

## THE QUEST FOR JUSTICE FOR WOMEN'S

By

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Right from the *vedic* times till date, we as a nation suffer from the well known vice - Gender Bias. Infact, man and woman are two halves of humanity none of the two can reach its highest creative excellence without cooperation of the other. Women constitute about one-half of the global population, but they are placed at various disadvantageous positions due to gender difference and bias. They have been the victims of violence and exploitation by the male dominated society all over the world. Even in the new millennium, the status of women has not improved significantly. The concept of equality between male and female was almost unknown to us before the enactment of the Constitution of India. The

journey has been a long, but interesting and rewarding one is learned that sexual harassment is a complex challenge, one that is often controversial and contentious. Attitudes towards sexual harassment run the gamut from discomfort, fear and concern; to disbelief and indifference.

The International Bill of Human Rights strengthened and emphasized on the human rights of women and children. As regards India, our Constitution provides better protection to women and children under Articles 14<sup>1</sup>, 15(3)<sup>2</sup>, 16<sup>3</sup>, 21<sup>4</sup>, 21-A<sup>5</sup>, 24<sup>6</sup>, 39(A)<sup>7</sup>, 51-A<sup>8</sup>, 32<sup>9</sup>, 226<sup>10</sup> and the Preamble<sup>11</sup> of the Constitution. Moreover, the earlier legislations in India have protected the

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1. Article 14 of the Indian Constitution provides that the State shall not deny to any person equally before the law or the equal protection of the laws within the Territory of India.
2. Article 15(3) of the Indian Constitution provides that the State shall not discriminate against any citizen on the grounds only of religious, race, caste, sex, place of birth or any of them, but the State shall make special provision for women and children.
3. Article 16 of the Indian Constitution provides that there shall be equality of opportunity for all citizens in matters relating to employment or opportunity for all citizens in matters relating to employment or appointment to any office under the State.
4. Article 21 of the Indian Constitution provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law".
5. Article 21-A of the Indian Constitution provides that the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.
6. Article 24 of the Indian Constitution provides that No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.
7. Article 39-A of the Indian Constitution provides the equal justice and free legal aid. For securing social justice the State shall not denied to any citizen by reason of economic or other disabilities.
8. Article 51-A(e) of Indian Constitution provides the fundamental duty to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.
9. Article 32 of the Indian Constitution provides that the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III is guaranteed.
10. Article 226 of the Indian Constitution provides the power of High Courts to issue writs for the enforcement of Fundamental and Constitutional Rights
11. The Preamble of the Indian Constitution provides that the India to become a Sovereign, Socialist, Secular, Democratic and Republic, that the State provides to secure to all citizens - Justice, Liberty, Equality and Fraternity.

women and children from torture, cruelty, outrage of modesty, rape, cheating, assault, bigamy and harassment under the provisions of Sections 509<sup>12</sup>, 498-A<sup>13</sup>, 494<sup>14</sup>, 497<sup>15</sup>, 304-B<sup>16</sup>, 305<sup>17</sup>, 354<sup>18</sup>, 375<sup>19</sup> and 376<sup>20</sup> of the Indian Penal Code, 1860 for maintenance under Sections 125 to 128 of Code of Criminal Procedure, 1973<sup>21</sup>.

Government of India has enacted special legislations to protect the women. Some of the most useful legislations are as follows-

### *The Factories Act, 1948:*

This Act provides some special provisions for women and children to regulate the conditions in manufacturing establishments (Factories) in order to protect the women and children and also provide some provisions for health and safety measures. According to this Act no child who has not completed his fourteen year shall be required or allowed to work in a factory<sup>22</sup>. But a child who has completed his fourteenth year or an adolescent<sup>23</sup> may be allowed to work

