

# Law and the Status of Women in India

Dr. Shikha Saini

Assistant Professor, Department of Political Science, D.A.V College for Girls, Yamuna Nagar

---

## ARTICLE DETAILS

### Article History

Published Online: 10 November 2018

---

### Keywords

Women, Law, Social Change, Citizenship, Patriarchy, British, Child Marriage, Sati, Act.

---

---

## ABSTRACT

An attempt is made to analysis the impact of the legislative and legal measure on the social change and the status of women in India. A historical analysis of the development of the principles of the rule of law and their impact on the patriarchal social set-up of the Indian society especially on the status of women is done with the examples and facts. This paper very vividly holds that the principles of the rule of law which has been developed with many exception to the basic principles of the by the imperial power in India had initiated a positive change in the status of women. The journey of the development of the principles of the rule of law and the principles of the equal citizenship and equal rights has been paved with the making of Indian Constitution which has been further developed by the special legislative measures after the Independence.

---

## 1. Introduction

Law and society studies address the mutual relationship between law and society with its different actors, institutions, and processes. Law is created and put into practice through societal processes. The study of law and other specializations in the social sciences are thus closely interwoven. In fact, there are two modes of this aspect. First is, "Law changing the society", which means that the law of the land compels the society to be changed according to it and second is to persuade social change by changing itself according to the needs of the changing society. Thus, law is an important agency of social control. Law regulates the behaviour of the people in society. Law, by using force, makes the people conscious about their duties and obligations.<sup>i</sup>

In the modern era, there has been widespread concern of law as a tool for bringing about homogeneity in the heterogeneous population having socio-cultural diversities. Though there are several devices to bring about a change and reformation in society, but reformation through law is perhaps one of the most effective and safest methods to achieve this end.<sup>ii</sup> Although, the concept of rule of law or rule by law is of recent origin in India and it origin can be traced back to the established of British Empire, the demand of the equality before the law before the law as British Citizens and the Indian Concerns against the White Man violence created an environment of the development of rule of law in India. However, its origin can be traced back to the ancient religious and social texts.<sup>iii</sup>

The arrival of the British is also taken as the starting point of the new age in Indian thinking as the connection with the British Empire provided them an exposure to the other socio-cultural, economic and political set up which was claimed to be more progressive and scientific. The debate over the place and role of a woman in Indian society has been initiated with demand for change of the old social norms has been raised by the new western educated elite of India along with the efforts of the British Bureaucracy and Christian missionaries. The rights of women became matter of great concern for the social reformers of India and the very dawn of India's renaissance started with the advocacy of women education and liberation.<sup>iv</sup>

It is pertinent to mention that before the arrival of the invader the women enjoyed a position of respect and status in the ancient Vedic India. Women of the Vedic period (circa 500-122 BCE) were epitome of intellectual and spiritual attainment. The Vedas have lots to say about these women, who both complemented and supplemented their male partners. When it comes to talking about significant female figures of the Vedic period, four names –Ghosa, Lopamudra, Sulabh Maiteryo and Gargi –come to mind.<sup>v</sup>

The period of Medieval India (1206-1761 AD) by and large is depicted as the dark period of Indian history. The construction of the socio-religious boundaries during this period has added to various problems. In the absence of any superior methodology or technical excellence, the Hindu of India became a soft target to successive invaders. Some of them were assimilated into Hindu culture, but the Muslims, adhering to their rigidity could not interact with Hinduism and remained a separate entity. The question of cultural supremacy between the Hindus and Muslims, not only created the sense of belongingness and othering. While articulating their identity and creating the socio-religious boundaries both the Hindus and Muslims tried to create a concept of purity and pollution with a non-assimilating view of each other community. The sense of nation purity and the nation making through the gender purity has been developed by and large during this period.

The non accommodative views of the both communities and methods to which they had been adopted to control the influence of each other on the socio-religious and cultural fabrics of their communities, had a lot of affects on the status of women indirectly and directly along with the other social implication on the Hindu society. The Mughals invaders created a sense of social insecurity as the invaders looted the women along with the property of the Hindus. The emotional set-backs to which the Hindu families, particularly of north-India had faced due to the abduction and looting of their women folk by the Muslim invaders has resulted into the many wickedness. The evil practice of infanticide and purda (veil) has been by and enlarge developed during medieval period due to the above disclosed reasons.<sup>vi</sup> On the other hand the Muslim conquerors attempted to impose their coercive norms on the conquered

Hindu population, which resulted into the more rigidity and conservatism of the Hindu society.<sup>vii</sup>

The initiatives which were led by British Bureaucracy and the Christian missionaries against the social evils were further followed by the Indian reformers. The support of the India's educated elite to the British bureaucracy against the social evils like **Sati, Infanticide, Child Marriage and Women education** proved to be the backbone of the British initiatives. Two regulations were also passed by the Government, to suppress infanticide, i.e. **Regulation XXI of 1795 and Regulation III of 1804**. However, these resolutions could not be proved effective and the crime against the girl child continued. Determined to stop this crime, the British Government passed an official declaration prohibiting infanticide through an act in 1870. According to this act, it was compulsory for parents to get the birth of their children both boys and girls registered. In **1860 Indian Penal Code included the child marriage as a punishable offence**. Early marriage, however, remained unchecked despite the earnest efforts of the reformers who continued to oppose it. The movement against child marriage took a long period and could get some success only when the Government of India passed the Child Marriage Act, popularly known as the **Sarda Act of 1929**

