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# Mapping the role of Indian Judiciary in protection of Human rights of women

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## ABSTRACT

*Women in India have been subjected to centuries of oppression and tyranny at the hands of its patriarchal culture. Even after centuries of legislative reforms, incentives and various government schemes assisting women in the country, equality still far cry from reality in the country. This paper seeks to identify the steps taken by the Indian government in pursuance of protecting the human rights of women, its affects in the condition of women in the country and the identifying the reason of such disappointing condition of women rights in the country. Since India is a country of rich heritage, religion, spirituality and culture, it can be safe to assume that somewhere along the way the ancient cultural practices and religious scriptures have been misinterpreted and twisted to fit the convenience of a particular class in order to practice domination over others.*

*Additionally, the paper attempts to map the journey of the development of the concept of human rights of women, the international perspective and instruments dedicated towards the protection of human rights of women and their complementary contribution in the domestic legislation and judicial review.*

*Finally, the research paper seeks to identify the real culprit- lack of legislative reforms and assistance or the twisted cultural and traditional practices which have resulted in such a conflicting and questionable state of human rights of women in the country.*

## I. HUMAN RIGHTS OF WOMEN IN INDIA

*“The fight is not for a woman’s status but for human worth. The claim is not to end the inequality of women but to restore universal justice. The bid is not for loaves and fishes for the forsaken gender but for cosmic harmony, which never comes till woman comes.”<sup>2</sup>*

The evolution of the status of women in India has been a continuous process of challenges, disappointments, and snail-paced development and upliftment throughout history. Women

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have enjoyed theoretical importance (compared and described as goddesses in many Hindu cultures) but in practice, as evident, she has been assigned a subservient position than a man. This conflicting status can be said to be a contribution of the paradoxical statements in different religious texts. It shall be wrong to claim that the Indian women were always deprived of their basic human rights and dignity. The scenario was starkly different during the 'Vedic period' i.e., between 2500 B.C- 1500 B.C During this period the women were given the same status and respect as their counterpart Gender - man. They had an honourable status in society. They were not in any way secluded by men and equally participated and contributed in public life. This is generally upheld on the basis of the Instances recorded in the religious texts Like Upanishads, Smritis, Epics like Mahabharat, Ramayana And Other Dharma shastras.

The sharp change in behaviour towards women was observed during the 'post-Vedic period' i.e., during the time period of 1500 B.C to 1800 A.D, although it is difficult to pin the exact point at which such deterioration in the status of women was observed, however, the reasons for the same can be laid down as under:

- i) Imposition of Brahminical rules and code of conduct
- ii) Rigid restrictions imposed by the caste system

Further, the contradictory pronouncement recorded in the Manu smriti is also said to be one of the instrumental factors which may have contributed to such degradation and outrageous deterioration of the status of women in the Indian society. After the gallant tribute of *yatra naryas tu pujoyante ramante tatra devtah* (iii. 56: Gods choose to reside where women are respected) comes the chilling judgement *na strisvatantrayam arhati* ( ix. 3: Women do not deserve to be free).<sup>3</sup> It can be inferred from the above that changes in the dynamics of the functioning of the society at that time and the changing societal positions of men and different classes may have influenced such a change in the status of women in the post Vedic period, or it can be perceived to be the initial signal of dehumanization and disregard for the womankind, at that pointy in time . It is however pertinent to note that since such a dramatic change in the scenario and status of women during the post Vedic stage, women, at present have failed to completely free themselves of the barbaric patriarchal clutches of our society.

Women struggle for their basic human rights and fundamental rights in our country, today as well. The exploitation, abuse and oppression of women by men have been going on for centuries in India which has resulted in normalization and acceptance to such treatment by

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<sup>3</sup> Shruti S Pradhan, *Decoding Manu's Eulogy and Censure of Women*, JSTOR 76, 137 (1995)

not only men but women as well, henceforth, any rebellion towards such behaviour is resisted by men as well as some sections of the women population as well. Even though women now have made their mark in every field possible, there still exists an invisible veil of unfairness, exploitation and an overall resistance towards the upliftment of women. Turning our attention to the status of women at the international front it can be comfortably concluded that the situation is not much different in other countries as well. Therefore, the fight for equality and protection of human rights is not fought by our Indian women alone, but the womankind worldwide. The changing scenario of the status of women can be termed as a pseudo development as even though women have managed to reach great heights, they are still under the clutches of the patriarchal mindset that the world functions on. Movements like #metoo enumerate the same, where women of all walks of life came forward with the stories of sexual harassment. Sexual harassment, rape etc are only one facet of the problem. Women face discrimination in the areas of employment, education, reproduction rights, marriage rights, property rights, health-care and in all walks of economic and social life.

Women rights are human rights. This was duly affirmed by the final document of the fourth UN world conference held in Beijing in 1995. The conference called for the integration of women's human rights in the works of different human rights bodies of the United Nations. Additionally, it also called for eradication of any conflicts which may arise between the rights of women and the harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.<sup>4</sup> The United Nations Convention on the Elimination of Discrimination Against Women defines the term "discrimination against women" as

*'Any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in political, economic, social, cultural, civil or any other field.'*<sup>5</sup>

This status was achieved after a long struggle. The struggle which began in the 19th century was successful in providing legal equality to women; however, this did not ensure the eradication of women subordination. India has granted equal status to women under the Indian constitution under the purview of Article 14, which lays down that "*the state shall not deny any person equality before the law or equal; protection of laws within the territory of India.*"

This proves that women have been given an equal status in India and violation of the same

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<sup>4</sup> H.O Agarwal, Human rights, 115, Central Law Publications, Allahabad, 16 Edn., 2018

<sup>5</sup> Article 1, CEDAW, United Nations, Treaty series 1249, 135

shall be a violation of her fundamental and human rights. Further, Article 15 provides that every female citizen has a right to access all the public places which are wholly or partly maintained by state funds. Article 15(3) also provides that the state may make special provisions for women. Article 16 provides that there shall be equality of opportunity for all citizens (including women) in matters relating to employment or appointment to any office of the state. In consequence to these constitutional provisions India has enacted a number of other legislations to ensure that the equal status of women is ensured in India, for instance the constitution was duly amended in 1992 to reserve thirty three percent of the seats in their favour in panchayats<sup>6</sup> and municipalities<sup>7</sup>. This amendment is regarded as one of the most crucial and positive steps towards the socio-economic empowerment of women. The constitution has also made it a duty of every citizen to renounce practices derogatory to the dignity of women<sup>8</sup>. This directive principle of state policy even though not enforceable can act as a reasonable restriction of the fundamental rights. In spite of all the constitutional safeguards and additional steps taken by our Indian government in pursuance of safeguarding the human rights of women, the crimes against them has become a common place and is at a constant increase. While both women and men suffer from specific human rights abuses, much of the human rights violations are gendered, which means that the ways in which the women are tortured, imprisoned, forced into bonded slavery, suffer exploitation and other violations is a result of the fact of her being a female.

Radhika Coomaraswamy (1992) points out that women are vulnerable to various forms of violent treatments for several reasons, all based on gender:

1. Because of being a female, a woman is subjected to rape, genital mutilation, female infanticide and sex related crimes. The reason relates to society's construction of female sexuality and its role in societal hierarchy.
2. Because of her relationship to a man, a woman is vulnerable to domestic violence, dowry murder, and sati. This relates to society's concept of a woman as a property and dependent on the male protector, father, husband, son etc.
3. Because of the social groups she belongs to, in the times of wars and riots. On the other hand, ethnic, caste or class violence, a woman may be raped and brutalized as a means of humiliating the community to which she belongs. This also relates to male perception of

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<sup>6</sup> INDIA CONST. art. 243D

<sup>7</sup> INDIA CONST. art. 243 T cl. 2

<sup>8</sup> INDIA CONST. art. 51-A cl. (e) 6

female sexuality and women as property of men.<sup>9</sup>

Hence, from the violations and crimes against women have to be studied in regard with the societal constructs and concepts of gender, and the instances and the areas which trigger such sense of entitlement in men resulting in these gross violations.

