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**GENDER EQUALITY – REVISITING THE PAST AND IDENTIFYING THE PRESENT GENDER
BIASED LEGAL SYSTEM IN INDIA**

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Abstract - India stands unique among the world's ancient cultures. It's true that a society's development can be easily traced by the level of women's education or status. In the Vedic and Sangam age, women have made vast contributions in literature. They were revered and rewarded in all aspects. In later stage, women were considered a curse as the social evils- female infanticide, sati, child marriage and dowry crept into the society. Eminent leaders like Rajaram Mohan Roy, Ishwarchandra Vidyasagar and Mahatma Gandhi worked for the upliftment of women and gradually eradicated such cruel system. The result of this was that, several laws were enacted for Sati prevention, Restrain of child marriages, Dowry prohibition, Equal rights of woman in property and remarriages of widow and many more. After independence, the Parliament and the State Legislatures passed laws to grant equal status to women to bring them on par with men. Today, women are excelling in all aspects that they exceed men in various fields. Eventually these laws, being taken for granted became biased, supporting only women. Again, there arose inequality in the society which led to men's physical and mental abuse. Such situations of men have been unnoticed and less spoken. Hence, in this paper the researchers have attempted to bring out the various phases of oppression faced by women, leading to gender equality through laws, along with its consequences which in itself has again led to inequality by ignoring men's rights.

Key Words – Inequality, Prevention, Oppression, Law, Men, Women.

Introduction

India stands unique among the world's ancient cultures. In Hindu Society woman occupies a most significant and vulnerable place. In Indian religion, a woman is regarded as the Divine Power called Mahasakthi, but not merely a companion of life. In Indian Tradition there is no single remark, dishonourable or derogatory to the ladies.¹It's true that a society's development can be easily traced by the level of women's education or status. The Pre- Vedic society (2500 – 1500 B.C) was basically matriarchal. The Pre- Aryans who settled in Indus Valley were probably agriculturist. Grain gathering was women's business; agriculture was doubtlessly the invention of women. Agriculture predominated over hunting in providing food and it raised the status of women.² Historical studies and scriptures indicate that the pre-Aryan period enjoyed comparatively high status.

¹Manjari Biswas (Bhaumik), *The Status of Women in India from Antiquity to Modernity*, Abhijeet Publications, Delhi, 2010, Ed, p.15

²Neelam Venkata Rao, *Status & Position of Women in Ancient Indian Culture*, The Associated Press, Delhi, 2010, pp.198-199

Phase of Women's Glory

The Aryans overwhelmed the non-Aryans, suppressed their religion and culture and imposed their values. Vedic literature was the contribution of the Aryans to the Indian culture. In the Rig Vedic period, the women were assigned prestigious position in the social order and the son and daughter were not discriminated in their upbringing. Both husband and wife occupied an equal status; wife designated as 'dampati'.

Women were educated both in Spiritual as well as temporal subjects. They were given training in the religious lore, in the historical tradition and mythology. They were also given training in the fine arts as well as in the military science in the certain cases. As a qualification of marriage, the education of a girl was considered as important as that of a boy. The ancient literature records that there were scores of women, eligible to become rishis and composed very effective poetry. *Ghoshha* and *Lopamundra* were great poem composers of the time. The women had liberty of movement. They were admitted into philosophical groups and were allowed to discuss the highest spiritual truths of life. They enjoyed a position on a par with men. The men and women were considered as the 'two wheels of the same chariot'³

Throughout the Vedic literature, mention has been made regarding many women's who attained enormous eminence in the sphere of philosophy. Similarly, according to *Satpatha Brahmana*, woman was regarded equal with man. She took part early in philosophical debates; notable among them were *Gargi* and *maitreyi*. She practiced penances like man. This shows that man and women enjoyed equally important status in the early vedic period.⁴

Initial Downfall in Women's Status

In the later Vedic and Epic period the position of women gradually declined. The society became completely patriarchal. The Rig Veda had rendered the highest social status to qualified woman of those days. But status of woman fell in the later Vedic and Epic period. They were not at all treated equally with men and were not enjoying equal rights and privileges as compared to men. Though the woman participated in each family ceremony with men, she played the role as a silent observer. As per Manu, men always enjoy unchallenged authority over their wives. Child marriages, Polygamy and Sati were prevalent at that time.⁵ The birth of a female child's was considered as sin.

