^{xli} dealt with the increasing peril of sexual harassment at workplace which amounted to denial of right to work of a woman. The court recognized that sexual harassment of a working woman at the place of her employment violates Article 14, 15 and 21 of the Indian Constitution. The Court further observed that, “the meaning and the content of the fundamental rights guaranteed in the Constitution of India are of sufficient

amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse. The Court, further, issued certain guidelines to be followed at the workplace in accordance with the international conventions related to sexual harassment until a legislation is enacted for the aforementioned purpose.

In *Anuj Garg v. Hotel Association*,^{xlii} the Supreme Court once again dealt with the issue of women in workplace. It scrutinized and struck down section 30 of the Punjab Excise Act, 1914 which prohibited the employment of women in any part of the establishment in which liquor or intoxicating drug was consumed by the public, rejecting the gender stereotypical argument that the aforesaid legislation seeks to ensure the “security” of women. The Court observed that: “The present law ends up victimising its subject in the name of protection...It is for the court to review that the majoritarian impulses rooted in moralistic tradition do not impinge upon individual autonomy.” Thus, it was a stupendous step on the part of Indian judiciary to promote gender equality in workplace by disregarding gender stereotypes prevalent in the society.

TRANSFORMATIVE CONSTITUTIONALISM AS INSTRUMENT TO PROMOTE GENDER EQUALITY

Transformative Constitutionalism as a concept has been described by Karl Klare as a “long term project of constitutional enactment, interpretation and enforcement committed to transforming a country’s political and social institutions and power relationships in a democratic, participatory and egalitarian direction.”^{xliii} It refers to the aim of the Constitution to transform the Indian society into a society wherein ideals of justice, equality, liberty and fraternity as imbibed in the Preamble, are actually observed and embraced.^{xliv}

The principle proponent of this view in India was Krishna Iyer, J. who, recognizing the need to interpret Constitution as a transformative rather than a rigid document, observed that, “To interpret the Constitution rightly, we must understand the people for whom it is made- the finer ethos, the frustrations, the aspirations, the parameters set by the Constitution for the principled solution of social disabilities.”^{xlv} It is this transformative character of the Constitution that is significant in broadening the concepts of liberty and dignity and thus, the courts can use this concept as an instrument to achieve the goal of gender equality.

Though the recent slew of judgments in *Puttuswamy*^{xlvi}, *Shafin Jahan*^{xlvii} and triple talaq^{xlviii} have progressive impact with respect to gender equality, however, the larger picture still remains bleak. This is because the courts have continuously shied away from their responsibility to observe gender equality which can be observed from the analysis of the forthcoming cases.

In *NarasuAppa Mali*,^{xlix} the constitutional validity of Bombay Prevention of Hindu Bigamous Marriage Act, 1946 was challenged. The petitioner, a Hindu male, contended that though polygamy was abrogated for Hindus, it still prevailed for Muslims which constituted discrimination on the basis of religion under Article 15 and thus, such a practice should be declared void under Article 13(1) of the Indian Constitution. The Bombay High Court was, thereby, posed with the question that “whether personal laws were included within the phrase “laws in force” present in Article 13. The Bombay High Court held that personal laws cannot be subjected to test the adherence to ‘fundamental rights’ as personal laws do not fall within the ambit of the expression “laws in force” under Article 13(1). Though the court upheld the validity of the 1946 Act, however, ironically, the reasoning on which it was based has put women subjected to personal laws beyond the reach of constitutional law and guarantee of equality which is a manifest ignorance of the aspect of gender equality. This ghost of *Narasu Appa* haunts the court till date with respect to the rights of woman.

Even though this view has been challenged in various cases, it was only in the *Sabarimala* case that the court (Chandrachud, J.) exorcised this ghost to a certain extent by holding that “those activities that are inherently connected with the civil status of individuals cannot be granted constitutional immunity merely because they may have some associational features which have religious nature.”¹

Goolrokh case represents a shocking picture. The Gujarat High Court, by a majority judgment in *Goolrokh v. Burjor Pardiwala*,^{li} held that a Parsi woman, by contracting an inter-religious marriage, ceases to be a Parsi and is deemed to acquire her husband’s religion. This judgment represents a low benchmark on the issue of gender justice in India as it based upon the assumption that a woman loses her identity as an individual after marriage. Thus, religion remains a major obstacle in achieving gender equality in India.

Further, in the triple talaq judgment, the judges came up with different reasoning for the unconstitutionality of the practice. On the one hand, two judges observed that the practice was

manifestly arbitrary and therefore, unconstitutional, while on the other, other judges described the practice as un-Islamic and therefore, unconstitutional but none of them held that the practice was violative of Article 15 and 21 of the Constitution. This explicitly forecasts the negligent attitude of the judiciary when it comes to the question of rights of women and observing gender equality in the Indian society.