## II. WOMEN RIGHTS AS HUMAN RIGHTS

Three conferences; sponsored by the UN to acknowledge the international women's right decade (1976 to 1985) , Mexico city 1975, Copenhagen 1980 and Nairobi 1985 and fourth world conference on women's right in Beijing 1995 have contributed immensely in addressing and raising international awareness and acknowledgement of concerns with respect to the women rights for the day have also played an instrumental role in providing groundwork for important links between national women rights movement and international community.

The 1995 Beijing conference called for the integration of women's human rights in the work of different human rights bodies of the united nations. The conference also called for the eradication of any conflicts which may arise between the rights of women and harmful effects of certain traditional or customary practices, cultural prejudices and religious extremism.

United nations general assembly in 2000 convened a special session on women in 2000- *Gender equality, development and fees for the 21st century* to assess the progress on women's issues since the waiting conference in 1995, also regarded as Beijing + 5, renewed the Beijing declaration and platform for action adopted at the Beijing conference on women in 1995. At the Beijing + 10 review at the commission on the status of women in 2005, it was made evident that gender equality and human rights have to be placed at the centre of human development and human security. Many reports of numerous bodies of the United nations working towards women empowerment and protection of human rights have stated that there has been a significant improvement in the fields of education, poverty reduction at women's health and participation in public life.

However, according to June Zeitlin, executive director, women's environment and development organisation, realities are different. The WEDO report on the status of women in 150 countries concludes that many women across the world are words of today then there were 10 years ago and accuses the government of failing to keep their pledge to achieve

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<sup>9</sup> Dr. Bina Rai "Violence Against Indian Women and Human Rights", IOSR Journal of Humanities and Social Science 20, 2015

equality of the sexes<sup>10</sup>.

A number of factors have prevented women from equal enjoyment of human rights.

Firstly, human rights are described as the rights that everyone has and everyone possesses equally by the virtue of their very humanity. The problem with the basis of a common humanity is that it assumes common experience and common needs. The emphasis of women's enjoyment of the human rights by virtue of their 'sameness' with men excludes women's need for specific rights or other specific application of human rights to take account of their biological differences and the gender construct of their role in society<sup>11</sup>.

Secondly, it is the enforcement of 'public' and 'private sphere in international law and national law. International human rights law is meant to mediate the relationship between the 'governing' and the governed'. The governed, however, traditionally occupy the public sphere of society; the political, legal, social, and economic institutions populated largely by men and women are traditionally enclosed within the private sphere of the home and family.

The public sphere assumes a public sphere of rationality, order and political authority in which political and legal activity takes place and the private sphere assumes a subjective sphere in which regulation is not appropriate or differently ordered. The public is often associated with the state and private with domestic or family life. Therefore, women's actions, activity and importance are confined within the boundaries of domestic and family life.

Thirdly, the UN bodies responsible such as commission on human rights and commission on status of women have failed to adequately address the human rights of women.

Fourthly, international instruments dealing with women have weaker implementation obligations and procedures while the institutions designed to draft and monitor them are under-resourced and their roles often circumscribed compared to other human rights bodies.

Fifthly, the widespread practice of states in making reservations to fundamental provisions in instruments give scope to states not to fulfil their applications; their initial focus was only on the legal equality for women; they ignore gender specific issues.

Lastly, the UN bodies believed that the states are not uniquely responsible for the provision of social and economic rights and obligated to work only for their gradual and incremental implementation leading to denial of rights to women.

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<sup>10</sup> H.O Agarwal, *Human rights 115*, Central Law Publications, Allahabad, 16 Edn., 2018

<sup>11</sup> International Justice Resource centre, *Women's Human Rights*, (Mar. 12, 2020, 4:09 PM) <https://ijrcenter.org/thematic-research-guides/womens-human-rights/>

Feminist across the world have criticized and held strong opinions against the manner of implementation and realisation of human rights of women in the countries across the world through international law enforcing agencies and instruments.

We, as a community, are under the impression that the position of women in today's society is better than it was years ago however reviewing the various reports of crime violations and exploitations faced by women and girls in India as well as various countries suggest otherwise.

The doctrine of statism according to which state sovereignty is a fundamental concept of international law has resulted in ignoring the rights and interest of women within the state. The international law provisions of various bodies of the United Nations working towards protection of human rights have one thing in common: they do not hold the state parties in contempt of the violations of the regulations and solutions to further the protection of human rights.

Additionally, there is a lack of representation of women in international relations that is, in high positions in international organisations in diplomatic services and as head of the states therefore this under representation the law-making body consists of men - the section of humanity, which from the time immemorial has been the reason of subordination, exploitation, violation and abuse of the women.

Further the doctrine of statism, which governs the international laws have contributed in exaggerating the violation of human rights of women, why not making the state parties liable of the failure to implement the necessary provisions for the betterment of women rights consequently results in unsupervised nation of the individuals within that state which contribute towards such abuse and exploitation.

Therefore, it is evident that to improve the status quo of our women there is a dire need to bring in the change in the very basic nature and procedure of setting up international laws and international bodies.

### **III. INTERNATIONAL PERSPECTIVE**

The establishment of the united nations in 1945, was an important milestone towards recognition and protection of women rights at an international platform. The United Nations, since its establishment has actively worked towards the advancement of status of women in the international community by setting up various bodies contributing towards the same. Following are the bodies, conventions and commissions which have played an instrumental



role in furtherance of the visions of numerous activists, scholars and women fighting for their rights<sup>12</sup>.

### **Declaration on Protection of Women and Children In emergency And Armed Conflict (1974)**

The declaration was adopted by the general assembly resolution 331 (XXIX) in 1974 with an objective to secure the rights of women and children in times of emergency or any situation of conflict as a progressive step for security of women and children. In the times of war and conflict women and children are targeted and exploited because of being the weaker section. The declaration considered as all forms of repression and cruel inhuman treatment of women and children including imprisonment, torture, shooting, mass arrests, collective punishment, destruction of dwellings and forcible evictions committed by belligerents in the course of military operations and occupied territories as criminal. Food medical aid shelter etcetera are considered as inalienable rights which are to be granted to women and children who are in circumstances of emergency and armed conflict in the struggle for peace self-determination national liberty and independence or who live in occupied territories.

### **Convention on The Elimination of All Forms Of Discrimination Against Women (CEDAW), 1979**

CEDAW, was established with an intent to identify and abolish the discriminatory practices against women worldwide and establish a uniform set of protocols and standards according to which all the ratifying parties are to base their domestic policies on. The UN general assembly adopted the convention on the elimination of all forms of discrimination against women in 1979 which is also referred to as international bill of rights for women. The preamble of CEDAW recognises the existence of extensive discrimination against women and sizes that such discrimination is violative of the principles of equality of rights and human dignity.

Discrimination is defined under the convention as “.... *Any distinction, exclusion are restriction made on the basis of sex which has the effect of purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on the basis of equality of men and women of human rights and fundamental freedoms in the*

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<sup>12</sup> United Nations, Declaration on Protection of Women and Children In emergency And Armed Conflict (Mar. 13, 2020, 11:00 AM), [https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.19\\_declaration%20protection%20women%20armed%20conflict.pdf](https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.19_declaration%20protection%20women%20armed%20conflict.pdf)

*political, economic, social, cultural, civil, any other field*<sup>13</sup>”

### **Optional protocols to CEDAW**

The general assembly on October 7 1999 adopted the optional protocol to the convention on the elimination of all forms of discrimination against women which enable the victims of sex discrimination sexual exploitation and other abuses to approach the committee e for relief and investigation against state parties to the protocol. Therefore, the protocol allowed the committee to have the authority to investigate and bypass the state parties in order to address the grievances of the affected individual.

