

CHAPTER VI

CONCLUSION AND SUGGESTIONS

India has made tremendous progress in various fields and the country as well as the people in general is enjoying the fruits of this progress. The policy makers have tried to create a society based on equality, however, this progress has never touched a number of cross sections of the society, ensuring liberty and freedom for all as is evident from the Preamble to the Constitution itself. Apart from the Constitution, much legislation was enacted to take care of the marginalized sections of the society to save them from exploitation. However, in spite of all these legislations a few sections of the society still live on the fringe. They have never witnessed any change in their living conditions and are discriminated and marginalized. They have no control over their life, in many cases, no laws to secure their condition and are forced to live in a society apathetic to their cause. These marginalized sections in India largely include:

1. Women
2. Children
3. Disabled
4. People with HIV/AIDS
5. LGBT Community

The development that is taking place all around has hardly touched any of these sections of people and they still live in an atmosphere of isolation and discrimination. They have very limited opportunities and they strive hard to sustain in a world which has nothing to offer to them except sympathy. While living in the society, they are kept away from the main stream and benefits as reaped by the others in the society. They live as an excluded group with no one bothering for them. Even after seventy years of independence, the rights as guaranteed under the Constitution elude them. It look like, the right to equality and right against exploitation is totally non-existent in their case as the government as well as the society continue to deny them equality and protection from exploitation.

Marginalization is the process of pushing a particular group or groups of people to the edge of society by not allowing them an active voice, identity, or place in it. Through both direct and indirect processes, marginalized groups may be relegated to a secondary position or made to feel as if they are less prominent than those who hold more power or privilege in society. Individuals and groups can be marginalized on the basis of various factors associated with their identity, including but not limited to: race, gender or gender identity, ability, sexual orientation, socioeconomic status, sexuality, age, and/or religion. Some individuals identify with multiple marginalized groups, and may experience further marginalization as a result of their intersecting identities⁵³².

6.1 Conclusion

6.1.1 Women

Gender inequality is a common feature in many societies particularly in a country like India. This gender inequality makes the women a marginalized section of people. Though the situation in the urban areas has shown improvement to a great extent, the rural areas tell a different story even now. The conditions of women despite a number of laws to support their cause are yet to achieve the desired result. They still remain as marginalized relative of men. They are still excluded from a good number of jobs. Their representation in many avenues of profession is relatively low. Very few of them are in active politics or such fields. The condition of illiterate women and those belonging to lower classes and poorer sections of societies are far worse. Indian society is a male dominated society and the women are seldom considered as equal counterpart.

The incidence of violence against woman is increasing day by day. This begins when they are still in the womb of their mother. A good number of abortions takes place just because the fetus inside is a female baby. There is a general perception in India that the woman should continue to bear these atrocities in the interest of family without raising their

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Available at: <http://counselingcenter.syr.edu/social-justice/impact-of-marginalization.html>,
(Visited on April 20, 2017).

voice. They are insulted, assaulted and discriminated for one reason or the other. They are also subjected to sexual violence very often.⁵³³.

The following are some of the incidents that highlight the pitiable state of being a woman in India inspite of the protective provisions:

6.1.2 Rape and Sexual Assault

Rape has become an everyday phenomenon in India that we cannot find a single news paper in India without the report of a rape. It has reached such enormous proportions in India that the country has become a place which is not safe for the women.

The following table illustrates the fact that the incidents of rape are raising year by year. Even after the implementation of the Justice Verma Committee report imposing harsher punishments for rape, the incidents of rapes have increased⁵³⁴.

Year	Number of rape cases
2007	19348
2008	20737
2009	21467
2010	21397
2011	22172
2012	24923
2013	33707
2014	36735
2015	34210
2016	38947

⁵³³ Vasundhara Sirnate, "Good Laws, Bad Implementation", *The Hindu*, May 18, 2016.

⁵³⁴ "Indias Rape Crisis", *The Quint*, April 16, 2018.

One of the reasons for these increasing incidents of rape as cited is the low conviction rate. According to the estimates of NCB, the conviction rate for rape in India is 25.5% much lesser in comparison to other cognizable offences⁵³⁵

NCB data of 2015 on proximity of offenders to victims (the most recent data available) shows that in 95 percent of all rape cases, the offender knew the victim. For example, 27 percent of rapes are committed by neighbors, 22 percent involves the promise of marriage and 9 percent are committed by immediate family members and relatives. The data further stated that at least two percent of all rape cases involves live-in partners or husbands (former partners or separated husbands — rape within marriage is not recorded), 1.6 percent are committed by employers or co-workers and 33 percent are committed by other known associates⁵³⁶.

Apart from rape, women are also subject to several other kinds of sexual assault. They are not safe and secure in any place in India, neither at home or outside. They are sexually assaulted in offices; they are unable to walk alone without listening to lewd comments, they very often become victims of stalking, voyeurism etc. In fact, they are betrayed and exploited by those men who are close to them in many cases. The introduction of sections 354A – D or the guidelines of the Apex Court in the case of *Visakha v. State of Rajasthan* had little impact on their condition and they continue to suffer as ever.

6.1.3 Rape as Punishment for Deviant Conduct

Incidents are not rare in which the women were raped as a mode of revenge or punishment for deviant behavior or behavior which in the estimation of the society is not up to the norms of the society.