Significantly, a welcoming step was taken by the Supreme Court in the direction of gender equality in the case of *Joseph Shine v. Union of India*^{lii} wherein the offence of adultery, which was based on the underlying notion of paternalism and parochial mores, was declared unconstitutional. Section 497 was based on the anachronistic presumptions such as “women, like chattels, are the property of men” or “infidelity of men is normal but that of women is impermissible.” However, the Supreme Court rejected the notion of marital subordination and observed that, “Marriage in a constitutional regime is founded on the equality of and between spouses. Each of them is entitled to the same liberty which Part III guarantees.” Recognizing the aspect of transformative constitutionalism, the Court observed that the protective discrimination imbued in Article 15(3) of the Indian Constitution cannot be applied in a manner that establishes paternalistic notions of ‘protection’ which serves to restrict a woman in a cage. Rather the dignity of an individual should be upheld so that women can observe substantive equality, which is an important facet of achieving gender equality.

Therefore, from the above judgment two crucial features of Transformative Constitutionalism emanate:

- a) It advocates for recognition and elimination of all forms of discrimination in order to realize substantive equality;
- b) It provides for realisation of full human potential within positive social relationships – the use of the term “positive social relationship” reflects the presence of the concept even in the private sphere.

Thus, these facets of Transformative Constitutionalism can be used by the courts to ensure the rights of women and realise the goal of gender equality of the country.

CONCLUSION

After an all-embracing analysis of the contemporary scenario it can very well be concluded that the satanic rituals have not yet become the sins of the past but still continues to be a ritual today. The world has united against the extremities against the human body and recognized the Universal Human Rights offering protection not limited by national borders, but have failed to protect women after all these years. The perennial tussle between culture and laws have played a vital role in the suffering of women. The barbaric practices are still offered protection under the shield of culture. The paper elucidated several prevalent practices which have rampantly been infringing women's rights. Obscure legislations have further swelled the distress.

The Role of Judiciary has been significant. The wisdom of the judges and their keen sense of understanding has helped the institution tackle the problem. Through various decisions, the judiciary has established the Recognition of Women Right of Choice and on many occasions have transgressed the borders of personal laws in ensuring natural justice to the aggrieved. But, these stark decisions have not been ever existent. Even the judiciary through the passage of time have evolved itself. The institution had to face major criticism over the judgment in Mathura Rape Case. From not recognizing the ordeal of woman to ensuring protection from sexual predators in the work place and protecting the dignity of the aggrieved woman, the judiciary has come a long way.

The existence of practices like Polygamy and Triple Talaq on the ground of having religious authority proves that Personal laws has been used as a shield against violation of the fundamental rights. The lacunas in the laws have further deteriorated the situation. The Personal Laws have rampantly discriminated women against men of the same religion. The solution to this problem lies in recognizing the constitution as a 'Transformative Document' rather than a rigid one as it can help broaden the concept of Liberty and Dignity. The Judiciary has come forward and recognized Fundamental Rights over Personal Law in the historic Sabrimala Case. In regard to the abysmal condition more such judgements are essential in order to establish the notion of gender equality. The legislature must come forward and minimize the present legal lacunas by formulating the necessary legislation. The Executive of the country must ensure the compliance.

RECOMMENDATIONS: THE NEED FOR SENSITISATION

Law, unequivocally, is a powerful tool to enable social change but it can do little unless societal position, socialization pattern and socio-religious attitude undergo stupendous radical change.

- **Effective legal measures** such as penal sanctions, civil remedies and compensatory provisions should be enacted to protect women against all forms of violence such as female genital mutilation, marital rape and honour killings.
- **Preventive measures** such as awareness and education programmes should be organised to educate the public about the existence and content of social legislations which seeks to protect women from disparities.
- Education on gender equality should be imparted to them by the educational institutions in order to enlighten them on existing patriarchal notions, myths and gender stereotypes and how these perceptions on the status of women interferes with fair and equitable administration of justice.
- Religious institutions should preach equality and inculcate such social and cultural values which views women on an equal pedestal to men in the society.
- Gender sensitive training should be organised for judicial and law enforcement officers and public officials at all levels especially on the nature of violence against women in general and dowry offences, domestic violence, and sexual violence in particular. Social workers and women organisations should participate in such training programmes in order to internalise the gender-based violence by the law enforcement agency and the judiciary so that the criminal justice system can become more responsive and sensitive to the victims of violations.
- **Protective measures** such as medical support, counselling, rehabilitation and other support services should be provided to victims of violence or women who are at the risk of violence.

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