The protocol under Article 2 provides that individuals or groups of individuals, in writing, can communicate to the committee. Before the committee can take any action for redressal of grievances the committee has to first determine that such individual or group of individuals has exhausted all available domestic remedies.

Once a complaint id is accepted and admitted by the committee, the state party against whom the first complaint has been made is given a period of 6 months is granted to provide a written report enumerating its response and the remedies taken to address the allegations.

The protocol also has procedure in cases where is *Suo moto* cognizance of any valuation of the provisions of the convention is communicated to the committee through a reliable source.

Henceforth the optional protocol to CEDAW allows the individuals subjected to discrimination and other abuses right to communicate to the committee.

In **Angela Gonzalez v Spain CEDAW W/C 58/D/47/20120**, the complainant, a mother of one daughter Andrea, was married to One F.R.C. her husband constantly subjected her with domestic violence and abuse. Further, her daughter was also exposed to the violent and toxic behaviour of her husband. Ms Angela always attempted, through local authorities, to keep F.R.C away from her daughter and herself. However, in 2003 F.R.C murdered Andrea and committed suicide. To this extent, the domestic law enforcement agencies of Spain failed to provide any substantial relief and justice to Angela.

She claimed to be a victim of a violation by Spain of articles 2(a)-2(f)<sup>14</sup>, 5(a)<sup>15</sup> and 16<sup>16</sup> of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>17</sup>.

Among other things, she asserted that:

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<sup>13</sup> United Nations, Convention on Elimination of all forms of Discrimination against Women, (Mar. 13, 2020, 2:00 PM), [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-8&chapter=4](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8&chapter=4)

<sup>14</sup> UN General Assembly, Convention on the Elimination of All Forms of Discrimination against Women, (Mar. 17, 2020, 10:30 AM), <https://www.refworld.org/docid/3b00f2244>

1. the authorities failed to act with due diligence to prevent, investigate, prosecute and punish the known violence experienced by Angela and Andrea and the murder of Andrea.
2. the authorities failed to provide an effective judicial response to Andrea's murder and appropriate redress for the damages Angela suffered through the State Party's negligence
3. the State Party had inadequate protections against domestic violence at the relevant time and that victims continued to experience discrimination
4. stereotyping by the authorities meant that, *inter alia*, they: did not investigate Andrea's situation as a direct and indirect victim of violence; prioritised her husband's wishes over Andrea's rights and best interests; and questioned Angela's credibility
5. The authorities discriminated against Angela in the decisions on her separation and divorce, including by not taking the violence into account and ensuring F.R.C. paid child support<sup>18</sup>.

The state parties contested that the communication by Angela was unfounded, on the grounds that Angela had failed to exhaust the domestic measures available to her, specifically by pointing out judicial error in front of the Supreme court. Secondly, that the complaints made by Angela were not substantial as the crimes were committed by F.R.C and not the Spanish authorities. Thirdly, the state maintained that it cannot be held liable for non-compliance with the provisions of the optional protocol, as the event occurred before the optional protocol came into force.

Committee concluded that the violence committed by F.R.C. against Angela and the murder of Andrea was foreseeable. It noted, for instance, that F.R.C.: committed numerous acts of violence against Angela, which Andrea often witnessed; was not held legally liable for ignoring court protective orders; and had been diagnosed with an "obsessive-compulsive disorder with aspects of pathological jealousy and a tendency to distort reality which could degenerate into a disorder similar to paranoia". It also noted a social services report regarding

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<sup>15</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, (Mar. 17, 2020, 10:48 AM) <https://www.refworld.org/docid/3b00f2244.html>

<sup>16</sup> UN General Assembly, *Convention on the Elimination of All Forms of Discrimination against Women*, (Mar. 17, 2020, 11:09 AM), <https://www.refworld.org/docid/3b00f2244>.

<sup>17</sup> CEDAW, United Nations, Treaty series 1249

<sup>18</sup> *Angela Gonzalez v Spain* CEDAW W/C 58/D/47/20120, (Mar. 17, 2020, 3:00 PM) , <https://opcedaw.wordpress.com/tag/angela-gonzalez-carreno-v-spain/>

the need for continuous monitoring of visits between F.R.C. and Andrea. According to the Committee, the State Party's due diligence obligations were not met, since no reasonable steps were taken to protect Angela and Andrea against the violence and, in Andrea's case, murder. Moreover, the State Party had not investigated whether its authorities failed to protect, or were negligent in protecting Angela and Andrea against violence<sup>19</sup>.

Further, the committee recommended that the state should look into the domestic mechanisms of law enforcement to determine whether there has been failure to protect the rights and grant protection to Angela and her daughter. Further, it also recommended that, the instances of domestic violence should be kept in consideration while granting visitation rights and that the authorities should be prompter and more sensitive towards the complaints of domestic violence and lastly by providing the administration and the legal farmers towards gender sensitization and stereotyping and the crime of domestic violence.

**X and Y v Georgia 2015 CEDAW C/61/D/24/2009**, is another case, which highlights the negligence and lack of due diligence by the state party to protect the woman from domestic violence. The Committee came to the conclusions that Georgia had failed to enact criminal law provisions to effectively protect women and girls from physical and sexual abuse within the family, provide equal protection under the law to victims of domestic violence and sexual abuse, and protect them from domestic violence (violations of Articles 1<sup>20</sup>, 2(b)-(f) and 5(a) of the CEDAW Convention). The Committee also cited the state's due diligence obligations (under Articles 1 and 2 of the Convention read in conjunction with the Committee's General Recommendation No. 19 on violence against women) to prevent, investigate, and punish acts of domestic violence by non-state actors

In the case of **A S v Hungary Communication No 2 of 2003 CEDAW**<sup>21</sup> the committee based on its past experiences with the similar cases of domestic violence against women held that, the state of Hungary was not equipped through both its legal and institutional frameworks to maintain the international standards which is expected to comprehensively protect, and provide effective support to the victims of domestic violence. In pursuance of which it laid down specific recommendations and guidelines for the state to provide better care and protection to the victims of domestic violence which include;

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<sup>19</sup> ANGELA GONZALEZ V SPAIN, *Supra*, note 17

<sup>20</sup> X and Y v Georgia 2015 CEDAW C/61/D/24/2009, (Mar. 15, 2020, 1:15 AM)  
<https://digitallibrary.un.org/record/837725?ln=en>

<sup>21</sup> A S v Hungary Communication No 2 of 2003 CEDAW, (Mar. 18, 2020, 7:06 PM)  
[https://www.ohchr.org/Documents/HRBodies/CEDAW/Jurisprudence/Case4\\_2004.pdf](https://www.ohchr.org/Documents/HRBodies/CEDAW/Jurisprudence/Case4_2004.pdf)

- (a) Respect, protect, promote and fulfil women's human rights, including their right to be free from all forms of domestic violence, including intimidation and threats of violence;
- (b) Assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women
- (c) Take all necessary measures to ensure that the national strategy for the prevention and effective treatment of violence within the family is promptly implemented and evaluated;
- (d) Take all necessary measures to provide regular training on the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol thereto to judges, lawyers and law enforcement officials.
- (e) Implement expeditiously and without delay the Committee's concluding comments of August 2002 on the combined fourth and fifth periodic report of Hungary in respect of violence against women and girls, in particular the Committee's recommendation that a specific law be introduced prohibiting domestic violence against women, which would provide for protection and exclusion orders as well as support services, including shelters
- (f) Investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards;
- (g) Provide victims of domestic violence with safe and prompt access to justice, including free legal aid where necessary, in order to ensure them available, effective and sufficient remedies and rehabilitation.
- (h) Provide offenders with rehabilitation programmes and programmes on non-violent conflict resolution methods.

