

# Essays

## Are Women's Rights Human Rights? Myth versus Reality

Prof. Nomita Aggarwal<sup>†</sup>

Ms. Geeta Sekhon<sup>‡</sup>

### I. INTRODUCTION

*"I am quite sure that our real and basic growth will only come when women have a full chance to play their part in public life. Wherever they have had this chance, they have, as a whole done well, better if I may say so, than the average man. Our laws are man-made, our society is dominated by men, and so most of us naturally take a very lopsided view of this matter. We cannot be objective, because we have grown up in certain grooves of thought and action. But the future of India will probably depend ultimately more upon women than the men."*

Pandit Jawahar Lal Nehru,  
First Prime Minister of India<sup>1</sup>

International human rights law is a source of norms and standards for the practice of human rights by measures that are dynamic and constantly evolving according to the emerging understanding of contexts of rights and violations. Women's participation in this process in recent years has given new meaning to the concept and content of rights. For example, it is at women's insistence globally, that Violence Against Women (VAW) by private persons and which is perpetrated against them because they are women has come to be regarded as a violation of human rights.

---

<sup>†</sup> Dean and Head of the Department, Faculty of Law, University of Delhi.

<sup>‡</sup> Lecturer of Law, Faculty of Law, University of Delhi.

<sup>1</sup> DR. NOMITA AGGARWAL, WOMEN AND LAW IN INDIA, (2002), (New Century Publications).

However, human rights regime leaves a wide gap between normative claims and implementation capabilities. In this connection women emerge as the most vulnerable group. Textually they enjoy a host of rights under many conventions and treaties. UN has adopted various International Conventions having specific relevance to women. Many of these have been sponsored by the UN Commission on the Status of Women and include the 1952 Convention on the Political Rights of Women, the 1957 Convention on the Nationality of Married Women, the 1949 Convention for the Suppression of Traffic in Persons and Exploitation of the Prostitution of Others. In 1967 the General Assembly of the UN adopted a *Declaration on the Elimination of Discrimination Against Women*, which highlighted the need for positive reform. The UN declared 1975 as the International Women's Year and subsequently 1976 – 1985 were celebrated as the UN Decade for Women. Among the significant achievements of that Decade has been the adoption of the 1979 *International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*.<sup>2</sup> The Government of India ratified CEDAW on July 9, 1993. The government is thus duty bound to fulfill its twin objectives, "to prohibit discrimination" and "ensure equality" (Articles 2, 3 and 4). The scope of obligations created by the Convention extends to political, economic, social, cultural, legal, familial and personal fields of activity.

But these instruments have not necessarily facilitated a practical realization. The woman is unjustly treated as unequal by society for the genetic sin of her discriminated sex. She suffers gender devaluation at home, at work, in literacy, in matrimony, in inheritance and allied rights, in economic opportunity, public life and power process. Despite international efforts in the form of Declarations and Conventions the reality is that -----

*"Women constitute half the world's population, perform nearly two – thirds of the work hours, receive one – tenth of the world's income and own less than one – hundredth of the world's property".*<sup>3</sup>

## II. WOMEN IN INDIA

In India, like many countries of the world, a good number of women do enjoy high status and position in society but countless women still continue

---

<sup>2</sup> Ibid at note 1. See also T.A. BAIG, *WOMEN OF INDIA*, (New Delhi: Publication division, Government of India).

<sup>3</sup> *Human Development Report 2000* available at <http://www.undp.org/hdr2002>. The Human Development Report, is an independent report commissioned by the United Nations Development Program.

See also <http://www.devdata.worldbank.org/genderstats>

to occupy a lonely, disadvantaged and very humiliating position at the base of the pyramid. It is a paradox of modern India that women wield power and hold positions at the topmost levels, yet large sections of women are among the most underprivileged. Some women from the upper classes head political parties and command large followings, yet women's representation in the Parliament and state legislatures has not been more than 10 per cent.<sup>4</sup> Exploitation of women at home and outside continues in most parts of the country. Male superiority and adverse conditions for women are still widely prevalent.

#### A. *The Census Report of 2001*

The Census Report of 2001 revealed among other things that<sup>5</sup>

- In matters of health – maternal mortality the number is the second highest in the world at 385 – 487 per 10,000 live births.
- 125,000 women die every year of pregnancy and pregnancy related causes.
- 245 million women cannot read or write, which makes them the world's largest number of unlettered women.

Consider the following statistics from the latest report released by the Census Commissioner of India on September 6, 2004.<sup>6</sup> The national average sex – ratio of males and females is *933 females per 1000 males*.