An incident from West Bengal is a shocking testimony to this fact. A tribal woman was raped by about a dozen men for being in a relation with a man from some other clan. They were tied to a tree and locally tried for the so called offence and were imposed a fine of

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Ibid.

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Saachi Sharma, “NCRB Data Shows 95% Rape Victims in India known to offenders” *Firstpost*, May 9, 2017.

rupees twenty five thousand. The man got away by making payment but the woman was unable to pay. On this the local headman decided that now she has to make up with sex for failure to pay and was gang raped.⁵³⁷

In another shocking incident five women engaged in anti-human trafficking campaigns in Khunti district were allegedly abducted and gang-raped by armed men. The survivors, engaged with an NGO supported by a Christian missionary, were abducted by motorcycle-borne armed men while they were performing a street play at RC Mission School in Khunti's Kochang block, about 90 km from Ranchi. They were forced to sit inside cars, taken to a nearby secluded place and raped. Their only fault was that they have staged a street play there against trafficking in the region⁵³⁸.

A 16-year-old girl in Jharkhand was burnt alive inside her home in Jharkhand in the naxal affected areas of Chatra. According to the family, the four accused who were in an inebriated state took the girl away when all the other family members were away to a wedding. The father of the victim lodged a complaint with the elders and the accused were ordered to do 100 pushups and a compensation of Rs.50,000/-. However, this enraged the accused and they went to the victim's house and set the victim on fire and beaten up her parents⁵³⁹.

6.1.4. Honor killing

Honor killing is another form of atrocity against women that is prevalent in India. Every year a good number of women are brutally murdered to save the so called honor of family. With no freedom and choice and no law to curb this menace, Indian women are at the receiving end here again. The people in India consider a woman as secondary and obedient to men. They are supposed to live under the control of father, brother, husband and son all throughout their life and they cannot cross the *lakshman rekha* drawn by these men in her life. The moment she cross it, she is inviting trouble as any deviant behavior may cost

⁵³⁷ Supra note 3.

⁵³⁸ Bedanti saran, "Five Women Activists Abducted and Gangraped", Hindustan Times, Ranchi, June 22, 2018.

⁵³⁹ Manish Kumar, "16 Year Old Girl Allegedly Gang raped, Burnt Alive in Jharkhand", NDTV, May 05, 2018

her life. There are hundreds of cases in which women have been killed for the sake of honor of the family. The women are denied their right to choose in marriage and when they make a choice which is non-acceptable to the family, the trouble erupts and the question to be considered is can a person protect his honor at the cost of another?.

The following are cited as the most important reasons for honor killings in the state⁵⁴⁰:

- (i) loss of virginity outside marriage;
- (ii) pre-marital pregnancy;
- (iii) infidelity;
- (iv) having unapproved relationships;
- (v) refusing an arranged marriage;
- (vi) asking for divorce;
- (vii) demanding custody of children after divorce;
- (viii) leaving the family or marital home without permission;
- (ix) causing scandal or gossip in the community, and
- (x) becoming a rape victim

Honor killing has become a matter of concern as the *khappanchayats* in India are on a rampage in favor of decisions favoring killing to save the honor of family. There is no doubt that this is in contrast with the established system of law in India. Local *khappanchayats* are prevalent in many states across India. The state of Haryana is a perfect example of how *khappanchayats* can play havoc with the life of people. It is a huge task for any State to deploy police in every nook and corner of India. Taking advantage of many local and traditional factors, a group of elders wants to impose a Code of Conduct for the women in that society.

⁵⁴⁰ *Shakti Vahini v. Union of India*, Writ Petition (Civil) No.231 of 2010, decided on March 27, 2018.

The matter of honor killing was considered by the Apex Court in the case of *Shakti Vahini v. Union of India* and the following observations of the Court are worth quoting⁵⁴¹:

- Liberty, itself implies the freedom to choose and when that freedom is crushed it is not good in the interest of the society.
- The violation of human rights and destruction of fundamental rights take place in the name of class honor or group right or perverse individual perception of honor. Such individual or individuals consider their behavior as justified leaning on the theory of socially sanctioned norms and the legitimacy of their functioning in the guise of ethicality of the community which results in vigilantism.
- The action of a woman or a man in choosing a life partner according to her or his own choice beyond the community norms is regarded as dishonor which, in the ultimate eventuate, innocently invites death at the cruel hands of the community prescription. The reputation of a woman is weighed according to the manner in which she conducts herself, and the family to which the girl or the woman belongs is put to pressure as a consequence of which the members of the family, on certain occasions, become silent spectators to the treatment meted out or sometimes become active participants forming a part of the group either due to determined behavior or unwanted sense of redemption of family pride.
- The views of village elders or family elders cannot be forced on the willing couple and no one has a right to use force or impose far-reaching sanctions in the name of vindicating community honor or family honor.

There are several other cases in which the Supreme Court and other Courts have denounced this practice of honor killing, sadly the practice is going on and the woman continue to be the victims.

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Writ Petition (Civil) No.231 of 2010, decided on March 27, 2018.

6.1.5. Aborting Girl Child

A girl child is most unwelcome in many families and they are killed even before they take birth and this practice is going on in India for centuries. In the wake such rampant practice of female infanticide cases in India, the government has enacted the PNDT Act and banned the sex determination test a cognizable offence. However, nothing has changed for the female children and the inhuman practice continue as it is. This is happening in India despite its skewed sex ratio.