12. Section 509 of Indian Penal Code, 1860 provides that whoever intending to insult the modesty of any women, by words, gesture or act shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.
13. Section 498-A of Indian Penal Code, 1860 says that whoever, being her husband or the relative of the husband of a woman, subject such women to cruelty shall be punished with imprisonment for a term which may be extend to three years and shall also be liable to fine.
14. Section 494 of Indian Penal Code, 1860 says that whoever, marrying again during lifetime of husband or life, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.
15. Section 497 of Indian Penal Code, 1860 provides that whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.
16. Section 304-B of Indian Penal Code, 1860 provides Dowry Death. It means the death of women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment for dowry, such death shall be called dowry death, and such husband or relative shall be deemed to have caused her death and shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.
17. Section 305 of Indian Penal Code, 1860 provides that if any person caused to abetment of suicide of child or insane person shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.
18. Section 354 of Indian Penal Code, 1860 provide that whoever assaults or uses criminal force to any women, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and shall be liable to fine.
19. Section 375 of Indian Penal Code, 1860 defines Rape. It means a man has sexual intercourse with a woman against her will or without her free consent, or with or without consent sexual intercourse to a woman under sixteen years of age or sexual intercourse with his own wife below the age fifteen years of age.
20. Section 376 of Indian Penal Code, 1860 provides punishment for committing an offence of rape and the convicted shall be punished with imprisonment of either description for a term which shall not be less than seven years and shall also be liable to fine. And whoever commits a rape on a women by a police officer or public servant or staff of jail, remand home or staff of hospital or against pregnant women or a woman under the age of below twelve years or gang rape than the convicted shall be punished with rigorous imprisonment for a term not be less than ten years but which may be for life and shall also be liable to fine.
21. Chapter IX of Cr.P.C, 1973 deals the order for maintenance of Wives, Children and Parents, under Sections 125 to 128. According to Section 125 the Magistrate makes an order to pay maintenance to wives, children's and parents if they are unable to maintain themselves by the person who is having sufficient means but neglects to maintain his wives, children's and parents.
22. Section 67 of The Factories Act, 1948
23. An 'adolescent' means a person who has completed his fifteenth year of age but has not completed his eighteenth year. Section 2(b) Ibid.

in a factory if (a) a certificate of fitness for such work is in the custody of the manager of the factory, and (b) such child or adolescent carries, while he is at work, a token giving a reference to such certificate<sup>24</sup>. No women shall be required or allowed to work in a factory except between the hours of 6 a.m. and 7 p.m.<sup>25</sup>.

### ***The Immoral Traffic (Prevention) Act, 1956:***

The scope of the law is to cover both the sexes exploited sexually for commercial purposes and provided, inter *alia*, enhanced penalties for offences involving children and minors. The Act, lays down penalties for keeping a brothel or allowing premises to be used as a brothel; living on earning of prostitution; procuring, inducing and inducing person for the sake of prostitution; detaining a person in premises where prostitution in or in the vicinity of public places; seducing or soliciting for purpose of prostitution; and seduction of a person in custody. Besides contemplating specialized machinery for its enforcement, the Act envisages a comprehensive scheme for secure, protection and corrective treatment of prostitutes.

### ***The Dowry Prohibition Act, 1961:***

Main object of this Act is to prohibit the giving or taking of dowry<sup>26</sup>. This Act impose penalties for giving or taking dowry and also for demanding dowry. Any

agreement for the giving to taking dowry shall be void. Where any dowry is received by any person other than the woman in connection with whose marriage it is given, that person shall transfer it to the women, and pending to such transfer, shall hold it in trust for the benefit of the women. Otherwise, he shall be punishable<sup>27</sup>. Offences under this Act are cognizable, bailable and non-compoundable<sup>28</sup> and trial by the Metropolitan Magistrate or a Judicial Magistrate of the First Class<sup>29</sup>. The State Government may appoint as many Dowry Prohibition Officers as it thinks fit and specify the areas in respect of which they shall exercise their jurisdiction and powers under this Act<sup>30</sup>.

### ***The Maternity Benefit Act, 1961:***

The Maternity Benefit Act, 1961 was enacted to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits. The Maternity Benefit Act, 1961 is intended to achieve the object of doing social justice to women workers. Therefore the Court held in *B. Shah vs. Labour Court, Coimbatore*<sup>31</sup>, that in interpreting the provisions of this Act, the Court has to adopt the 'beneficent rule of construction', which would enable the woman worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve

24. Section 68 Ibid.

25. Section 66 Ibid.

26. Section 2 of The Dowry Prohibition Act, 1961 defines "Dowry", it means any property or valuable security given or agreed to be given either directly or indirectly-

(a) By one party to a marriage to other party to the marriage; or

(b) By the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

At or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or *mehr* in the case or persons to whom the Muslim Personal Law applies.

27. Section 6 of The Dowry Prohibition Act, 1961

28. Section 8

29. Section 7

30. Section 8-B

31. AIR 1978 SC 12

her efficiency as a worker and maintain the level of her previous efficiency and output.