- Ironically, it is the lowest among Sikhs, one of the most prosperous communities of the State of Punjab, at *893 females per 1000 males*.
- The lowest sex ratio among child population (0-6 years) was also found among the Sikhs at *736 girls per 1000 boys*.
- The national average for *female literacy* is expectedly low at 53.7%.<sup>7</sup>

#### B. *Problem Areas*

Problem areas with respect to girl child / women in India are: -

- Preference of son over daughter.

<sup>4</sup> <http://www.infochangeindia.org/women> (last visited on 12 Feb, 2006).

<sup>5</sup> <http://www.censusindia.net> (last visited on 12 Feb, 2006).

<sup>6</sup> Times of India, New Delhi, dated September 7, 2004.

<sup>7</sup> After the Census was taken in 2001 these figures were released for the first time. They indicate the data on population, number of literates, category and types of workers for each major religious group. These figures have been collated to give valuable insights into the developmental patterns of each major community.

- The girl child is viewed as a burden - Recently released hospital statistics show that girls are denied treatment because the parents refuse to spend so much to save a daughter.<sup>8</sup>
- Foeticide and infanticide - the above mentioned sex ratio figures are indicative of this societal scourge.
- Child Marriages.
- Lack of educational opportunities for women in general and the girl child in specific – the above quoted female literacy figures amply highlight this fact.
- Dowry (the practice of giving gifts given during marriage of the daughter, often gets converted into unreasonable demands from the groom's family and in some cases even leads to killing of the daughter-in-law due to unfulfilled demands).
- Non – Registration of Marriages.
- Women are kept out of the decision making process.
- Cultural norms regulating appropriate behaviour - such as passivity, docility, subservience, etc.
- Poor participation of women in politics - UN Report on Gender Inequality, 2003 states that throughout the world women occupy only 10% of Parliamentary seats and 6 % of Cabinet positions.<sup>9</sup>

### C. *Where do the Roots of Discrimination against Women lie?*

They can be traced back to ancient Hindu civilization. Although some studies point to the equal status and rights those women enjoyed in the Vedic period (2500 B.C. to 1500 B.C.), patriarchy seems to have been the norm throughout history. In the later Aryan period after 300 B.C., domination by the Brahmins (the priestly class), the growth of the caste system and other factors led to social decline. Child marriage became the norm, wives were expected to worship their husbands, barren women were thrown out of their homes and widows were not permitted to remarry. Many of these vicious customs are still observed in some parts of the country. Other religions, like Buddhism, Jainism, Sikhism or Islam, have questioned some of the practices in Hinduism, but, by and large, all religions have kept their women in varying stages of confinement and restrictions.<sup>10</sup>

<sup>8</sup> Times of India, New Delhi, dated September 18, 2004.

<sup>9</sup> Prof. Ranbir Singh, *Gender Justice and Human Rights in India – A Fragile Myth* in JAWAHAR L. KAUL (ED), HUMAN RIGHTS – ISSUES AND PERSPECTIVES, (1995), (Regency Publications).

<sup>10</sup> <http://www.infochangeindia.org/women> (last visited on 12 Feb, 2006). See also A.S. ALTEKAR, THE POSITION OF WOMEN IN HINDU CIVILIZATION, (1962), (New Delhi: Motilal Banarasidas).

### III. POSITION OF WOMEN IN INDIAN LAWS

#### A. *Constitution of India and Women*

The Indian Constitution, which came into force on 26<sup>th</sup> January 1950, provides a framework for the governance of the country. All provisions of the Constitution are applicable in equal measure to men and women, and can, therefore, be invoked by women for the assertion of their rights. Although the Constitution grants equal rights to men and women there are several ways in which the family structure and the existence of several inequitable social customs and practices serve to deprive women of their rights.

The article 14 of our Constitution enunciates the general principle of the right to equality and prohibits the state from denying to any person, "*equality before the law or the equal protection of laws*".<sup>11</sup> The article 7 of the Universal Declaration of Human Rights uses both these expressions. Both these expressions, taken together, aim at establishing "the equality of status" as has been envisaged by the Preamble to the Constitution.<sup>12</sup>

Status refers to women's position and rights in different fields of law, namely, property, succession, matrimonial relief, guardianship, will-making power, choice in adoption, etc. Status whether proprietary or otherwise is now the natural outcome of Article 14 of the Indian Constitution. In the past a woman was frequently denuded of her status, but new laws post-independence grant her better position in domestic as well as property matters. However, the disparity between formal or "proclaimed" equality under the laws and the "reality" of discrimination is huge in the area of women's rights. Although they contribute substantially towards family income, they are viewed as unproductive by government statisticians, economists, and development experts and even by their husbands. Gender bias in various forms prevents them from obtaining education, health services, childcare and the legal status needed to escape poverty. The social process based on the putative qualities of "maleness" and "femaleness" is not conducive for the genuine equality between the sexes.<sup>13</sup>

---

<sup>11</sup> CONSTITUTION OF INDIA, Ministry of Law, Justice and Company Affairs, Government of India, 2000.