Deterioration of Women's Position

Muslim invasion collapsed women's position in India. Restrictions were imposed on her rights and freedom. Muslims adherence to polygamy and purdah influenced Hindus. Both Hindu and Muslim women were considered inferior to men and so began to be ill-treated. They were confined to their home and education was denied. There were ladies of royal families who had the privilege of learning the religious texts and various arts and crafts but those they learnt by their own persistence and in their own homes. There were highly learned and accomplished Muslim ladies like Razia Begum, Chand Bibi, Nur Jahan, Jahanara. In the medieval period women from royal families enjoyed much respect and freedom, the women of lower and middle strata of society were largely ignorant and illiterate.⁶

At the advent of British Empire the status and position of the Indian women was very low. She was considered an inferior by the male members of the society. The social evils as customs crept into the society, polygamy, purdah, denial of property rights, child marriage, sati, denial of remarriage of widows resulted in the development of a weak personality of the woman. The close contacts with western cultural tradition, literature and education affected very deeply in the minds of the Indian leaders.

³ Muniruddin Qureshi, *Social Status of Indian Women*, Anmol Publications, New Delhi, 2003, Vol 1, pp.12-13.

⁴ S.K. Tripathi, *Position of women in different cultures*, Omega Publications, New delhi,2013, p.28

⁵ Nilay Singh, Research Scholar Department of Ancient History, Culture and Archaeology, University of Allahabad, *Role And Status Of Women In Ancient India*, International Research Journal of Human Resources and Social Sciences ISSN(O): (2349-4085) ISSN(P): (2394-4218) Impact Factor- 5.414, Volume 4, Issue 12, December 2017

⁶ Muniruddin Qureshi, *Social Status of Indian Women*, Anmol Publications, New Delhi, 2003, Vol 1, pp 23- 24

Upliftment with a legal backup

Raja Ram Mohan Roy laid the foundation for all the principle reformist movement which subsequently became instruments for modernization of the country. He fought against sati and a legal ban was clamped on the practice by the enactment of Abolition of Sati in 1829. By the efforts of Ishwar Chandra Vidyasagar Widow Remarriage Act of 1856 was passed. The other eminent reformers who continued to battle on behalf of women were Swami Dayanand Saraswathi, Sri Rama Krishna Paramahansa, Swami Vivekanandha, Mahatma Gandhi and countless others.⁷

The efforts of all these leaders elevated the status of women and few women involved in struggle for social progress and political independence. Women like Sarojini Naidu, Kasturba Gandhi, Kamala Nehru, Aruna Asaf Ali participated in the political arena with all their might and potentials. Indeed India witnessed the rise of many great women. The result of this was that, several laws were enacted for Sati prevention, Restrain of child marriages, Dowry prohibition, Equal rights of woman in property and remarriages of widow and many more. After independence, the Parliament and the State Legislatures passed laws to grant equal status to women to bring them on par with men.

Biased Laws

The status of women in India has been subject to many great changes over the past decades. They are well educated, independent and strong. Today, women are excelling in all aspects that they exceed men in various fields. But on the other side, majority of the women in India continue to face atrocities such as rape, dowry killings, forced prostitution, female infanticide, sex selective abortion and domestic violence.

In order to prevent such crimes against women, several laws have been enacted to protect them. Women were given justice at one side, but, at the same time, these laws have led to inequality by being unfair to men on the other. Hence, the concept of gender equality has led to biased laws. Some of such statutes are discussed below.

False accusations under the Criminal Law

- *Section 497 of the Indian Penal Code*⁸ - At present, Section 497 of the IPC treats only the man as an offender.⁹ The implication of Section 497 of the IPC is that it is punishable only for men and not women, even if the woman is a consenting party to sexual intercourse outside of marriage.¹⁰ She is believed to be a victim. Although the law appears to be women-friendly, it is not so.¹¹ This means that a woman can't file a case of adultery, nor can she be prosecuted on the ground of adultery.¹²
- *Section 498A of the Indian Penal Code* - If a woman is treated with physical or mental cruelty by her husband and his family, she can throw them behind bars. Though it's perfectly fair in a way to serve justice, Section 498 A of the Indian Penal Code says that the woman needn't give any evidence whatsoever. But, unfortunately, there are a number of reported false imprisonments.¹³ According to the provisional data of the National Crime Records Bureau (NCRB), a total number of 16,351, 4,204 and 531 cases have been registered under the Protection of Women Against Domestic Violence Act, 2005 in 2012¹⁴, 2013¹⁵ and 2014¹⁶. Out of 90,000 to 1,00,000 cases investigated every year, nearly 10,000 complaints of dowry harassment turn out to be false. The figure makes the Protection of Women Against