***The Indecent Representation of Women (Prohibition) Act, 1986:***

This Act is intended to prohibit indecent representation of women<sup>32</sup> through advertisements or in publications, writings, paintings, figures or in any other matter. This Act prohibits the advertisements containing indecent representation of women<sup>33</sup>. No person shall, or cause to be published, or arrange or take part in the publication of exhibition of any advertisement which contains indecent representation of women in any form. The Act also prohibits the publication or sending by post of books, pamphlets *etc.*, containing indecent representation of women<sup>34</sup>.

***The Legal Services Authorities Act, 1987:***

The Act came into operation on 9th November 1995 and that day is celebrated as legal service day throughout country. All the governmental and non-governmental institutions having concern with legal service organize different types of activities and programmes on the eve of the legal services day. The Act was passed to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity. The Act strive to fulfill the aims and objectives as envisage under Article 39-A of the Constitution of India. According to Section 12 of this L.S. Act,

1987 the women and child shall be entitled to receive legal services provided that the concerned Authority is satisfied that such person has a *prima facie* case to prosecute or to defend. Legal services may be provided in any one or more than one of the following modes, namely:

- (a) Process fees and all other charges payable or incurred in connection with any legal proceedings except Court fees,
- (b) Representation by a legal practitioner in a legal proceeding,
- (c) Obtaining of certified copies of orders and other documents in the legal proceedings,
- (d) Preparation of a paper book including printing and translation of documents, in the legal proceedings,
- (e) Any other expenses which chairman of Legal Services Committee or District Authority deem fit to grant in special circumstances of a given case.

Any person desiring legal aid or advice may make an application addressed to the concern authority and the application shall be processed as early as possible and preferably within one month.

***The National Commission for Women Act, 1990:***

This Act came into force w.e.f. 31st January, 1992. The National Commission for Women under Section 3 of the Act has been constituted. The main objective of the Commission is to study and monitor all matters relating to provisions of Constitutional safeguards for women and to review existing

32. Section 2(c) of the Indecent Representation of Women (Prohibition) Act, 1986 defines the 'Indecent representation of women' as the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt to injure the public morality or morals.

33. Section 3 of The Indecent Representation of Women (Prohibition) Act, 1986

34. Section 4 Ibid

legislations as well as suggest amendments, wherever necessary<sup>35</sup>. The Commission consists of a Chairperson nominated by the Union Government and five other members who have experience of law, administration, health, education, social welfare and management. A Member-Secretary is also nominated by the Central Government who is member of Civil Services of the Union or All India Services.

***The Protection of Human Rights Act, 1993:***

This Act provides for the constitution of National Human Rights Commission, State Human Rights Commissions and Human Rights Courts for better protection of Human Rights. Human Rights mean the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants<sup>36</sup> and enforceable by Courts in India<sup>37</sup>.

***Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994:***

In olden days, it was impossible to determine the sex of the baby in the womb of mother until it was delivered. As medicine advanced, new techniques were devised for preventing the genetic, chromosomal disorders of child in the womb. With these modern techniques and machinery it became possible to ascertain the sex of the child in the womb even in the early stages of pregnancy. The techniques used to diagnose the condition, and sex of the foetus is called 'Amniocentesis'. These techniques are actually used to test the amniotic fluids, blood or any tissue of a pregnant woman for the purpose of finding

any genetic or metabolic disorders. This advancement of science turned to be a curse towards female child. This is an Act to provide for the prohibition of sex selection, before or after conception, and for regulation of prenatal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female foeticide; and, for matters connected therewith or incidental thereto<sup>38</sup>. This Act came into effect from 1st February, 1996. The Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 was enacted with the following objects

- (i) Prohibition of the misuse of Pre-natal Diagnostic Techniques for determination for sex of foetus, leading to female foeticide,
- (ii) Prohibition of advertisement of Pre-natal Diagnostic Techniques for detection or determination of sex,
- (iii) Permission and regulation of the use of Pre-natal Diagnostic Techniques for the purpose of detection of specific genetic abnormalities or disorders,
- (iv) Punishment for violation of the provisions of the Legislation.

The Medical Termination of Pregnancy Act, 1971 is enacted to provide for the termination of pregnancy by registered medical practitioners where its continuity would involve a risk to life or grave injury to her physical or mental health. Because in recent years health services are available

35. Dube, Leela, Women and Kinship Vastar Publications, New Delhi, 1997, pp.146-151.

36. Section 2(f) of the Protection of Human Rights Act, 1993, International Covenants means the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by the General Assembly of the United Nations on the 16th December, 1966.