<sup>12</sup> DR. VIJAY CHITNIS, DR. C.M. MADAN AND DR. M.H. HIRANI (EDS.), HUMAN RIGHTS AND THE LAW: NATIONAL AND GLOBAL PERSPECTIVES, (1997) (Snow White Publications).

<sup>13</sup> HARI SWARUP, FOR WHOM THE LAW IS MADE, (1981) (Veena Publishers).

Fundamental Rights in Part-III and Directive Principles of State Policy in Part IV of the Indian Constitution need special mention, as these are the foundations on which protective legislations for women have been designed. The phrase “equality before law” under Article 14 has been further elaborated under Article 15 (1) of the Constitution, which lays down that the “*state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them*”. In other words, while all laws are to apply to members of two sexes equally, there is express prohibition of discrimination on the ground of sex. However, the guarantee of non-discrimination on this account does not prevent the state from making any special provisions for women as has been laid down under Article 15 (3).<sup>14</sup>

A closer look and deeper analysis of these two provisions reveal that whereas rule of “equality before law” is a command to the state, to make special provisions for women under Article 15 (3) is not and the state in its wisdom, may not adopt any such provision. Hence, women are at the mercy of the state to enjoy and realize the full potential of the rule of equality.<sup>15</sup>

Apart from the fundamental rights guaranteed in Part III of the Constitution with a special bearing on women, Part IV has some provisions for the welfare of the women with reference to improvement in their social and economic status as enshrined in the Directive Principles of State Policy. The article 39 mentions that the State shall direct its policy towards securing (among other things)

- (a) that the citizen, men and women equally, have the right to an adequate means of livelihood;
- (b) that the ownership and control of material resources of the community are so distributed as best to sub-serve the common good;
- (c) -----
- (d) that there is equal pay for equal work for both men and women;<sup>16</sup>

Article 42 mandates upon the State the provision for just and humane conditions of work and maternity relief.<sup>17</sup> Under Article 44 the State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.<sup>18</sup>

---

<sup>14</sup> See Aggarwal, *supra* note 1.

<sup>15</sup> S.K. Verma, *Gender Equality – Theory and Practice in India* in Kaul, *supra* note 9.

<sup>16</sup> The Equal Remuneration Act, 1976 was enacted under this provision.

<sup>17</sup> Consequently, the government has enacted The Maternity Benefits Act, 1961.

<sup>18</sup> P.M. BAKSHI, *THE CONSTITUTION OF INDIA*, (2001), Universal Law Publishing Co. Pvt. Ltd.

The Supreme Court of India, protector and guardian of fundamental rights, has always championed the concept of "equality of status" and elaborated on this issue. The Court has recognized the equal rights of women in matters of succession, equal pay for equal work, equal opportunity and promotional avenues, unreasonable restriction on the basis of pregnancy, and many more aspects of equality.<sup>19</sup> Article 15 has been often used by the courts to justify reservation and upholding statutory provisions in favor of women such as exempting them from punishment for adultery,<sup>20</sup> providing them special rights in respect of bail under Sec. 497 (1) of the Criminal Procedure Code,<sup>21</sup> authorizing service of summons on men only,<sup>22</sup> reservation of seats for women in local bodies<sup>23</sup> and reservation of seats for women in educational institutions.<sup>24</sup>

### B. *Statutory Provisions*

The emancipation of women and the achievement of full equality between sexes must at all times be the primary objective of any society. The denial of such equality perpetrates injustice against women that is carried from the family to the workplace, to political life and ultimately to international relations. There are no grounds—moral, political, legal or biological—upon which such denial can be justified.<sup>25</sup> Towards this end, the Indian Legislature has enacted a number of statutes protecting the rights of women. Some examples are enumerated to denote that the laws have touched upon almost every aspect of the life of a woman.<sup>26</sup>

- Child Marriage Restraint Act, 1929
- Maternity Benefits Act, 1961
- Dowry Prohibition Act, 1961
- Medical Termination of Pregnancy Act, 1971
- Factories (Amendment) Act, 1976—establishing crèches where 30 or more women are employed
- Equal Remuneration Act, 1976

<sup>19</sup> See Verma, *supra* note 15.

<sup>20</sup> *Yusuf Abdul Aziz vs. State of Bombay*, AIR 1954 SC 321, *aff'd in Smt. Soumithri Vishnu vs. Union of India* (1985) 1 SCALE 960.