⁷ Ibid.,

⁸ <https://indiankanoon.org/doc/1833006/>

⁹ *Urvi Maheshwari, 9 Gender-Biased Indian Laws That Are Unfair Towards Men*, Jun 09, 2015 at 11:34 IST, <https://www.scoopwhoop.com/inothernews/gender-biased-laws-in-india/#.pecwn8yyd>

¹⁰ Apoorva Mandhani, *Breaking: Decriminalisation Of Adultery Will Destroy The Institution Of Marriage- Centre Seeks Dismissal Of Petitions Challenging S.497 IPC*, JULY 11, 2018 14:24 IST <http://www.livelaw.in/breaking-decriminalisation-of-adultery-will-destroy-the-institution-of-marriage-centre-seeks-dismissal-of-petitions-challenging-s-497-ipc/>

¹¹ Joseph Shine Vs Union of India (Writ Petition (Criminal) No.194/201

¹² Ibid.,

¹³ *Section 498A I.P.C.- Its Use & Misuse*, News and current affairs, 25 February 2011 15:54 IST

¹⁴ <http://ncrb.gov.in/StatPublications/CII/CII2012/Statistics2012.pdf>

¹⁵ <http://ncrb.gov.in/StatPublications/CII/CII2013/CII13-TABLES/Table%204.1.pdf>

¹⁶ <http://ncrb.gov.in/StatPublications/CII/CII2014/chapters/Chapter%205.pdf>

Domestic Violence Act (498A) one of the most abused laws in the country.¹⁷ The Supreme Court has said in a recent order that Section 498A has "dubious place of pride amongst the provisions that are used as a weapon rather than a shield by disgruntled wives".¹⁸

- *Section 304 B of the Indian Penal Code* - If the death of the woman is caused by burns or bodily injury within 7 years of marriage where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, then it amounts to Dowry Death under Section 304B. It was held in *Kaliyaperumal vs. State of Tamil Nadu*¹⁹, that cruelty is a common essential in offences under both the sections 304B and 498A of IPC for deciding the intensity of the offence committed.²⁰

Right to Property and Maintenance

- *Hindu Succession Act of 1956* - The father of the deceased doesn't inherit property, but the mother does. If the deceased leaves no will, first the property goes to the spouse, then to the mother and then the children inherit the property belonging to the deceased. The father is only entitled if the deceased does not have a spouse, mother or children.
- *Special Marriage Act of 1954* - Under the Hindu Marriage Act, both the man and woman can claim permanent alimony and maintenance, but under Section 37 of the Special Marriage Act, only the wife can claim permanent alimony and maintenance.

Conclusion

The researchers from the above analysis feel that the laws at present are being over sympathetic towards women. This approach, though fair to a certain extent, shouldn't be such that it leads to disparity in the society. There can be special provisions and statutes to support the weaker sections of society as stated in Article 19 and to grant equality to all persons according to Article 14 and Article 15, but, at the same time it shouldn't be biased to one gender alone. Today, the situation is that, men require special laws as their hurdles have become unheard and unnoticed. Hence, the researchers suggest that these biased laws should be amended to be made neutral in order to regain the equality in the society.

¹⁷ [Tarique Anwar](https://www.firstpost.com/india/flipside-of-dowry-law-men-recall-how-section-498a-is-unfairly-used-against-them-2172943.html) , *Flipside of dowry law: Men recall how Section 498(A) is unfairly used against them*, March 25, 2015, 16:29:04 IST

<https://www.firstpost.com/india/flipside-of-dowry-law-men-recall-how-section-498a-is-unfairly-used-against-them-2172943.html>

¹⁸ Ibid

¹⁹ 2004 (9) SCC 157; 2004 SCC(Cr) 1417; 2003 AIR(SC) 3828

²⁰ Kamlesh Prabhudas Tanna Vs State of Gujarat (Criminal Appeal No. 531 of 2004)