37. Section 2(d) of the Protection of Human Rights Act, 1993 defines Human Rights.

38. Preamble of PNDT Act, 1994, Act.No.57 of 1994



everywhere and the service hospitals with qualified doctors are available to all classes of people. The Government proposed to liberalize certain existing provisions relating to termination of pregnancy to avoid loss of the mother's health, strength and sometimes life.

***The Protection of Women from Domestic Violence Act, 2005:***

This Act proposed to enact a Law keeping in view the rights guaranteed under Articles 14, 15, and 21 of Constitution to provide for a remedy under the civil law which is intended to protect the women from being victims of domestic violence and to prevent the occurrences of domestic violence in the society. According to The Protection of Women from Domestic Violence Act, 2005 "Domestic Violence" means any harm, or injury to health, safety, life, limb or well-being or any other act or threatening or coercion *etc.*, by any member of family. An aggrieved woman who is, or has been, in a domestic or family relationship in the nature of marriage, adoption or are family members can complain. Aggrieved women, who have been subjected to any act of domestic violence by the respondent, can complain to the Protection Officer, Police Officer, Service Provider or Magistrate. The Magistrate receiving the Domestic Incident Report (DIR) which is equivalent to FIR may take up enquiry into the case which is called DVC (Domestic Violence Case). After receiving DIR issue notice to the respondent within 2 days and fix the 3rd as the date of hearing. Meanwhile, if the Magistrate deems it fit may issue *ex parte* interim orders against the respondent such orders may be passed even after the appearance of the respondent as well pending issuance of reliefs prayed for by the

aggrieved women. According to this Act after receiving the domestic incident report the Magistrate try the matter speedily and the Court has the power to ban publication of proceedings held *in camera*. The aggrieved women can seek protection orders<sup>39</sup>, residence orders<sup>40</sup>, monetary orders<sup>41</sup>, custody orders<sup>42</sup> and compensation orders<sup>43</sup>. The victims may be wives, sisters and mothers or any other female relative living in the share-household in domestic relationship. The respondents are males or may also be female. All orders of the Magistrate are appealable to the Sessions Court which disposes of the appeal as though it is a criminal appeal filed under Cr.P.C. There is no revision to the Sessions Court or the High Court against the orders of the Magistrate. The orders of the Sessions Court not being appealable to the High Court and the High Court may entertain revision against the orders of the Sessions Court. The Act by itself does not punish the respondent in the domestic violence case, but if the case discloses any offences punishable under the Penal Code or any other penal law, or under the Dowry Prohibition Act. As far as this case is concerned, it runs as a civil case and in the manner the maintenance under Section 125 of Cr.P.C. or in the manner in which security proceedings are held by the Magistrate under the provisions of Cr.P.C.

***The Protection against Sexual Harassment of Women Bill, 2005:***

This Bill confers upon women the right to protection against sexual harassment, and towards that end for the prevention and redressal of sexual harassment of women. Every woman shall have a right to be free from sexual harassment and right of work in an environment free from any form of sexual harassment.

39. Section 18 of The Protection of Women From Domestic Violence Act, 2005

40. Section 19 Ibid

41. Section 20 Ibid

42. Section 21 Ibid

43. Section 22 Ibid

***The Prohibition of Child Marriage Act, 2006:***

After passing of this Act The Child Marriage Restraint Act, 1929 has been repealed. The object of this Act is to provide for the prohibition of solemnization of child marriages. According to this Act child means a person who, if male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age. Every child marriage, whether solemnized before or after the commencement of this Act, shall be voidable at the option of the contraction party who was a child at the time of the marriage<sup>44</sup>. Marriage of a minor child's to be void in certain circumstances<sup>45</sup>. Child marriage has been annulled by a decree nullity under this Act, every child begotten or conceived of such marriage before the decree is made, whether born before or after the commencement of this Act, shall be deemed to be a legitimate child for all purposes<sup>46</sup>. This Act provides

punishments for male adult marrying a child or for solemnizing a child marriage and for promoting or permitting solemnization of child marriage<sup>47</sup>. Contravention of the provisions of this Act the person shall be punished and the offence is cognizable and non-bailable.