<sup>21</sup> *Mt. Choki vs. State of Rajasthan*, AIR 1957 Raj 10.

<sup>22</sup> *M.I. Shahabad vs. Mohd. Abdullah*, AIR 1967 J&K 120.

<sup>23</sup> *Dattatreya Motiram More vs. State of Bombay*, AIR 1953 Bom 311.

<sup>24</sup> *P. Sagar vs. State of Andhra Pradesh*, AIR 1968 AP 165.

<sup>25</sup> See Aggarwal, *supra* note 1. See also Rebecca J. Cook, *State Responsibility for Violation of Human Rights of Women*, 7 Harv. H. R. Jour. 1994.

<sup>26</sup> AIR COMMODORE MAHINDER SINGH, *KNOW YOUR RIGHTS AND BENEFITS*, (2003) (Popular Prakashan, Delhi).

- Indecent Representation of Women (Prohibition) Act, 1986
- Commission of Sati (Prevention) Act, 1987
- Family Courts Act, 1984
- Prevention of Immoral Traffic Act, 1986
- National Commission for Women Act, 1990
- Pre – Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1992 – to deal with the menace of determining the sex of the foetus which ultimately leads to foeticide if it is a girl – child.
- 73<sup>rd</sup> and the 74<sup>th</sup> Constitutional Amendments of 1992 added Articles 243 D and 243 T to the Constitution, which provided for reservation of not less than one third of the total seats for seats for women in the constitution of the Panchayats and Municipalities respectively.
- Criminal Law (Amendment) Act, 1983, added Section 498 A in the Indian Penal Code - to combat the menace of dowry deaths by providing that cruelty by the husband or his relatives against the woman would be deemed to be an offence.
- Section 113 A in the Indian Evidence Act, 1872, provided for a presumption regarding abetment of suicide by a married woman within a period of seven years from the date of her marriage by her husband or any relative of the husband

Piecemeal measures have also been taken by State Governments towards addressing specific problems faced by women. The state of Tamil Nadu enacted a law against eve – teasing in 1998. The government of Maharashtra issued a notification in 1994 exempting women from paying court–fees in cases of maintenance, property disputes, violence and divorce.<sup>27</sup>

### C. *Personal Laws*

Personal laws deal with marriage and divorce, maintenance, guardianship, adoption, inheritance, succession, ownership of property, etc. These laws are divided along religious lines in India, irrespective of their religious basis.<sup>28</sup>

Hindus are governed by: -

- Hindu Marriage Act, 1955
- Hindu Succession Act, 1956

---

<sup>27</sup> *ibid.*

<sup>28</sup> Kirti Singh, *Obstacles to Women's Rights in India*, in REBECCA J. COOK (ED), HUMAN RIGHTS OF WOMEN: NATIONAL AND INTERNATIONAL PERSPECTIVES (1994) (University of Pennsylvania Press).



- Hindu Adoption and Maintenance Act, 1956
- Hindu Guardianship and Minority Act, 1956

Muslims are governed by: -

- Sharia Act, 1937
- Muslim Women's Dissolution of Marriage Act, 1939
- Muslim Women's (Protection of Rights on Divorce) Act, 1986
- Uncodified Muslim personal laws

Christians are governed by: -

- Christian Marriage Act, 1872
- Indian Divorce Act, 1869
- Indian Succession Act, 1925

The Parsis in India are governed by: -

- Parsi Marriage and Divorce Act, 1936.

### 1. Matrimonial Rights

*"A woman feels as keenly, thinks as clearly as a man. She in her sphere does work as useful as a man in his. She has as much right to her freedom, to develop her personality to the full as a man. When she marries, she does not become the husband's servant but his equal partner. If his work is more important in the life of the community, hers' is more important in the life of the family. Neither can do without the other. Neither is above the other or under the other. They are equals".<sup>29</sup>*

Many problems of women today are family based. Marital maladjustments, cruelty, demand for dowry, dispute over property, social incompatibility and other disruptive issues within a family could lead to critical hostility and legal consequences. Most Indian women whether educated or uneducated depend upon their husbands for their personal and family needs. An ignorance of law puts them in economic jeopardy whenever there is conflict within their marital homes.<sup>30</sup>

The main characteristic of these personal laws in matters of matrimonial rights is that they are blatantly discriminatory and anti-women. Apart from unequal treatment meted out to them within each community, these laws subject them to varying degrees of discrimination against each other.<sup>31</sup> For example, a Hindu, Christian and Parsi wife can sue her husband for bigamy, but a Muslim wife cannot because under the Muslim personal law, which permits polygamy, a husband can have four wives at a time.

---

<sup>29</sup> LORD DENNING, THE DUE PROCESS OF LAW, (1980) (Butterworth, London).