In March 2017, the police while investigating the death of a woman due to abortion traced out 19 aborted female fetuses from a private hospital in Maharashtra⁵⁴².

This is not an isolated incident and such incidents are reported from different parts of India on every day basis.

According to official statistics, about three million girls end their prematurely as they were never allowed to take birth between the year 2000 to 3000. Over the 30 years from 1980 to 2010, there could have been as many as 12 million abortions of girls. Census data also reveals a sharp decline in the numbers of females. The gap has grown substantially since the 2001 census, which found 6 million fewer girls, and the 1991 census, 4.2 million fewer⁵⁴³.

Families in India are increasingly aborting their second child if they know it to be a girl and they already have a daughter. Scientists estimate that up to 6 million girls have been aborted in India over the past decade by couples who do not want a large family and are determined to have a son. The practice is more widespread among wealthier and better educated Indian families, who are better able to afford the prenatal tests and medical intervention they want. While it has been known that there has been a tendency to abort girls

⁵⁴² Satyajit Joshi, "Maharashtra Doctor Arrested for Dumping 19 Aborted foetuses in Sangli", *Hindustan Times*, March 07, 2017.

⁵⁴³ Sarah Boseley, "Families in India Increasingly Aborting Girl Babies", *The Guardian*, May 24, 2011.

in India since the first census in 1871, the latest evidence suggests that the practice is common throughout the country⁵⁴⁴.

According to Census data in 1961, in the case of children below the age of seven years, there were 976 girls for every 1000 boys in India. This has come down to 914 in the year 2011. In fact India stands only next to China in this dismal ratio of sex in favor of male child.

6.1.6 Cruelty for not able to deliver a male child

Perhaps India may be the only state where there is such a craze for sons and a good number of parents in their craze for boys prefer to abort the girl child. They are still living in the traditional concept that a son is necessary to advance the family line whereas a daughter will be married off and she will have to go to another house. This traditional thinking seems to be at the root of the problem where daughter-in-laws are harassed for not giving birth to male child.

The story of Kulwant and Rekha from Sagarpur Delhi is a true account of the atrocities against for their failure to women is just a tip of the iceberg. The story of Kulwant is an eye opener to the sorry state of affairs in India when it comes to neglect of female child. Kulwant had three daughters but their in-laws wanted a boy. From the fourth pregnancy onwards, they forced her to go for sex determination tests and abortion till she was conceived with a male child. They even threatened her that she will have to face divorce if she fails to give birth to a male child.⁵⁴⁵

Rekha, the mother of a three year old girl has her own story. In her second pregnancy, her mother in law wanted to go for sex determination tests but she never wanted to go for it. An ultrasound examination was done and it revealed that she was pregnant with girl child again. The inlaws then started pressurizing her for abortion as they thought that a girl child can never continue the family legacy. She lamented that there is no happiness and there is no celebration on the birth of a girl child in India.

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Ibid.

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“Where are India’s Millions of Missing Girls”, BBC News, May 23, 2011.

6.1.7. Bride Burning on Failure to Bring Dowry

The evil of dowry has spread its tentacles in the society and very frequently a good number of innocent girls become victims of this evil. Bride burning has become a practice in India for not failure to come with dowry according to expectations. This demand starts immediately after the marriage and are raised by the groom or his parents for benefits in cash or in kind.

The condition of women in India is aptly described as under:

India's women are traumatized in less obvious ways than by tanks in the streets, bombs and warlords. Our oppression starts innocuously: it occurs in private life, within families, with girls being locked up in their own homes. This everyday violence is the product of a culture that bestows all power on men, and that does not even want women to exist. This is evident in the unbalanced sex ratios at birth, even in wealthy families. But India also kills its women slowly. This violence is buried in the training of women in some deadly habits that invite human rights violations, but that are considered the essence of good womanhood⁵⁴⁶.

It is not that there are no laws to protect women, and improve the conditions of women. There are a good number of laws to protect the women from exploitations and a number of guidelines by the Apex Court. The Indian penal Code prescribes punishment for offences like rape, molestation and outraging modesty of women etc. There are guidelines by the Apex Court to protect the women from sexual harassment and the PNDT Act is so harsh on sex determination tests etc. However, the basic problem seems to be the inefficient administration of these laws. The conviction in offences against women is so low to be any deterrent against such offences.

Thus, inspite of the protective provisions like the amendment of criminal laws in 2013, section 304-B, section 498A, Domestic Violence Act, Dowry Prohibition Act, The

⁵⁴⁶ Deepa Narayan, "India's Abuse of Women is the Biggest Human Rights Violation on Earth", *The Guardian*, April 27, 2018.

Immoral Traffic prevention Act etc, it is yet to achieve the desired results against the overall exploitation of women.

6.1.8 People with disabilities

India is not a country for persons with disabilities. They face hurdles everywhere and they are discriminated and isolated. The environment they live in is totally unkind to them and they face a good number of problems in their day to day life. This is despite the fact that the Indian Constitution secures equal treatment and a treatment that take care of their dignity. But it is a sad fact that even after 70 years of freedom, equal opportunities are denied to them and except a 3% quota in jobs, nothing has been changed for persons afflicted with disorders.