And directed the state to provide a report within six months to map the progress and the steps taken to inculcate the recommendations of the committee.

## **UN WOMEN**

In July 2010 the United Nations General Assembly established UN women, an entity for gender equality and the empowerment of women. The UN member states took this historic step in accelerating the organization's goals on gender equality and empowerment of women the creation of UN women came about as a part of the UN Reform agenda bringing together resources and man days for Greater impact. the aim of UN women is too much and carry forward the important work of four previously distinct part of the UN system which exclusively working on gender equality and women's empowerment,

- Division For advancement of women (DAW)

- International research and training institute for advancement of women (INSTRAW)
- Office of special Advisor on gender issues and advancement of women (OSAGI)
- United nations development fund for women (UNIFEM)<sup>22</sup>

The United Nations has recognised that even after numerous efforts the status of women and the gender discrimination and inequality faced by them has not been adequately dealt with. Henceforth, the main objective of UN Women is to work towards elimination of discrimination towards women and girls, work towards their empowerment and to establish equality between men and women in all aspects of life for establishment of a positive attitude towards the issues of human rights and humanity in general.

### **First World Conference on Women, 1975**

The commission on the status of women called for the organisation of the first world conference on women to coincide with international Women's year. The world conference of the international Women's year was subsequently held in Mexico City; 133 governments participated, while 6000 NGO representatives attended a parallel forum the international Women's year Tribune. The conference defined a world of action for implementation of the objectives of the international Women's year which offered a comprehensive set of guidelines for the advancement of women through 1985<sup>23</sup>.

### **Fourth World Conference on Women, Beijing, 1995**

The Fourth World Conference also known as “The fourth world conference on women: action for equality development and peace” was convened by united nations from 4th September to 15 September 1995 Beijing, China.

This was a milestone step in recognising women rights as human rights. The most important result of this conference was the Beijing declaration and the platform for action. The platform for action identified twelve areas of concern which are important to achieve social, political, economic and cultural equality in security among all people. The areas which were identified include poverty, education, health, violence, armed conflict, the economy, power and decision-making mechanism for women's advancement, women's human rights, mass media the environment, and the girl child.

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<sup>22</sup> UN Women (Mar. 15, 2020, 10:57 AM), <https://www.unwomen.org/en>

<sup>23</sup> UN Women (Mar. 16, 2020, 12:08 PM) World conferences on women, <https://www.unwomen.org/en/how-we-work/intergovernmental-support/world-conferences-on-women>

The declaration emphasizes on further advancement of the status of women and specifically called for recognition and formation of the right of all women to control all aspects of their help in particular there on fertility as basic to their empowerment. Further it emphasized on equal access to equal treatment of women and men in education and health care and enhancement in women's sexual and reproductive health as well as education.

The general assembly decided to hold a 23rd special session to conduct a five-year appraisal and review of the implementation of the Beijing platform for action, and to consider future actions and initiatives. The subsequent review and appraisal of the Beijing platform for action was held in the year 2005, 2010 and 2015<sup>24</sup>.

#### **IV. PROBLEM**

India, as a country has always experienced a patriarchal way of life. It has seen male domination in society, throughout history. Even though it has been observed that, women enjoyed a fairly equal and important position in the society in the early Vedic times, the same cannot be implied for the subsequent times lines thereafter. The literatures of philosophers and scholars like Manu and Tulsidas, wherein the women have been compared to chattels and have been degraded and dehumanized to such an extent that, the sole purpose of their existence was boiled down to being objects of sexual pleasures for men and a medium of reproduction. These ideas were further reflected by the Brahmanical class, which was regarded as the most superior and scholarly class of the society, in the post Vedic age. The constant reinforcement of such derogatory ideals and standards of treatment of women led to two catastrophic outcomes; the birth of toxic masculinity and the exploitation and subordination of women. The cultural and religious norms have given rise to such fierce and rigid standards of concepts of gender and gender roles in the country, that even after legislative reforms to the policies and laws to empowerment of women, they are still subjected to discrimination, violence and exploitation at the hands of the male, who has been fed toxic concepts of masculinity. The concepts of masculinity and femininity took birth in the era when the society was agrarian. The heavy lifting and rigorous physical activities like hunting and ploughing required the strength of a male body, as there was a lack of modern-day technologies and tools for agricultural processes. And consequently, the women were assigned the tasks of household care and childcare. The division of labour at those times were on the basis of the biological traits and however as the society transitioned from the agrarian way of life to industrial and post-industrial society, those responsibilities and domestic roles

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<sup>24</sup> id. at 3

which got assigned at the agrarian times, did not lose its significance. In modern day society, and the advancement of technology there are hardly any fields where the task of any occupation requires unparalleled strength or stamina. Both men and women are equipped to apply themselves equally in a similar scenario of jobs. But, the biologically inspired distribution of labour failed to evolve with the changing dynamics of the society, rather males became to be associated with traits like physical appearance of tall and muscular, emotionally men became to be regarded as inexpressive, aggressive, flamboyant and egocentric, whereas women came to be regarded as fragile, emotionally mature, sympathetic, caring, nurturing but most importantly submissive, soft spoken and obedient. This resulted in an undue dominance of the males on the females. Further, such notions of what constitutes true masculinity gained rigidity as the times changed, so much so that any man who deviates from such norms of masculinity is outcast, exploited and violated by the “men”. The pressure to fit into the mould of masculinity results in added aggression and frustration to the psyche of the men who struggle to identify themselves as men in accordance with the decided definition. The result of such toxic psychological effects of the gender norms have given rise to gender specific crimes against women. Not only that, the women are denied basic human rights like equality, dignity, liberty and life. The constant belittling and dehumanization of the womankind has led the society to treat women as a class subservient to men. Even though the United Nations has over time taken steps to identify the root of the problem and taken requisite policy steps with an aim to implement an internationally acknowledged and approved uniform set of rules and regulations and policies to enable the women worldwide to enjoy the basic human rights which they are entitled to, the state parties have miserably failed, to realise and implement such changes in policies within their domestic legislation. However, if we look closer to home, India has over time managed to implement legislations for the upliftment of the women in the country. It has identified numerous aspects where women face discrimination, injustice and exploitation, but the question here arises is, why are the women still facing abuse in almost every aspect of their daily lives. The problem which arises is not the lack of statutes and legislations in favour of women, the problem is the miserable implementation of the same. The channels which help the women to reinforce their rights are not available to women of every walk of life. The legislation is of no importance if the target population is unable to gain access to the same. The interpretation and the stance of the Indian judiciary has always been pro women. However, the limitation here still remains the same, the courts shall only be able to enforce rights and grant relief to those victims who approach the courts. The time lapse and the delayed relief however remains a drawback of the Indian judicial



system. The one thing which has to be understood here, is that the number of legislations and their implementation would not matter, if the attitude of the society towards women fails to change. **The Criminal Amendment Act, 2013** implemented more water tight and stringent changes to the criminal justice legislations in the country, henceforth broadening the scope of its implementation, however crimes of sexual harassment, rapes, molestation etc did not cease to exist. Women still faced these violations to their person, not because of the absence of any legal remedy but because of the attitude of the men. Even if women are given equal opportunities with respect to employment and economic independence, they face harassment and discrimination at the place of work. To combat that, sexual harassment at workplace (prevention, prohibition and redressal) act, 2013 was implemented to give force to the guidelines by the supreme court in the case of **Vishaka v State of Rajasthan AIR 1997 SC, 3011**. The legislation provided women a platform to take a step against discrimination and sexual harassment, but the implementation of the Act did not actually stop the discrimination and sexual harassment, rather many companies became reluctant to employ women to avoid such harassment issues. Additionally, as the crimes and injustice against women increase, families, parents or guardians place restrictions on the females with respect to their employment and movement, this time not because of the discriminatory mindset, but as a means to protect the women from such crimes. This in turn results in reinforcement of the same restrictions and limitations on the women, and the same gender norms which the women have been trying to fight for centuries. Therefore, unless and until the society chooses to break free of the gender norms which have been ingrained through centuries of rigid, biased, unjust and discriminatory cultural and religious standards the fight for protecting and guaranteeing the human rights to women shall never be successful and complete in its true accord.