<sup>30</sup> See Aggarwal, supra note 1.

<sup>31</sup> See Singh, supra note 28.

For Muslim women polygamy is a major hindrance in the complete realization of her Human Rights. Unilateral divorce by 'talaq' by men along with polygamy severely undermines the dignity and status of the Muslim women. The Muslim Women's (Protection of Rights on Divorce) Act, 1986, which was enacted after the Shah Bano Case<sup>32</sup> has severely curtailed the right to seek maintenance in comparison with other Indian women, from the husband under Sections 125-127 of the Criminal Procedure Code which provides maintenance to divorced women irrespective of their religion. The Act restricts the right of maintenance only to the 'iddat' period of three months after divorce and stipulates that thereafter her own family and the Waqf Board shall be responsible for her maintenance.

Under the Indian Divorce Act, 1869, earlier a Christian wife's right to ask for divorce was discriminatory and biased in favor of the husband. In 1995, the Kerala High Court and thereafter several other High Courts throughout the country found Section 10 of the Act discriminatory. Therefore, the Indian Parliament passed the Indian Divorce (Amendment) Bill in 2000 to make suitable changes and give Christian women the right to seek marriage annulment by removing gender bias and do away with High Court confirmation in divorce cases.

## 2. *Inheritance Rights*

The Hindu Succession Act came into force on June 17, 1956, with a view to conferring complete ownership on Hindu female in the property, which was in her possession when the Act came into force. The limited estate of Hindu females is enlarged and the reversionary rights have now been abolished to a great extent. There was a time when the Hindu female could not enjoy status in a male dominated Hindu joint family, which did not allow her to hold property. Further she was denied the rights of succession in the coparcenary property of the Hindu joint family. She could not hold property independently or even become a full owner.<sup>33</sup>

The new era of democracy brought an enlightened view on the construction of society in independent India. Pundit Jawaharlal Nehru, the first Prime Minister of India was concerned with the disabilities and difficulties suffered by the Hindu women. In spite of the strong protest from the orthodox Hindus, the Prime Minister pushed through the enactment of the revolutionary law at that time, viz., the Hindu Succession Act, 1956. The Indian Parliament respecting the feelings of Hindu women, thus, in Section 14 of the Hindu Succession Act conferred full-fledged status of ownership in property held by her either before 1956 or after 1956. Needless it is to

<sup>32</sup> Md. Ahmad Khan vs. Shah Bano, AIR 1985 SC 945.

<sup>33</sup> See Aggarwal, supra note 1.

emphasize that the provision was a step forward in attempts at social amelioration of women who earlier had been subjected to gross discrimination in matters of inheritance.<sup>34</sup>

The Hindu Succession Act, 1956, maintains equality of sexes in general and confers rights of inheritance on female heirs (section 8). However, under Section 4 (2) of the said Act, however, "laws providing for prevention of fragmentation of agricultural holding" have been exempted from application of the Act. This means that in the name of "prevention of fragmentation of agricultural land" a Hindu female heir could be deprived of her right to property. Under Section 23 there is a restriction on her right to demand partition. If a Hindu dies in testate, his female heir cannot claim partition of the dwelling house until the male heirs chose to divide their respective shares therein and till then, the female heir is restricted to a right of residence only.

Where the female heir is a daughter she is entitled to right of residence in the dwelling house only if she is unmarried or deserted or separated from her husband or is a widow. A married daughter has no right to shelter in her parent's house, nor maintenance, charge for her being passed on to her husband.

If a female Hindu dies in testate without leaving behind children or her husband, her property devolves on her husband's heirs, except the property inherited from the parents, which in absence of a son or daughter of their children will devolve on the heirs of the father.

The Law Commission of India had analyzed the property rights of women. In its 174<sup>th</sup> report submitted to the Government of India in May 2000, the Law Commission had recommended for removal of the inherent discriminatory provisions, which exist in the inheritance and succession law of the Hindus. This recommendation is commendable in the face of the growing realization of the human rights of women throughout the world.

In response to the above quoted Law Commission Report, the government introduced path-breaking amendments and changes to the Hindu Succession Act, 1956 vide the amending Act of 2004 which has been approved by the Parliament in December 2005. By virtue of the changed Section 6 a daughter will become a coparcener in her own right and will have the same rights as that of a son. A coparcener is a narrow body of people within the Joint Hindu Family and is crucial to the inheritance of property under the Hindu Law of Succession. Prior to this amendment, women, whether daughters, mothers or widows could not be a part of the

---

<sup>34</sup> Ibid.

coparcenery as the same only comprised of the father and his three male lineal descendants. However, vide the provisions of Section 6, a daughter will now have the same rights in the coparcenery property as if she had been a son. The changed law also covers agricultural land by providing for equal shares to the daughter and over-riding state level discriminatory tenurial laws in the process. The above quoted Section 23, which restricted a daughters right to demand partition has been deleted from the statute book. . In one swoop these amendment have made daughter a member of the coparcenery and is a significant advancement towards gender equality.