The central govt. has enacted 'The Right of Persons with Disabilities Act' in the year 2016 and according to the Act the following are listed as the categories of disabilities covered under the Act⁵⁴⁷:

1. Total blindness of eye
2. Vision which is not normal or low
3. Persons cured of leprosy
4. deaf and hard of hearing
5. Locomotor Disability
6. Dwarfism
7. Intellectual Disability
8. Mental Illness
9. Autism Spectrum Disorder
10. Cerebral Palsy
11. Muscular Dystrophy
12. Chronic Neurological conditions
13. Specific Learning Disabilities
14. Multiple Sclerosis
15. Speech and Language disability
16. Thalassemia

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(Act No.49 of 2016)

17. Hemophilia
18. Sickle Cell disease
19. Multiple Disabilities including deaf blindness
20. Acid Attack Victim
21. Parkinson's disease

It took 70 years for the government to enact a comprehensive legislation on people with disabilities. Even today, public places, offices, railway stations, buses and public transport are not accessible to them.

Those with disability have fought against the odds and their fight is still continuing against the neglect of their interest all through the centuries. Those around them are totally insensitive to their special needs and treat them as botherations. India has considerable population of more than 21 million disabled persons which constitutes about two percent of the total population. Inspite of this huge population having some or the other kind of disability, the people in general and those in governance are apathetic to the needs of people with disability.

Perhaps the authorities consider that providing a 3% quota in jobs is what is required to improve the conditions of people with disabilities. But jobs are only a part of the problem they are faced with. Ofcourse getting job is a big challenge for them as no one would think of giving jobs to a person with disabilities. Thus quota will surely help them but that alone cannot ameliorate their problem. The biggest challenge they face is live a life with minimum dependence on others. Mobility is severely restricted in their case and the infrastructure around is totally hostile for them to leave a life of their own with minimum dependence on others. Even after the Supreme Court guidelines for making all public buildings disabled friendly, the situation more or less remains hostile to them. They cannot access public transports, there are no ramps in many buildings, wash rooms etc are not disabled friendly and so continues their vows unless they are living in a big city. The villages and the small towns of India are totally hostile to the needs of a disabled person. They cannot plan anything as they are at the leniency of others.

The following are some of the problems faced by people faced with disability:

1. Restricted mobility and dependency on others
2. Transportation related problems due to unfriendly design of transport vehicles and public buildings. Buses do not have enough spaces to accommodate wheel chairs etc and even when there is a ramp or wheel chair in any building, they cannot move around without wheel chair.
3. People consider them as a breed apart and simply sympathize with them. They never consider that the disabled people can also have some abilities, needs and interests just like the other populations.
4. Employers are reluctant to employ disabled people.
5. They are insecure in every step of their life.
6. Families never take care of their education and they remain illiterate and face economic hardship in their life.
7. Their medical needs are very often neglected and a good number of them even cannot afford appliances like wheel chair, crutches, artificial limbs, other such aids etc which can better their conditions in life.
8. Socio, emotional/psychological changes are a part and parcel of their everyday life. They are abused, insulted, they have a very dim prospect of married life and they are considered as a bad omen by the family and the society.

It is a fact that - to be a disabled person is a nightmare in India even though the situation changing for the better.

6.1.9 Rights of Persons with Disabilities Act 2016

The government has enacted “Rights of Persons with Disabilities Act 2016” so that the rights of those with disabilities can be protected or taken care of. Through this Act, the

government wants to ensure equality and dignity to persons with disability and makes their life equally with others. The Act also aims to provide an appropriate environment to them facilitating their movement and make buildings and other public places friendly to their special needs. The Act also makes provisions to protect them from violence, exploitation and all derogatory practices and discrimination against them.

However, as in the case of many other Acts, implementation seems to be the biggest problem here again. Despite the expiry of the deadline by the Supreme Court to make public places, transport and buildings disabled friendly by the 31st of December 2018, no constructive steps are taken in this direction. The steps taken towards the vocational training and self employment of disabled people are very limited. Many poor among the disabled are unable to afford quality implements that may enhance their mobility. Thus despite the Act, the government initiatives in accessibility of public facilities and employment aspects remain dismal. Further, there are allegations that the matter of voting rights of people suffering from psychological disorders and many such aspects are not taken care of in the Act.

6.1.10 Children

We can find a good number of children roaming around the streets of India as rag pickers, working in *dhabas*, factories etc. A good number of them can also be seen working in the houses of wealthy people across the cities in India. In their childhood, the children are supposed to attend school and take up study. But this is not possible for many children in India due to the poor financial conditions of the family. In order to support the family, the children must also do some kind of work and they get engaged in work due to compelling situations. However, this is not good for the overall growth of the children as it will have long term adverse effect on their health and their growth and well being. While the other children enjoys a healthy and productive life, the children who comprises the marginalized sections of the society lives in darkness far away from the development going on all around. They live on the edge and are denied involvement in economic, political, cultural and social activities.

Marginalization brings with it a host of problems. Most of these marginalized sections of children are from poor families who need them to work for the sustenance of the family. Such marginalization can be a reason for anger, anxiety, fear, depression, frustration, isolation etc. Such children are often found reluctant to interact with others and participate in class room discussions and concentrate in their studies.