## **V. DOMESTIC IMPLEMENTATION OF HUMAN RIGHTS OF WOMEN**

India has always maintained the view of actively protecting the human rights of every citizen, consequently it has consistently supported the purpose and objectives of the UN for protection of human rights by extending international support and cooperation towards implementing and releasing the provisions of human rights protection within the country.

India also played an active part in drafting the universal declaration of human rights and informed, used and implemented the same principles within the concept of fundamental rights in its own constitution. India has always viewed and supported the United Nations endeavours in promotion and protection of human rights. Apart from UDHR India has

ratified the following treaties;

- International convention on the elimination of racial discrimination (ICERD) on 3 December 1968,
- International covenant on civil and political rights (ICCPR) on 10 April 1979,
- International covenant on economic, social, and cultural rights (ICESCR) on 10 April 1979,
- Convention on the elimination of discrimination against women (CEDAW) on 9 July 1993,
- The convention on the rights of the child (CRC) on 11 December 1992<sup>25</sup>.

By ratifying the above-mentioned treaties India has acknowledged the obligation to implement the treaty obligations within the domestic instruments of application, in order to fulfil its duty to promote, protect and enforce human rights. Consequently, India is under the obligation to submit periodic reports to the relevant treaty bodies to provide relevant information with respect to the resonant measures that it has taken to give effect to the provisions of the treaties.

The UN treaties are specially aimed at protecting the rights of women. To that India, India has not been able to effectively secure the same through its domestic implementation. To assess the condition and status of women and their rights in the country the special rapporteur on violence against women, Rashida Manjoo visited India on 22 April - 3 may, 2013. She noted that there exists a wide discrepancy between reality and theory. According to her observation of the situation in India, women here, face several forms of violence in their daily lives, which include domestic violence, dowry deaths, honour killings, witch hunting, sexual trafficking, sexual violence, rape and maternal mortality. The women are denied social, political, cultural and economic rights, because they are considered the weaker section of the society<sup>26</sup>.

The reason behind such gross negligence, violations and denial of rights of women stems from the strong cultural and social norms which have been prevalent in the country from centuries. The cultural norms place women below men in the social structure. The toxic and ingrained patriarchal practices and concept of masculinity. This results on women facing

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<sup>25</sup> United Nations Human Rights Office of the High Commissioner, "View the ratification status by country or by treaty: *Ratification Status for India*, (Mar. 23, 2020, 8:08 PM), [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=EN)

<sup>26</sup> Rashida Manjoo, Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to India, (Apr. 5, 2020, 12:33 AM), <http://undocs.org/en/A/HRC/26/38>

violence and discrimination “from the womb to tomb” these norms are responsible for the gender-based crimes and exploitations women face in the country during their lifetime. In 2005, the Indian government, in its reports to CEDAW pointed out that the strong traditional, cultural and religious systems play an important role in women’s life in India<sup>27</sup>.

Due to the strong hold and sway of traditional and religious practices in country, men from the very beginning are taught and treated to be superior to the women, the women in contrast are taught to be tolerant, submissive and self-sacrificing from the childhood, this leads to violation and unlawful and discriminatory treatment of women in the country.

## VI. INDIAN JUDICIARY AND WOMEN RIGHTS

The universal declaration of human rights enumerates various civil, political, social and economic rights which every human being is entitled to. Part III of the Indian constitution enshrines and guarantees various civil and political rights as fundamental rights, whereas social, cultural and economic rights are guaranteed under part IV. Article 13 lays down that all the statutes and legislations in the country should be in concurrence with the provisions of the Indian constitution.

A sole guarantee of fundamental rights is not an adequate means to ensure non violation of the rights, it has to be coupled with an assurance of free enjoyment of those rights. Therefore Article 32 of the constitution guarantees a right to constitutional remedies, a necessary instrument in realization and enjoyment of rights.

Indian judiciary is the sole guardian of the human rights of people and in extension the human rights of women. It not only effectively protects and implements the rights expressly granted and guaranteed in the constitution but also widens their scope through judicial interpretations. Hence, the judiciary not only plays an important part in guaranteeing and protecting the enumerated rights, but also protects those rights which are not substantively expressed in the constitution. For instance, the supreme court in the case of **Maneka Gandhi v Union of India AIR 1978, SC 597**<sup>28</sup>, widened the scope and meaning of the term “right to life and personal liberty” to include other unenumerated rights such as a right to live with human dignity.

The Indian judiciary has been proactive towards the plight of women in the country. The

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<sup>27</sup> The Committee on the Elimination of All Forms of Discrimination against Women, “Combined Second and Third Periodic Report of State Parties India, (Apr. 6, 2020, 10:04 AM), <https://www.refworld.org/country/,,CEDAW,,IND,,,0.html>

<sup>28</sup> Law Times Journal, *Maneka Gandhi vs Union of India*, (Apr. 12, 2020, 12:23 PM), <http://lawtimesjournal.in/maneka-gandhi-vs-union-of-india/>

courts have played an active part in delivering landmark precedents to cater to the harassed and tortured women's rights.

The supreme court has, in the case of chairman, railway board, has duly observed that the principles enshrined in the universal declaration of human rights, as and when needed shall have to be read into the provisions of the domestic jurisprudence. Which indicates the intention of the judicial system to incorporate the human rights standards for women at the international platform, into the domestic laws and their interpretation.

The supreme court in the case of **Chandra Prakash kewalchand Jain v State of Maharashtra AIR 1990, SC 658<sup>29</sup>**, has duly observed that;

*“when the respect of womanhood in our country is, on the decline, unfortunately. In our country, standard of decency and morality in public life is now the same as in other countries of the world, so the decency and morality in public life can be promoted and protected if only the courts deal strictly with those who violates the societal norms”*

## VII. EQUALITY AND INDIAN WOMEN

As discussed in the preceding chapters, the Indian constitution guarantees equality to women, however the constitutional protections are often eclipsed by the harsh realities of the country owing to the rigid cultural norms. The Indian judiciary has made a fair attempt to fill the gap between the ground reality and the protections of law through its many judgements. Further, the legislation and the judiciary have been working together to identify and build a strong system of legal framework to uphold the equality and dignity of women, which have been denied to them for centuries.

The supreme court on the basis of the constitutional provisions of equality and right against discrimination have, in many judgements attempted to uphold the same

In the case of **C.B Muthamma v. Union of India AIR 1979, SC 1868<sup>30</sup>**, a question was raised with respect to the validity of the Indian foreign services rules, 1961 which stated that no married women shall be entitled as a right to be appointed to the services. Further a woman member of the services shall have to obtain written permission from the government before solemnization of her marriage and if at any point the government feels that her marital duties as a wife hinders her work commitment, then such woman member shall be required to resign. The supreme court held very clearly that the provision of the rules, which require a

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<sup>29</sup> Delhi Law Academy, Chandra Prakash kewalchand Jain v State of Maharashtra (Apr. 9, 2020, 9:13 AM), <https://www.delhilawacademy.com/state-of-maharashtra-v-chandraprakash-kewalchand-jain/>

<sup>30</sup> Indian Kanoon, C.B Muthamma v. Union of India (Apr. 11, 2020, 2:09 PM) <https://indiankanoon.org/doc/1339558/>

prior permission by a woman to enter into matrimony and denial of right to be appointed on the grounds of the candidate women being married is highly discriminatory against women. The court also held the view that, an equal opportunity in matters with respect to employment does not mean that the difference and the limitations of both sexes can be ignored in different situations and opportunities. In other words, the court was of the view that both the genders are different naturally, and have different emotional, physical and mental capabilities as per their anatomy, the equality in opportunity should not mean that such differences should not be acknowledged or respected.