***The Protection of Children from Sexual Offences Act, 2012:***

This Act came into force from November 14th 2012. The Act aims at protecting children from offences of sexual assault<sup>48</sup>, sexual harassment<sup>49</sup> and pornography<sup>50</sup> and provides for establishment of Special Courts for trial of such offences. Until now, various provisions in the Indian Penal Code were used to deal with sexual offences. However the law did not make a distinction between an adult and a child. This is the first time different sexual offences against persons below the age of 18 years have been defined

44. Section 3 of The Prohibition of Child Marriage Act, 2006.

45. Section 12 Ibid

46. Section 6 Ibid

47. Sections 9, 10 and 11 Ibid

48. Section 7 of The Protection of Children from Sexual Offences Act, 2012 defines 'Sexual Assault' as whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration.

49. Section 11 of The Protection of Children from Sexual Offences Act, 2012 defines 'Sexual harassment'. A person is said to commit sexual harassment upon a child when such person with sexual intent,—

(i) utters any word or makes any sound, or makes any gesture or exhibits any object or part of body with the intention that such word or sound shall be heard, or such gesture or object or part of body shall be seen by the child; or

(ii) makes a child exhibit his body or any part of his body so as it is seen by such person or any other person; or

(iii) shows any object to a child in any form or media for pornographic purposes; or

(iv) repeatedly or constantly follows or watches or contacts a child either directly or through any means; or

(v) threatens to use, in any form of media, a real or fabricated depiction through electronic, film or digital or any other mode, of any part of the body of the child or the involvement of the child in a sexual act.

50. Section 13 of The Protection of Children from Sexual Offences Act, 2012 provides 'use of child for pornographic purposes'. Whoever, uses a child in any form of media (including programme or advertisement telecast by television channels or internet or any other electronic form or printed form, whether or not such programme or advertisement is intended for personal use or for distribution), for the purposes of sexual gratification, which includes—

(a) representation of the sexual organs of a child;

(b) usage of a child engaged in real or simulated sexual acts (with or without penetration);

(c) the indecent or obscene representation of a child, shall be guilty of the offence of using a child for pornographic purposes.

and specifically provided for. The object of the Act is to provide safety, security and protection of children against sexual assault, sexual harassment and pornography. The punishments provided in the law are also stringent and are commensurate with the gravity of the offence. The offence is considered 'aggravated' if committed by a person in a position of authority such as a public servant or member of the security forces. The criminal procedure law has been made widely applicable in dealing with cases under this Act. Any child offender has been directed to be dealt under Juvenile Justice (Care and Protection of Children) Act, 2000 that recommends rehabilitate measures other than penal actions for child offenders. Complaints under this law are to be filed before the Special Court of Session, which includes the power to impose punishment upto life imprisonment.

#### ***The Family Courts Act, 1984<sup>51</sup>:***

According to this Act, establish Family Courts where population exceeds one million<sup>52</sup>. The main object for the establish Family Courts with a view to promoting conciliation in, and securing speedy settlement of, disputes relating to marriage and family affairs. No party to a suit or proceeding before a Family Court is entitled, as of right, to be represented by a legal practitioner provided that if the Family Court considers it necessary in the interest of justice, it may seek the assistance of legal expert as *amicus curie*<sup>53</sup>.

#### ***Personal Law Legislations:***

Personal laws are applicable to the persons of particular religions and not applicable to all religions persons like general laws. Hence, Hindu laws applicable to Hindus, Muslim laws applicable to Muslims and Christian law applicable to Christians. Some of the special provisions are inserted for the protection of women in Religious Legislations, they are as follows:

1. The Hindu Marriage Act, 1955
2. The Hindu Adoption and Maintenance Act, 1956
3. The Hindu Minority and Guardianship Act, 1956
4. The Succession Act, 1956
5. The Muslim Women Protection Act, 1986

#### ***Conclusion:***

Though various Legislations are enacted for the protection of women's and children's rights various anomalies are also existed in legislations which must be amended for better protection of women's rights to save the women. It is to be noted that the Legislations or Acts alone cannot eliminate the discrimination against women. In order to reduce the offences we must change the attitude and behaviour of men; and this has to start early in boyhood. Enlightened fathers, husbands and brothers are more likely to respect daughters, wife and sisters.

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51. Act No. 66 of 1984

52. Section 3 of The Family Courts Act, 1984

53. Section 13 Ibid