However, it is worthy to note, that these changes would only apply to Hindu women, to the total exclusion of Muslim and tribal women.

Muslim personal laws have bestowed upon Muslim women unequal rights of inheriting property. A son takes double the share of the daughter and a brother takes double the share of his sister, according to the Shariat laws.

### 3. *Child Care*

The interest of the child is of paramount importance. Although, in every instance the father, is regarded as the natural guardian of the child, and must be proved unable or incompetent or morally undesirable as an influence on the child for the guardianship to devolve on the mother. In the case of male child under the Muslim Law, the mother is permitted to keep the child till he reaches the age of five years, for the benefit of the child. In the case of female children, this period may extend to puberty. She does not, however, have the right of guardianship over any properties or assets that the child may own. She must depend on her own earnings or on the payment of child support from the father. In case the father does not pay the child support regularly, she may have recourse to court to claim arrears. Here too, there is no remedy for ensuring regular payment in the future. In case, the mother does not live a "chaste life", she is considered a bad moral influence on the child and the courts may rescind even the minimal rights that she has.

Under Hindu Law, under Section 6 (9) of the Hindu Minority and Guardianship Act, 1956, the *mother along with the father is considered the "natural guardian"* of the child.<sup>35</sup> In a bold interpretation the Supreme Court stated that if the father was absent from the care of the minor's property or person for any reason whatsoever, though alive, the mother of the minor being a recognized natural guardian, could act validly on behalf of

---

<sup>35</sup> See *Githa Hariharan vs. Reserve Bank of India*; *Vandana Shiva vs. Union of India*, AIR 1999 SC 1149.

the minor as the guardian. Such an interpretation, the Court held, would fall in conformity with the international instruments such as CEDAW and the Beijing Declaration.<sup>36</sup>

To remove these disparities Article 44 of the Indian Constitution providing for a Uniform Civil Code is a desired step.<sup>37</sup> The Supreme Court has time and again asked the Central Government to take a fresh look at Article 44 and directed it to ask the Law Commission to draft a comprehensive legislation incorporating "the present day concept of Human Rights for women, in consultation with the Minorities Commission". The judgment was rendered on four writ petitions filed by Hindu women who were deserted by their respective husbands who had remarried after conversion to Islam. The issue for consideration before the court was whether a Hindu married man could enter into another marriage by embracing Islam without dissolving his first marriage. The court held that such a second marriage was invalid and the apostate husband was guilty of bigamy under Section 494 of the Indian Penal Code.

The main argument advanced against reform of personal laws or to have a Uniform Civil Code is that it is violative of the right to freedom of religion granted under Article 25 of the Constitution.<sup>38</sup> But Article 25 is itself subject to

- Public order, morality and health
- Other provisions of the Constitution, namely, Articles 14, 19, etc.
- Laws made by the state regulating or restricting any economic, financial, political or other secular activity which may be associated with a religious practice
- Laws made by the state providing for social welfare and reform.

The government has been singularly reluctant to address the issues of minority women's rights. The constitutional stipulation to chart a Uniform Civil Code has been unsuccessful so far because, by and large, the perception of the minority communities is that the effort is aimed at imposing Hindu law in the name of a Uniform Code and to ignore even the positive aspects of Personal Laws of other communities.<sup>39</sup>

---

<sup>36</sup> NARENDRA KUMAR, CONSTITUTIONAL LAW OF INDIA, (2003) (Pioneer Publications).

<sup>37</sup> *Smt. Sarla Mudgal vs. Union of India*, 1995 (3) SCALE 286.

<sup>38</sup> Dr. Anupama Sawant, *Human Rights and Atrocities Against Women* in Chitnis, et al. at supra note 12.

<sup>39</sup> <http://www.infochangeindia.org/women>; Also see T. Minattur, *Women and the Law: Constitutional Rights and Continuing Inequalities*, 1975 SOCIAL ACTION 25 (3).

#### D. *Crimes against Women*

WHO estimates that at-least one in five women, have been physically or sexually assaulted by a man at some point of time in her life.<sup>40</sup> UN estimates that every year 4 million women and children are bought or sold either into marriage, prostitution or slavery. Most of the sex trade in women and children takes place in Asia, where the growing trend is to offer “regional sex tours” through advertisements on the Internet.<sup>41</sup> The nature of crime against women in India is foeticide, infanticide, dowry offences, rape including marital rape, prostitution, trafficking, etc.