Hon'ble Justice V.R Krishna Iyer and P.N Singhal observed that

*“This writ petition by Ms Muthamma, a senior member of the Indian foreign service, bespeaks a story which makes one wonder whether articles 14 and 16 belong to myth or reality. The credibility of the constitutional mandates shall not be shaken by governmental action or inaction but it is the effect of the grievance of Ms muthamma that sex prejudice against Indian womanhood pervades the service rules even a third of a century after freedom. There is some basis for the charge of bias in the rules and this makes the ominous indifference of the executive to bring about the banishment of discrimination in the heritage of service rules. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to guess.”*

In **Air India v. Nergesh meerza AIR 1981, SC 1829** The court struck down the arbitrary rule which stipulated a termination of services of the female cabin crew on her first pregnancy, on the grounds of being unconstitutional. The court held that;

“it seems to us that the termination of the services of an air hostess under such circumstances is not only a callous and cruel but an open insult to the Indian womanhood- the most sacrosanct and cherished institution”

In the case of **Maya Devi v State of Maharashtra ICSR 1986** the supreme court struck down the provisions that a married woman should obtain her husband's consent before applying for public employment jobs. The requirement was held to be unconstitutional and invalid. It was observed that such a requirement was anachronistic obstacle to women's equality.

In the case of **Anuj Garg v Hotel Association of India AIR 2008, SC 663** the constitutional validity of the Punjab excise act of 1949 section 30 was questioned. As per the provisions of the earth it prohibited the employment of any women in any part of such premises in which liquor or intoxicating drugs is consumed by the public. Delhi high court observed that the

provision of the act was ultra vires of article 19 (1) (g)<sup>31</sup>, 14 and 15 of the constitution as it prohibited the employment of any women in such premises. The supreme court observed that instead of prohibiting employment of the women in such situations altogether, the state should focus on factors by which unequal consequences of sex differences can be eliminated, further it observed that it is the duty of the society to ensure circumstances of safety which may inspire confidence in women to discharge their duties in accordance to the requirement of the profession that they choose for themselves.

In the case of **Vijay Laxmi v Punjab university AIR 2003 SC 331**, the division bench of supreme court held that rules 5, 8, 10 of Punjab university calendar, volume iii, which provide for the appointment of lady principal in women's college or a lady teacher therein, cannot be considered violative of article 14 and article 15. The court observed that;

*“on the concept of equality enshrined in the constitution, it can be stated that there could be classification between male and female for certain posts. Such classification cannot be said to be arbitrary or unjustified, rules providing appointment of lady principal or teacher would also be justified. The object sought to be achieved is a precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught.”*

In the case of **C. Masilmani Mudaliar** , the supreme court has observed and highlighted that women are entitled to a right to economic empowerment, as a fundamental right under the constitution.

The supreme court in the case of **female workers (muster roll) and another** observed that;

*“To become a mother is the most natural phenomenon in the life of a woman. Whatever is needed to facilitate the birth of a child to a woman who is in service the employer has to be considerate and sympathetic towards her and must realize the physical difficulties which a working woman would face in performing her duties at the workplace while carrying a baby in the womb or while nursing the child after birth.”*

Henceforth, appreciating the difference between men and women, and ensuring that the rights of working women are not hindered due to natural phenomena.

## VIII. WOMEN RIGHTS AND CUSTOMARY LAWS

It is an established fact that, one of the main reasons for exploitation and subordination of

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<sup>31</sup> INDIA CONST. art. 19

women in our country is the rigid cultural norms and customary practices. In an effort to make a positive change with respect to women rights the supreme courts has, in the past with its numerous decisions attempted to question the validity of such norms and practices.

In the case of **Ahmed Khan v Shah Bano Begum AIR 1985, SC 945**, the supreme court brough Muslim women within the purview of section 125 of the CrPC (code of criminal procedure 1973)<sup>32</sup>. Thus, making Muslim women entitled to maintenance by their husbands after divorce, breaking the customary law, where a Muslim woman was denied any maintenance from husband after divorce.

In the landmark judicial decision in the case of **Shamim Ara vs State of U.P 7 SCC 518 (2002)** the supreme court invalidated the held triple talaq to arbitrary and held that, the facts and circumstances leading to the talaq were requisite to prove the divorce and a mere writing of the date and the events of the talaq would be insufficient to prove the same.

*“a plea of previous divorce taken in the written statement cannot at all be treated as pronouncement of talaq by the husband of the wife on the date of filing of the written statement in the court followed by delivery of a copy thereof to the wife.”*

Henceforth, breaking the customary law of handing a Muslim woman, a divorce capriciously and whimsically.

In the case of **Shayara Bano v Union of India**, Shayara Bano, the petitioner argued that the practice of triple talaq violated the right of equality of the Muslim women along with other fundamental rights. The supreme court with the majority of 3:2 declared the practice of triple talaq as invalid and unconstitutional on the grounds of it being opposed to the values of fundamental and constitutional rights of the Muslim women. Even though the objective of the decision was not of gender justice, it played an important role in advancing the cause of women rights in the country, by breaking the customary barrier to it.

In the case of **State of Maharashtra v Madhukar Narayan Mardikar AIR 1991, SC 207** the supreme court held that a woman with easy virtue is also entitled to the right of privacy, and no one has any entitlement to violate the same. Further, the evidence of such a woman

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<sup>32</sup> The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974, India, Section 12

“Order for maintenance of wives, children and parents.—(1) If any person having sufficient means neglects or refuses to maintain— (a) his wife, unable to maintain herself, or (b) his legitimate or illegitimate minor child, whether married or not, unable to maintain itself, or (c) his legitimate or illegitimate child (not being a married daughter) who has attained majority, where such child is, by reason of any physical or mental abnormality or injury unable to maintain itself, or (d) his father or mother, unable to maintain himself or herself, a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate 1 \*\*\* as such Magistrate thinks fit, and to pay the same to such person as the Magistrate may from time to time direct.”

cannot be dismissed on the grounds of her unchastity or easy virtue. The supreme court here, regarded the women as a free individual with an independent will, henceforth breaking the myth that a woman of easy virtue is to be disregarded of her individuality and being. This decision of the supreme court is important as it holds that a woman whether of bad deed, behaviour or character is entitled to the same rights as any other woman or human being. A judgement of character or virtue is irrespective of the entitlement and protections of rights.

The case of **Githa hariharan v Reserve Bank of India AIR 1999, SC 1947** was instrumental in providing equal guardianship rights to both the mother and father with respect to the guardianship of their minor child, henceforth giving mothers an equal right of guardianship of their ward.

**Mary Roy v State of Kerala AIR 1986, SC 1011** the women from the Syrian Christian community were prevented from inheriting an equal share in their father's property due to rigid customary rights, the custom was challenged by Mary Roy, a social activist. The supreme court through this landmark judgement, granted Syrian Christian women a right to seek an equal share in their father's property.