6.1.11 Causes for the marginalization of children⁵⁴⁸

(a) Poverty

Poverty seems to be the first and foremost reason for child labour in India. Even after seventy years of independence, a considerable chunk of the population lives below the poverty line and they are unable to meet both the ends. In such a scenario it is nothing amazing that the poor and hapless parents have no other way to meet the day to day expenses. They therefore send their children to the urban areas to work in *dhabas*, factories, farms, households etc. Perhaps they are even not happy to send their kids as labours away from home, but they are under some compulsion triggered by extreme poverty and helplessness. Their primary aim in sending the children to work is an increase in family income. But these decisions taken under compelling circumstances play havoc with the life, education and development of children.

(b) Lack of Educational Facilities near Home

Even today, the remote and rural areas of the country present a sorry state of affairs. The schools are far away from home and the village or a cluster of villages around has no proper educational facilities. The parents being poor are unable to send them to the town for education. In such a situation, the children will prefer to stay at home and help the parents in their work or the parents will send them to distant places where work is available. Even if some private schools are available in the area, these poor parents may not be able to get their children educated due to penury. Poverty combined with illiteracy ultimately make them end up as child labour.

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Available at: <http://www.indiacelebrating.com/social-issues/child-labour-in-india/>, (Visited on April 15, 2018).

(c) Social and economic backwardness

Social and economic backwardness also contributes towards the problem of child labor. Education can be a least preference for a person who is socially and educationally backward. Being illiterate themselves, they are unable to value education and understand the importance of education in the life of a person. They thus never bother to get their children educated and prefer their children to work instead.

(d) Lack of other earning members

In certain families a situation may arise where the elder members are unable to work due to disease or disability. In Border States, addiction of elder members can also be a reason whereby there are no capable adults in the family to work and earn. In such a situation, the children left with no other option but to work.

(e) Poor Implementation of Laws

Apart from the Constitutional provisions, there are other laws in India which prohibits child labour in India. However, inspite of these provisions, child labor is common in India and children can be found working everywhere or roaming about the streets as rag pickers. The Supreme Court has also denounced this practice in a number of cases and issued guidelines to deal with this problem. However, the situation remains as it is and the children are at the receiving end. Thus poor implementation of the law is a reason for the prevalence of this practice.

(f) Child Labour is Cheap

For many employers in India lure of cheap labor is a reason for engaging children in shops, factories, *dhabas* etc. Their labor is cheap and they work for lesser wages without any protest etc. A businessman is always on the lookout of profit and cheap labour cost will always contribute towards his profit. Moreover he can make the children work the way he likes. This is not possible with adult labour. Once the children are lured to work, then they are subjected to all kinds of troubles and exploited. They work in deplorable conditions with

very less food and are forced to work for hours altogether without any rest etc. They are even deprived of proper time to sleep. They are paid with very less salary and their health care needs are not taken care of. The most important is that they lose their chance to get education and strive ahead in life.

The Apex Court in *Bachpan Bachao Andolan v. Union of India*, has analyzed and the various pros and cons of child labour in India and has highlighted the poor conditions of those children working in circus set ups.⁵⁴⁹

The Apex Court in *M.C Mehta v. Union of India*, has described the causes of child labour as - Extreme poverty, lack of opportunity for gainful employment and intermittency of income and low standards of living are the main reasons for the wide prevalence of child labor. Though it is possible to identify child labor in the organized sector, which form a minuscule of the total child labor, the problem relates mainly to the unorganized sector where utmost attention needs to be paid. The problem is universal but in our case it is more crucial⁵⁵⁰.

Thus over population, illiteracy, debt trap are some of the common causes which are instrumental in this issue. Overburdened, debt-trapped parents fail to understand the importance of a normal childhood under the pressures of their own troubles and thus it leads to the poor emotional and mental balance of a child's brain which is not prepared to undertake rigorous field or domestic tasks. National and Multinational companies also recruit children in garment industries for more work and less pay which is absolutely unethical. According to UNICEF children are employed because they can be easily exploited. By considering various causes of child labor, suitable strategy can be designed to curb or eliminate child labor⁵⁵¹.

⁵⁴⁹ (2011) 5 SCC 1

⁵⁵⁰ AIR 1987 SC 965

⁵⁵¹ Available at: <http://www.indiacelebrating.com/social-issues/child-labour-in-india/>, (Visited on April 15, 2018)

6.1.12 People with HIV/AIDS

Nothing wrong to state that those affected with HIV/AIDS are sure to face a kind of social boycott in life. There was a time they were shunted out from every sphere of life till the intervention of the Courts. Jobs were denied to them and fear psychosis was created around them that association with these people even a handshake may spread the disease.

Everyone in the society is keen on enquiring how these people got the infection, accuse them of their immoral conduct and make them feel guilty every moment without realizing that once a person has acquired this infection, these things are not going to help. Consequently, they feel isolation at their workplace, social gatherings and even in their families and the society humiliates them and the members of their family rather than working to make their life better.

AIDS comes with a host of problems. It affects the immune system and weakens the health and strength of the affected person. Moreover the knowledge of impending death makes them irritated and in a bad mood. This feeling coupled with the social boycott pushes them into stress and depression. Even in hospitals they face discrimination as staff is reluctant to treat them or there are instances when hospitals turn them away denying treatment to them. Ignorance about HIV is the biggest challenge they face from society leading to discrimination and stigmatization in their case. Even most of the countries restrict the trans-national movement of people under their immigration laws. All their life, they live with the stigma of being immoral and afflicted with AIDS and far away from the love and care of even their near and dear ones.