Unsurprisingly, the more severe the violation of Human Rights, the more the orders of power declare their loyalty to the regime of Human Rights. The near universality of ratification of CEDAW betokens no human liberation of women; it only endows the state with the power to tell more Nietzschean lies.<sup>42</sup>

##### 1. *The Menace of Dowry*

The practice of demanding dowry is a widespread social evil causing grave harm and misery to families. In recent years, despite all claims of modernity, ‘dowry deaths’ have increased alarmingly. The Dowry Prohibition Act was first legislated in 1961 and was amended in 1984 to make the offence of ‘dowry’ cognizable. The intention of the Act was laudable but its implementation and a tardy judicial system with a very low conviction rate has defeated the very purpose of the legislation. Even today newspapers are replete of new-reports of brides being burnt to their death or killed because they and their families could not satisfy the greed of their in-laws including their husbands. The recent report in the Times of India newspaper in September 5, 2004 of an engineer husband in New Delhi, strangulating his engineer wife and dumping her body in the storage box of the bed because she did not bring enough dowry, is a rude reminder that dowry is not an obsolete issue. It is a matter of grave concern and threatens

---

<sup>40</sup> <http://www.unhchr.ch/women>; Also see <http://www.questia.com> (last visited on 12 Feb, 2006).

<sup>41</sup> <http://www.hrw.org.women>;

Also see <http://www.umn.edu/humanrts/instree/women> (last visited on 12 Feb, 2006).

<sup>42</sup> UPENDRA BAXI, *THE FUTURE OF HUMAN RIGHTS*, (1991) (Oxford University Press). Also see YWCA, *THE EDUCATED WOMAN IN INDIAN SOCIETY TODAY*, (1971) (Tata – McGraw Hill Publishing Co.).

the human rights of women, whether educated or uneducated, whether rich or poor.

Section 498 A of the Indian Penal Code, deals with instances of dowry demands or of cruelty to a woman by her husband or the relatives of her husband. The concept of "cruelty" has been widened to include any willful conduct which is of such a nature as is likely to drive a woman to commit suicide or cause grave injury or danger to life, limb or health (whether mental or physical). The Indian Evidence Act, 1872, has been amended to provide that where a woman has ended her life within a period of seven years from the date of her marriage and it is shown that her husband or any relative of the husband had subjected her to cruelty, the court may presume, that such suicide has been abetted by her husband or such relative.

## 2. Marital Rape

The law has not expressly addressed the concept of marital rape, but it does exist in a very limited sense. Section 375 of the Indian Penal Code provides that if a husband has sexual intercourse with his wife who is below fifteen years of age, it would be deemed to be rape. Similarly, under Section 376A, if the woman is separated from her husband under a decree of judicial separation and her husband has sexual intercourse with her without her consent it would amount to rape. These provisions in a limited way, do guarantee to the women her human right over her own body and her physical self.

## IV. CURRENT LEGAL ISSUES PERTAINING TO HUMAN RIGHTS OF WOMEN IN INDIA

### A. *Domestic Violence*

*The Domestic Violence (Prevention) Bill*, is the initiative of NGOs. Considered by women activist as a revolutionary and bold step to pave the way for empowerment and emancipation of women, the legislation will give a new dimension to the scope of legal jurisprudence on the lines of US jurisprudence. Presently the Bill is surrounded by controversies with reference to its various provisions. However, when it sees the light of the day, it will bring succour to a large number of women who suffer ignominies within their marital homes.<sup>43</sup>

---

<sup>43</sup> See Aggarwal, supra note 1.

### B. *Pre-Natal Diagnostic Technique Act, 1994*

The objective of the *Pre – Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994*, was to prevent the misuse of medical inventions and techniques for the purpose of pre-natal sex determination leading to female foeticide. However, data and statistics amply prove that the implementation of the Act is a total failure. The census report of 2001 has demonstrated that the cases of female infanticide are on the rise in the rich and economically sound states and that the falling male-female ratio has reached alarming levels. This is the worst form of violation of the human rights of the girl child, as she is not allowed to take birth due to the peculiar beliefs prevalent in our society. Thus, the violation of the human rights of women begins from her “cradle” and continues up till her “grave.”<sup>44</sup>

### C. *Sexual Harassment*

*Sexual Harassment at the place of work* is another area, which has attracted the attention of the Supreme Court in a case filed before it.<sup>45</sup> In order to make the fundamental rights more meaningful, the Supreme Court discharged its functions effectively by giving guidelines for policies against sexual harassment. In the absence of the legislation, the court directed the Legislature to enact a law and provide women the much-needed security and protection and a harassment free environment in their workplace. This issue is being currently debated in the country, and the National Commission for Women along with NGOs, women’s activists have submitted the draft of the Sexual Harassment of the Women at the Workplace (Prevention and Redressal) Bill 2004 to the Ministry of Human Resource and Development.<sup>46</sup>