Most recently in the case of **Indian Young Lawyers Association & Ors. v State of Kerala and Ors. SC 2018 Review petition (civil) no. 3358/2018 In writ petition (civil) no.**

**373/2006**<sup>33</sup> it was observed by Justice D.Y. Chandrachud that

*“Article 17 certainly applies to untouchability practices in relation to lower castes, but it will also apply to the systemic humiliation, exclusion and subjugation faced by women. Prejudice against women based on notions of impurity and pollution associated with menstruation is a symbol of exclusion. The social exclusion of women based on menstrual status is a form of untouchability which is an anathema to constitutional values.”*

## **IX. CRIMINAL LAW AND WOMEN**

The fight against injustice for women is not limited to denial of economic, civil or social rights, they also find its roots deep within the crimes and violence the women face in their everyday lives as well. Crimes like rape, domestic violence, dowry deaths are committed against women each day, as a means to suppress and control them further. Several studies have shown that violent crimes against women are committed by the opposite sex in an attempt to satisfy their sense of masculinity. The act of overpowering a woman gives them a sense of superiority and dominance, which has been taught and ingrained in the men through rigid gender roles and cultural norms in the country. The more women try to free themselves

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<sup>33</sup> *Indian Young Lawyers Assn. v. State of Kerala, 2018 SCC OnLine SC 1690*



from the shackles of inequality and subordination, the more they are subjected to the heinous treatment by the society in an attempt to 'put the women in their right place'. Each day brings forward more gruesome cases of hatred, violence and atrocities a woman is subjected to.

The Indian judiciary has played an important role in protecting women against the violent behaviours they are subjected to. Through judicial activism and judicial review, the supreme court in the country has pushed the legislature to bring new and better changes to the statutes implemented for the protection of women by identifying and determining the exceptional cases of violence and atrocities women face.

The term 'modesty' of a woman has not been described in the Indian penal code. However, the term has been subjected to many judicial interpretations over the past to understand its meaning, concept and significance. In the case of **Ram Kripal vs State of MP AIR 2007 SC 49** the supreme court observed that,

*“modesty is an attribute associated with female human beings. It is a virtue, which attaches to a female owing to her sex. The act of pulling a woman, removing her saree, coupled with a request for sexual intercourse, is such as would be an outrage to the modesty of a woman; and knowledge, that modesty is likely to be outraged, is sufficient to constitute the offence without any deliberate intention having such outrage alone for its object”*

In the case of **Punjab v. Major Singh AIR 1967 SC 63** addressed the question of modesty of a seven and half month-old infant girl. While determining the same, the court held the following observation,

*“i think that the essence of a woman's modesty is her sex. The modesty of an adult female is written large on her body. Young or old, intelligent or imbecile, awake or sleeping, the woman possesses modesty capable of being outraged. Whoever uses criminal force to her with intent to outrage her modesty commits an offence punishable under s. 354. The culpable intention of the accused is the crux of the matter. The reaction of the woman is very relevant, but its absence is not always decisive, as, for example, when the accused with a corrupt mind stealthily touches the flesh of a sleeping woman. She may be an idiot, she may be under the spell of anaesthesia, she may be sleeping, she may be unable to appreciate the significance of the act; nevertheless, the offender is punishable under the section. A female of tender age stands on a somewhat different footing. Her body is immature, and her sexual powers are dormant. In this case, the victim is a baby seven and half months old. She has not yet developed a sense of shame and has no awareness of sex. Nevertheless, from her very birth she possesses the modesty which is the attribute of her sex.”*

In the case of state of **Punjab vs Baldev Singh 1999(6) SCC 172** The court reinstated the right of a woman to be treated with dignity. Even in cases where a woman has to be subjected to a body search, she shall be assigned a lady officer for the same. Under no circumstance should a woman be denied her right to be treated with dignity.

As discussed earlier there are many facets of the violations against a woman. In India, one of the major causes of concern remains the unfortunate harassment, abuse and exploitation of the newly wed brides under the garb of dowry. Incidents of dowry deaths and harassment remain at an all-time high.

The supreme court in **Kamlesh Panjiyar vs State of Bihar 2005 2 SCC 388**<sup>34</sup> observed that,

*“marriages are made in heaven, is an adage. A bride leaves the paternal home for a matrimonial home leaving behind sweet memories therewith a hope that she will see a new world full of love in her groom’s house. She leaves behind not only her memories, but also her surname gotra and maidenhood. She expects not only to be a daughter in law, but a daughter in fact. Alas! The alarming rise in the number of cases involving harassment to the newly wed girl for dowry shatters the dreams. In-laws are characterized to be outlaws for perpetrating terrorism which destroys the matrimonial home. The terrorist is dowry, and it is spreading tentacles in every possible direction.”*

A more rigid stance was observed by the supreme court in **Kundula balasubramaniam vs State of A.P,1993 crl.L.J.1635**<sup>35</sup> ;

*“of late there has been an alarming increase in cases relating to harassment, torture, abetted suicides and dowry deaths of young innocent brides. This growing cult of violence and exploitation of the young brides, though keeps on sending shock waves to the civilized society whenever it happens, continues unabated. There is a constant erosion of the basic human values of tolerance and the spirit of “live and let live.” Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crime. It is more disturbing and sadder that in most of such reported cases it is the woman who plays a pivotal role in this crime against the younger woman, as in this case, with the husband either acting as a mute spectator or even an active participant in the crime, in utter disregard of his matrimonial obligations. In many cases, it has been noticed that the husband, even after*

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<sup>34</sup> Anita Rao, leading cases on dowry 19, Human Rights Law Network (2011)

<sup>35</sup> Kundula balasubramaniam vs State of A.P, (Apr. 9, 2020, 5:08 PM) [http://jajharkhand.in/wp/wp-content/judicial\\_updates\\_files/07\\_Criminal\\_Law/04\\_dowry\\_demand\\_cruelty\\_death/Kundula\\_Bala\\_Subrahmanyam\\_And\\_An\\_r\\_vs\\_State\\_Of\\_Andhra\\_Pradesh\\_on\\_26\\_March,\\_1993.PDF](http://jajharkhand.in/wp/wp-content/judicial_updates_files/07_Criminal_Law/04_dowry_demand_cruelty_death/Kundula_Bala_Subrahmanyam_And_An_r_vs_State_Of_Andhra_Pradesh_on_26_March,_1993.PDF)

*marriage, continues to be 'mamma's baby' and the umbilical cord appears not to have been cut even at that stage!"*

The law commission of India, moved for capital punishment for a crime of dowry death, especially in pursuance of the order of Allahabad high court in the case of **Nathu v. State of U.P. Criminal bail application no.12466 Of 2002**<sup>36</sup>. Wherein j. Katju observed that

*"in my opinion dowry death is worse than murder but surprisingly there is no death penalty for it whereas death penalty can be given for murder. In my opinion the time has come when law be amended and death sentence should be permitted in cases of dowry deaths"*

Further, women from the time immemorial have faced the heinous crime of domestic violence. The UN declaration on the elimination of violence against Women, 1933 have Laid down that, violence against women is "a manifestation historically unequal power relations between men and women which has led to domination over discrimination against women by men and the prevention of advancement of women of course in to subordinate position compared with the men. "The patriarchal culture and cultural norms in India have led to a normalisation of the crime of domestic violence. Domestic violence has been to an extent accepted at the path of a matrimonial relationship.

In retaliation for the same, the domestic violence Act 2005 was implemented with an objective protecting from the act of domestic violence either from her husband or her in-laws. The husband challenges in many cases with respect to the gender specific provisions of the act. Ever the supreme court and where is court in the country have always held that the gender specific nature of the ad does not make it unconstitutional in any way it is maintained by the judiciary that women are in need of special protection against the heinous act of domestic violence which have less 2 years of atrocities hardships and exploitation of women over time.