The other problem associated with HIV/AIDS is their premature death and the care and protection of their children. People suffering from HIV usually die early and it creates a problem of their children becoming orphans with no one to take care. The society and even their relatives have unfounded fears about these children and are reluctant to help them.

6.1.13 Law and HIV/AIDS in India

Government of India has at last enacted a legislation to protect the interest of those affected with HIV/AIDS in obtaining treatment and employment and to prevent all kinds of discriminatory practices against them. The enactment of this Bill named as - The HIV & AIDS (Prevention and Control) Act, 2017 as it is known has been hailed as historic by many. The Act empowers people affected of this disease with legal protection so as to put an end to the discrimination against them. The Act apart from defining what is discrimination has the following defined aims:

- i) Every person shall have right to HIV prevention, testing, treatment and counseling services.
- ii) Prohibits HIV testing as a pre-requisite for securing admission or employment, renting property, accessing healthcare etc and no person be compelled to undergo screening test without his consent.

However, these provisions alone seem to be inadequate to better the conditions of people affected by AIDS. The biggest drawback is the clause in section 13 regarding the liability of the State to provide ART. The Act imposes liability “as far as possible” which means a poor person who cannot ART cannot claim it as a matter of right. This is rather considered by many as an escape route by which the government can shrink its responsibility. Again like many other Acts, whether the provisions will be implemented effectively or not is to seen.

6.1.14. LGBT Communities

LGBT community is yet another cross-section of the people who lives on the fringe. They are also marginalized and isolated by the society. Their conduct is condemned by the society as it is not according to the norms of the majority. The society seems to condemn every behavior which is not according to its norms and they tend to become the custodians of behavior and conduct of the sections of people. Any deviant behavior is met with hostility from the society. This is in violation of the principles of equality, dignity and honor as

upheld in Indian Constitution. The Constitution guarantees right to every citizen and every minority group in the society but it took long 70 years for the LGBT community get some kind of recognition and their fight is still half way.

They encounter problems in every walk of their life. It starts with the question of gender. They were not considered as belonging to any gender – male or female and only recently they have been recognized as the third gender which is yet to get the larger recognition of the society. This gender problem haunted them till recently and they were unable to get admission to educational institutions, get jobs or contest for elections. To some extent these problems were sorted out by the courts, but their quest for social status and dignity still seems to elude them.

However the truth is that the society is yet to accept the sexuality of this community. Their problems starts from their own family as they reject such deviant behavior and try to impose a behavior code on them. There are cases in which they are abused physically for their refusal to marry and behave in a particular manner. Thus it seems the real danger to the LGBT community is from their own families. There are instances in which LGBTs committing suicides due to intolerant behavior from their own families. They are also bullied everywhere wherever they go. With the hostile environment around them, they never feel, socially, emotionally and physically safe and over a period of time, this can lead to suicidal tendencies, depression, lack of concentration, drug abuse, violent behavior etc.

In a case reported from the Unites States, A 16-year-old transgender girl who spoke on YouTube about being bullied at school in Southern California killed herself, raising questions about what educators can and should do to support students who change gender identity. Taylor Alesana was constantly picked on by peers before taking her life. With few adults to turn to, and with no support from her school, her life became too difficult. She was a beautiful and courageous girl, and all she wanted was acceptance⁵⁵².

In another tragic incident from Ahmedabad India, a lesbian couple allegedly committed suicide after throwing a three-year-old child of one of them in the Sabarmati River in June 2018. According to the suicide note, they stated that they are distancing

⁵⁵² Associated Press, “Bullied Transgender Teen Commits Suicide”, *New York Post*, April 10, 2015.

themselves from the world so they could unite, but the world did not let them live. The two women committed suicide due to complications arising out of their lesbian relationship⁵⁵³.

In an incident from Bombay in August 2016, a girl hung herself from the ceiling after hearing that her neighbor friend had consumed poison in an attempt to kill herself. The previous day, the two girls had been spotted by one of their relatives and the father of one of the girls. The parents of the girls then forbade them from seeing each other and also sought the help of a local political worker who allegedly scolded both the girls and unable to bear the shame both of them attempted to commit suicide⁵⁵⁴.

In other instances of young men and women in same-sex relationships being harassed by their parents, communities and the police are alarmingly common. *Sahayatrika*, a support group for lesbian, bisexual and transgender people in Kerala said that 22 young women in the state had committed suicide under similar circumstances between 1995 and 2003. Since March 2014, LGBT rights group *Humsafar* Trust has dealt with 12 cases in Mumbai alone where couples were either contemplating suicide or were deeply depressed or had faced some kind of harassment or coercion by family or neighbors over their sexuality. In 2001 in Kerala two tribal girls were found dead near an irrigation canal after their families refused to let them marry. In 2008, in Chennai two women set themselves on fire, after their families tried to separate them. In 2011, in Nandigram in West Bengal, two women killed themselves, stating in their suicide note that they could not live without one another. And in 2013, two young women fled to Bangalore from Kerala, hoping to find acceptance and live together away from their disapproving families.⁵⁵⁵

Thus the LGBT community faces a lot of problems in India; some of them are as under:

- i) They are often addressed by derogatory names which vary from state to state.