### D. *Violence against Women*

*Violence against women* is a human rights violation of her body and her right as a person. Violence has been broadly defined as “an action or policy or an attitude that causes bodily or mental injury and debases or dehumanizes a person”. The most important achievement of the Vienna Declaration of June 25, 1993 was recognition of the gender- based Violence Against Women (VAW) in public and private life as a Human Rights concern.<sup>47</sup> Violence towards women takes many forms, such as:-

---

<sup>44</sup> Ibid.

<sup>45</sup> *Vishakha vs. State of Rajasthan*, AIR 1997 SC 3011.

<sup>46</sup> Times of India, New Delhi, September 18, 2004.

<sup>47</sup> Rashmi Oza, *Human Rights Education and Discrimination Issues – A Study with special reference to Gender Inequalities in India*, a paper presented in Seminar on



- Sexual or physical assault and harassment;
- Psychological, emotional, verbal and economic abuses;
- Violence and abuse of power by husband and his relatives especially in the context of India;
- Female foeticide and infanticide;
- Female circumcision;
- Labour exploitation, the denial of the right to organize, isolating women workers and further entrenching their powerlessness;
- Trafficking of women across state borders, sexual assault, violence and slavery, especially of migrant women labour;
- Population control measures that impose the responsibility of human reproduction and nurturing solely on women without granting them the corresponding autonomy and authority over their bodies, amounts to a gross violation of human rights.

#### E. *Women and AIDS*

*Women and AIDS* is another burning issue occupying the attention of the women activists. Women are the most vulnerable and susceptible and are at a higher risk than men to get this disease due to multifarious reasons like, poverty, illiteracy, ignorance, and lack of information and the absence of the right to say "NO". In the year 2001, 1.3 million women died of AIDS. Gender inequality is fuelling the rapid spread of HIV among women who are divested to control over their lives and bodies. Violence against women such as those mentioned above put women and girls at a higher risk of contracting the deadly virus.<sup>48</sup>

### V. CONCLUSION

Gender justice is a lost cause, forsaken faith and unpopular phrase. Our nation with all its hopes and all its boasts can never really be free until the last and the least woman among us is free. The women's movement and the fight for their human rights have been in existence for some time in India and it has had many expressions in law. However, rights granted by international and national laws are observed more in their violation than in their adherence. Real protection of Human Rights can only be the result of

---

Human Rights Education, Law and Society, NALSAR, Hyderabad. Also see <http://www.pdhr.org/rights/women> (last visited on 12 Feb, 2006).

<sup>48</sup> Pravin Parekh, *Can there be Human Rights without Gender Justice* in HUMAN RIGHTS YEAR BOOK (2002).

good codification, but, above all, would be the result of concrete action by the government. As stated by Radhika Coomaraswamy, the UN Rapporteur on Violence Against Women: *“The future of women’s rights in South Asian region lies not with the state, but with movements in civil society. The role of civil society is that of mobilization and raising awareness, while that of the state is articulation and implementation”*.<sup>49</sup>

Any future action and program<sup>50</sup> should proceed on the following lines:-

- Historical understanding of the inferior treatment of women.
- Proper assessment of the present conditions and problems of women.
- Formulation of systematic and strategic action plan and its implementation at the grassroots level.
- Periodic evaluation of the effectiveness of the laws passed for the benefit of women.
- Legal literacy, legal help and counseling.
- Advocacy of women’s rights through print and the visual media.

Feminists maintain that telling the stories of everyday violation and resistance which recognizes the role of women as authors of Human Rights is more empowering in terms of creating solidarity rather than wearing narratives of universal patriarchy or theorizing repression only as discursive relation. Feminization of Human Rights culture begins only when one negotiates this conflict between Meta and Micro narratives of women in struggle. One may term this task as “humanizing human rights.”<sup>51</sup>

*“The fight is not for woman’s status, but for human worth. The claim is not to end 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. Woman’s exploitation is a reality and gender justice, a fragile myth”*.<sup>52</sup>

---

<sup>49</sup> <http://www.wcd.nic.in> (CEDAW Report) (last visited on 12 Feb, 2006).

<sup>50</sup> See Aggarwal, supra note 1.

<sup>51</sup> See Baxi, supra note 42.

<sup>52</sup> KRISHNA IYER, J., OF LAW AND LIFE, (1979) (Vikas Publishing House).