In the Case of **Aruna Pramod Shah Vs Union of India 102 DRJ 543, 2008**<sup>37</sup>It was held that:

*"domestic violence is a worldwide phenomenon and has been discussed internationally including the Vienna accord of 1994 and the Beijing declaration and the platform for action of 1995. United nations convention on elimination of all forms of discrimination against women has recommended that state should act to protect women against violence off anytime especially that according within the family. There is a perception not unfounded or justified,*

<sup>36</sup> Nathu v. State of U.P (Apr. 9, 2020, 4:12 PM) <http://lawcommissionofindia.nic.in/reports/report202.pdf>

<sup>37</sup> Legal Information Institute, Aruna Pramod Shah vs Union of India, (Apr. 12, 2020, 3:19 PM), [https://www.law.cornell.edu/women-and-justice/resource/aruna\\_parmod\\_shah\\_v\\_union\\_of\\_india](https://www.law.cornell.edu/women-and-justice/resource/aruna_parmod_shah_v_union_of_india)

*that the lord and fate of them in India is an abjectly dismal one, which requires bringing into place urgent basis ameliorative measures against exploitation of women. The argument that the earth is item wise to the constitution of India because it is a cause protection of only two women and not to man is holding devoid of any merit. We do not rule out the possibility of a man becoming the victim of domestic violence but such cases would be few and far between, not requiring a justifying protection of the parliament.”*

Rape also falls into the category of the most hilarious acts a woman is subjected to. Can be considered as the only crime in which a woman's dignity and reputation is socially destroyed.

Justice Prabha Sridevan has observed that;

“though the victim of this violence can be a child, a woman or a man. The anatomy of rape is common to all. But I will continue to use the pronoun “her”, since the majority of victims of sexual violence are female. Rape is a deliberate negation of the right over one’s body.”

**State Of U.P. V Pappu, AIR 2005 SC 1248**The supreme court opined that, even a prostitute is entitled to the right to privacy. No person is entitled to invade that privacy and rape her, solely on the grounds of her being a woman of easy virtue.

The most significant change in the rape laws, in the country was observed after the infamous Nirbhaya case. The Nirbhaya case was instrumental in holding a mirror onto the Indian legal system and its incompetencies and gaps with respect to rape laws. The criminal amendment act of 2013, was a result of this case, which has significantly changed the landscape of how the crime of rape is perceived and handled in the country.

In **Joseph shine v Union of India, AIR 2018 SC 1665**, the Supreme court decided upon the constitutional validity of section 497, of the Indian Penal code, which deals with the offence of adultery. Section 497 IPC criminalised adultery by imposing culpability on a man who engages in sexual intercourse with another person’s wife. Adultery was punishable with a maximum imprisonment of five years. Women, including consenting parties, were exempted from prosecution. Further, a married woman could not bring forth a complaint under Section 497 IPC when her husband engaged in sexual intercourse with an unmarried woman. This was in view of Section 198(2) of CrPC which specified how a complainant can file charges for offenses committed under Sections 497 and 498 IPC.

The Supreme court was of the view that, section 497, was violative of the right to privacy if an individual. Further The judgment has put forward a good initiative as it struck down Sec 497 IPC and Sec 198(2) of CrPC as both the sections are based on discriminative

classification against women. The provision is being discriminatory in two ways, firstly it does not give women the right to prosecute an adulterous husband and secondly it does not punish a woman in adultery not even as an 'abettor'. Adequately, the section was struck down by the Supreme court in this unanimous decision as being against the provisions of Article 14, Article 15 and Article 21 of the Indian constitution.

In **Shafin Jahan v Asokan K.M & Ors., 2018 (2) KLT 571 SC**, it was highlighted that it is not difficult in this country to question the life choices of an adult woman by casting doubts on her volition and personal autonomy, and her freedom to choose her way of life can sometimes be judicially curtailed. The supreme court rightfully held that, the choice of a girl who has attained a legal age, has the right to freely make her own choices, and such choices cannot be questioned or curtailed on the ground that the mother or father have an authority to impose their sentiments or ego on such legally entitled free choices.

The Indian judiciary has played a pivotal role in identifying the need and the rights of women. Even though there is a long road ahead for improvement and realization of true equality of women in the Indian society, the judiciary has, through its numerous interpretations, made a positive change in the plight of women rights, in various fields. From customary laws, to the injustices faced by the women in society, the Indian judiciary has stood hand in hand with the women.

Through judicial activism, the courts have managed to reinstate the concepts of equality, dignity and protection of women rights.

It is however pertinent to note here, that even though judiciary and legislature are making an honest attempt to protect women rights in all its entirety, the main obstacle that the realisation of these noble objectives faces is the cultural and religious norms, which have managed to confine the women rights within its shackles even in today's time.

Further, due to such rigid religious ideas, crimes and atrocities like the crimes of marital rape are still left unaverted by the Indian judiciary. Therefore, a true change in the plight of and status of Indian women can only be achieved, when the judiciary plays a more proactive role in its attempt to demolish backwards and derogatory practices which have originated from the toxicity of the cultural and religious practices and norms, which continue to poison women's rights, freedoms and life.

## **X. SUGGESTIONS**

The first and the foremost step towards protecting the human rights of women in the country

should be to ensure women empowerment. Now, women empowerment is not restricted to only providing them with education, it extends to making them aware and confident of their rights and the requisite and legitimate channels through which they can enforce their rights. It can be seen that, discrimination, sexual harassment, rape, violations ironically are not discriminate to a specific class of women. Every woman, irrespective of her background faces such unjust behaviour throughout her life, henceforth empowerment should take place through NGO's and the welfare departments of the government to raise awareness, through campaigns and awareness programmes to make women woke with respect to their rights. Further, as identified earlier, true change in the situation of women can only be realised if the outlook of the society changes. However, enforcing ideals of equality, non-discrimination and respect for women shall not, and have not yielded any significant result. Therefore, gender sensitization and gender awareness practices should be inculcated and absorbed within the school curriculum itself, so that children grow up to be individuals who are capable enough to identify and distinguish between practices which are derogatory, violative and abusive to females. Further, through such gender sensitization curriculum, the notions of masculinity, which give the males a sense of entitlement over women would also be addressed appropriately. Raising children in an environment of respect, compassion, empathy and sympathy towards themselves and their counterparts would automatically give rise to cultural norms which respects and nurtures every being, irrespective of their gender. At the legislative level, implementation of Uniform Civil Code, as mentioned under Article 44 of our Indian constitution, would play a major role in ensuring uniformity and equality in the religious personal laws of marriages, property rights, guardianship rights etc, irrespective of the gender and the religion of a person. This shall prove to be a powerful step in breaking the barriers of discrimination, exploitation, atrocities and violations of the rights of women owing to the religious practices. The Indian judiciary has time and again identified the need for the implementation of the UCC, however, this directive principle of state policy is beyond the scope of implementation of the judiciary. Additionally, there is also a need to identify the religious customs and practices which have been holding the women and their rights from flourishing in the country. The courts have time and again identified in the case like **Indian Young Lawyers Association & Ors. v State of Kerala and ors, Review petition (civil) no. 3358/2018 In writ petition (civil) no. 373/2006**, that the religious practices which are discriminatory cannot be provided with a constitutional sanction of validity, as such practices deny women the right to be treated as an equal citizen of the country. Therefore, the legislative measures should find direction in abolishing such customary rights which have a

downhill effect on the development of women. Further, the legislative measures should be more focused towards the rehabilitation of the victims of sexually violent crimes, which includes rapes, sexual assault, dowry harassment and domestic violence acts. The United Nations and its agencies catering to women rights have shifted their focus on devising programmes and action plans which aim at including the men, to work and fight against the injustices against the women, the main idea behind the same is to encourage gender sensitization amongst the sexes, since India is a part of various international treaties which cater to women rights, there should be attempts by the legislation to incorporate and inculcate such motivation and ideology behind the legal framework for women rights.

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