⁵⁵³ PTI, "Lesbian Couple Commits suicide after throwing child in to river", The Indian Express, June 11, 2018.

⁵⁵⁴ Bhavya Dore, "A lesbian couple attempt suicide ", *Scroll.in*, September 04, 2016.

⁵⁵⁵ *Ibid.*

- ii) They are bullied and troubled very often
- iii) They were often blackmailed to sexual relationship so as keep the matter under wrap
- iv) Very often they become victims of physical violence
- v) Many of them are thrown out of home on their refusal to mend sexual orientation.
- vi) Even after the intervention of the court, they face problems and discrimination and shame in education educations and in job.

The question that deserves consideration is, can law alone ameliorate the conditions of people belonging to transgender community? Their enemy is within and the discrimination in their case start from their family itself. It is the family that isolates them, disown them and keep them away from inheritance and other benefits.

Transgender Bill 2016 - A bill has been introduced in the Parliament in the year 2016 to safeguard or take care of the rights of the people belonging to the transgender community. The Bill, contentious as it was never discussed in the dilemma of vote bank politics. According to official accounts, there are five million transgender people in India but the rights of such a huge number of people are not taken care of or totally and terribly neglected. The Parliament instead of deciding the Bill, referred it further to a Committee to work out the pros and cons of it.

However, the transgender community is upset over the amended provisions of the Bill. They raised certain objections to the provisions in the bill as under:

- i) the Bill does not recognize them as a distinct group.
- ii) the provisions of the Bill are not sound enough to remove the stigma associated with being an LGBT.
- iii) they find the provisions of compulsory medical examination before Screening Committee as an aggression on their right to determine their sex by self.

Though the bill was again introduced in the parliament in the year 2017, no decision was taken by the House. Consequently the Ministry of Social Justice considered the objections rose by the transgender community in the earlier versions of the Bill and made suitable amendments in the definition.

Thus the transgender community was unhappy about the provisions of the Bill and they have called for a nationwide protest against the provisions of Transgender Persons (Protection of Rights) Bill, 2016. They were of the opinion that the Bill as such is draconian, violative and contains regressive provisions⁵⁵⁶.

The definition of transgender which was discriminatory in nature was subsequently amended as - “a transgender means a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-women (whether or not such persons has undergone sex reassignment surgery or hormone therapy or laser therapy or such other therapy”. An inclusive definition of transgender was given accommodating persons with intersex variations, gender-queer and person having such socio-cultural identities such as ‘kinnar’, ‘hijra’, ‘aravani’ and ‘jogta’. Further, the provision of recommendation of the screening committee has also been done away with.

With these amendments, the Bill has been sent to the Cabinet; however, it is yet to become an Act. Section 377 remains the bone of contention that delays the Bill. The Ministry is yet to make any changes to the demand of excluding the transgender community from the application of section 377 which criminalizes homo-sexual activities. Moreover, there is no decision as to including them in the category of other backward classes for the purpose of reservation in jobs.

Thus without taking a decision on section 377, IPC, the Additional Solicitor general recently informed the Apex Court that it would not contest section 377 and it is left to the wisdom of the Supreme Court to take decision on section 377. This again has brought a ray of hope to the transgender community and their rights.

⁵⁵⁶ See, Express News Service, “Transgender People to Protest Provisions in Bill”, *The India Express*, December 17, 2017.

6.1.15 - Social inequality is accentuated and perpetuated by legal inequality

There cannot be any society where everyone stands equal in every aspect. Inequality is evident in social status, economic condition, wealth, racial status etc. Social inequality may be based on a variety of factors like race, poverty, sexual orientation, gender, age, disability, and other unique issues of inequality. In India laws are administered differently for people having different social status. Thus it is not wrong to say that implementation of law itself promote social inequality. For example, in India the people belonging to certain castes consider themselves as superior and some of the other classes as inferior. The spate of atrocities against the SC/ST communities in India even today is an example of this racial inequality. Even though there are laws and provisions in the Constitution itself to tackle with this problem, the sad fact is that it is still a burning issue. It is not wrong to say that the women are still discriminated in India despite the golden provisions of their protection. The case of transgenders, people suffering from aids, disabilities etc are also not different. Thus neglect of law or failure to uphold and administer law in its letter and spirit may promote and perpetuate the social inequality.

6.2 Suggestions

After analyzing the pros and cons of the problem of discrimination and marginalization against women, children, domestic workers, sex workers and LGBT community in India and various factors responsible for such marginalization, the researcher has formulated the following suggestions to improve the conditions of these marginalized sections so that they may also return to the main stream enjoy life like any other sections of people in Indian society.

6.2.1 Effective Law and its Strict Implementation is the Need of the Hour

There are effective laws against the marginalization of women, children and disabled but the plight of domestic workers, sex workers, LGBT etc are yet to be ameliorated with suitable legislations. Even when there are legislations, it is implemented poorly and it has failed to act as a deterrent. Even when there are laws to protect these marginalized sections, those laws are implemented poorly with the result that these laws have failed to create deterrence. The conviction rate under these laws is so low and it took years for the case to be decided. These marginalized sections do not have the money and power to fight against a

system which is totally hostile to them and are on the look out to exploit them. Thus in the case of sex workers, LGBT community, and domestic workers, there should be effective laws to protect them from exploitation.

6.2.2 People with Disability Deserve more than Sympathy

Sympathy is the people has to offer to a disabled person at present but sympathy alone is not going to better his cause. He needs to live like any other person in the society with dignity and equal opportunity. The society has reach out to those with disabilities in the society instead of considering them as a burden. The public places and public transport system must be friendly to them and their special needs. They should be given appointments in all suitable professions and financial support to start avocations that they can run smoothly. They should be given free education and their talent should be identified and it should be adequately supported.

6.2.3 Need to raise Education Level and Assure Alternate Income at Village Level.

The problem of child labour and that of domestic workers and sex workers cannot be solved with laws and its implementation alone. It is an end result of the prevailing social and economical situation in many parts of India, especially the rural and tribal area. The maximum number of child labour and sex workers and domestic workers are lured from the remote and tribal areas of India where the people are poor without adequate means to support and are illiterate. Thus this is not a problem that can be addressed with laws alone. The level of education needs to be raised at the village level and there should be proper policies to improve the economic situation in remote areas. Suitable educational programmes should also be held to make them aware of what is happening to their children once they reach the cities in lure of a job and income. The government should provide free education and scholarship to the children of poor parents. The real problem in all these is the economical hardship of the families and without addressing this problem, the menace of child labour, domestic workers plight, and thriving sex work cannot be addressed. Thus some kind of alternative income should be assured to the family.

6.2.4 People Suffering from HIV/AIDS needs Protection and Quality Treatment.

The society must understand that HIV/AIDS is just like any other health problem and should not victimize the victims as pervers or immoral. Promiscuous ways of life are not

the sole reason for contracting HIV, it can be acquired through blood transfusion, hospital procedures, contaminated use of syringes and appliances. They need the support and care from their society.

Identifying the HIV/AIDS patients is the biggest challenge. Most of the people suffering from this disease are afraid to disclose it for fear of victimization. They never come forward for tests or treatment. Thus the first priority is to identify the victims of HIV/AIDS.

Once identified, they should be educated regarding the dangers of HIV/AIDS and the precautions to be taken during sexual intercourse so that the spread of the disease may be prevented. Similarly, the sex workers and the LGBT community and the drug addicts etc who are potentially at risk needs to be educated about safe sex and how to protect them from the peril of HIV/AIDS. There should be suitable programs highlighting the dangers of this disease through the social media and through the medium of radio and television.

Equally important is the treatment aspects to contain this problem. Even though HIV is not curable, life can be prolonged by the use of anti-retroviral drugs. But these drugs are very costly and good number of people suffering from HIV is unable to afford them regularly. Thus the medicines should be provided to them free of cost.

Apart from this, the children of couples who die of HIV/AIDS needs to be take care of properly. Usually people living with HIV/AIDS die young and their children often becomes orphan. These children have nowhere to go as the relatives and the society are reluctant to take care due to unfounded fear.

Counselling and social support is required in their case to tide over stigmatization and social boycott. Moreover in matters of employment and schooling, this disease should not be a hindrance and they should be given opportunity like any other person.

6.2.5 LGBT Community Deserve a Better Deal

Sexual orientation of a person should not be a reason to put that person in to shame or discriminate or isolate him. They should be treated like any other individuals and the same kind of freedom, opportunities and dignity be given to them as well. There should be suitable laws to safeguard the interest of the LGBT community. It is a welcome step that the Supreme Court has decriminalized the provisions of section 377 IPC. But what is required more than decriminalizing the act is – the community should not be belittled just because of

their sexual orientation. Further any discrimination due to sexual orientation or being an LGBT should be made a cognizable offence to put an end to their plight.

6.2.6 Employment of Children should be made a Cognizable Offence Punished with Imprisonment.

Employment of children should be made a cognizable offence and those employing children should be punished with imprisonment. The mandate of section 39(e) of the Constitution is very clear that the children during their younger years should not be exploited affecting their health. Moreover, necessity should not force a citizen to do a job which is not possible for him to perform according to his age. Though these rights are protected under the Child Labour (Prohibition and Regulation) Act 1986, owing to poor implementation of the provisions of the Act, the problem is still persisting. A good number of the city households, *dhabas*, factories etc employs large number of children and this practice is going on and even the authorities are aware of it. Hence strict punitive measures must be imposed on those violating the provisions and engaging child labour.

6.2.7 Economic Dependence of Women makes the Situation Worse.

Many problems like sexual work as a profession, dowry death, domestic violence, problem of domestic workers and other forms of violence and discrimination against women, law alone cannot eradicate these problems. We have to strive for the economical independence of the women. Once the women become economically independent, she can express herself in a better way and assert herself and fight against these evils herself.

In the ultimate analysis, it is true to say that law alone cannot bring the desired social change. Education and alleviation of poverty also plays a vital role in curbing many social evils. Poverty compel a person to accept any work as he has no choice before him and this helplessness is exploited everywhere to their disadvantage. Thus so far India fails to tackle illiteracy and the problem of poverty, the marginalized sections will be at the receiving end. Another important thing is the need to control the ever growing population which reduces the opportunities and makes increasing competition for survival. In this race, many are left behind and are at the mercy of the Gods.