**Sati** was another social evil which was prevalent in the upper caste Hindus, particularly among the Brahmin, Bania and Rajput Castes. The voice against the Sati was first raised by the British officers and it was followed by enlightened Indians like Dwarkanath Tagore and Raja Ram Mohan Roy. Ram Mohan Roy had seen his brother's wife committing Sati in 1811 and he fought since then for its abolition. Raja Ram Mohan Roy continued his campaign against Sati with the zeal of a national reformer. Undoubtedly the ground for this social reform had been first prepared by Ram Mohan Roy. The first major step against the sati was taken by Lord William Bentinck, the then Governor-General of India (1829-1832), who decided to abolish the evil practice of sati by passing a law against it. **Lord William Bentinck got the sati abolished legally in 1829 and it was declared "illegal and punishable by criminal courts" by regulation XVII**. It provided that anybody who abetted a widow to commit Sati was to be punished for culpable homicide. The law was first applied to Bengal, but the Madras Government also passed a similar regulation on 2 February 1830.<sup>viii</sup>

Polygamy was the result of extreme sexuality and it reduced the woman's status to a sexual commodity. Simultaneously Polygamy deteriorated the position of women at large and converted the moral institution of marriage into a sexual one. The position of women under the polygamy system can be judged from the orders of the Raja of Darbhanga which he issued in 1805 to prohibit polygamy. In his order the Raja prohibited the people of his state from taking more than five wives. It means that a man could enjoy luxury of having five wives even after the prohibitory orders of the King. Muslims were also allowed to have four wives with religious sanction.

The Baroda state Government was first to pass an Act in 1942, declaring the second marriage illegal if the first spouse was alive or if the first marriage had not been dissolved. Bombay followed the Baroda and in 1946 passed the **Prevention of Hindu Bigamous Marriage Act**, but this could

not become effective as the intending parties could go to the neighbouring areas and contract second marriages. **The Hindu Marriage Act, 1955**, was passed after independence when bigamy was declared an offence.

The Independence of India was the beginning of a new dawn for the oppressed and deprived section of the Indian society, as the goals of the India freedom struggle were not limited to the political freedom only. The masses of India have to experience the political freedom along with the socio-economic freedom and the Constitution was the horoscope of the future India. We must remember the concluding remarks of Nehru which he expressed to the Constituent Assembly while introducing the Objective Resolution of the Indian Constitution. He said that the Objective of the Constituent Assembly was not only to free India through a new Constitution, but also to feed starving people and cloth the naked masses and to give every Indian fullest opportunity to develop themselves according to their capacity. Dr. Radha Krishna also emphasized that there must be a socio-economic revolution not only satisfying the fundamental needs of a common man but to bring about a fundamental change in the structure of Indian society.

Promulgation of the Constitution of India on January 26, 1950 was a defining moment in the history of human rights in India. The Preamble, Fundamental Rights and Directive Principles of the State combined together provided the basic human rights for the people of India. Democratic socialism spelt out in the Preamble and the Directive Principles meant to provide the context in which the fulfillment of Fundamental Rights had to be achieved. While Fundamental Rights stressed on the existing rights, Directive Principles provided the dynamic movement towards the goal of providing human rights for all. To enable the citizens to enjoy human rights, many pieces of social legislation have been enacted over the last 60 years. In addition to these, the Supreme Court of India through judicial interpretation has widened the horizons of women rights in India.

#### **Factories Act, 1948**

Factories Act, 1948 is an important legislation as it contains certain provisions regarding the nature of work to be given to women workers and hours of work for them, etc.

#### **Maternity Benefits Act, 1961**

Performance of the biological role of child bearing necessarily involves withdrawal of a woman from the workforce for some period. During this period she is not only forced to stop her work but also needs extra income for her medical expenses. In order to enable the women worker to subsist during this period and to preserve her health, the law makes a provision for maternity benefits so that the women can play her productive and as well as reproductive role efficiently.

#### **Equal Remuneration Act, 1976**

The equal remuneration act, 1976 provides for the prevention of discrimination on the ground of sex against women and also in the matter of employment and for matters connected therewith or incidental thereto. The act also prohibits discrimination while recruiting men and women workers for the same or similar nature of work except where the employment of women in such work is restricted or prohibited by or under any law for the time being

### Other Legislations protecting women

Besides the Constitutional provisions, The Indian Penal Code, 1860, the Code of Criminal Procedure, 1973 and the Indian Evidence Act 1872 along with other 54 major legislations are there to protect and promote women rights.

**Penal laws:** Looking at the social conditions and norms prevailing in Indian society, the penal code has offered special provisions for the protection of a woman who might become a victim of offences relating to her sexual identity. These special

provisions relating to women are not exceptions but are to guard against special offences as a woman faces many problems in her public and private life because of her womanhood and her social position. There are some special provisions for women in the criminal procedure code regarding search, seizure, arrest and imprisonment etc. Some sections which give special protection to women or deal with the offences which either specially refer to women or protect women are enumerated in the chart below:-

**Table- A (1) Protection under the Indian Penal Code**

S.No.	Name of offence	Section	Minimum punishment	Maximum punishment
1.	Obscene acts and song in public place	294	-	3 months or fine or both
2.	Dowry	304-B	7 years	Life imprisonment
3.	Causing miscarriage without women's consent	313	-	Life imprisonment or ten years and fine
4.	Death caused by act done with intent to cause miscarriage	314	-	10 years and fine as above if without, women's consent.
5.	Simple hurt wife beating	323	-	One year and also fine up to Rs. 10,000/ or both
6.	Grievous hurt or wife beating	325	-	7 years and also fine
7.	Assault or criminally force to women with intent to outrage her modesty	354	-	2 years or fine or both
8.	Kidnapping, abducting or inducing women to compel her marriage	366	-	10 years and also fine
9.	Procuration of minor girls	366-A	-	10 years and also fine
10.	Importation of girls from foreign country.	366-B	-	10 years and also fine
11.	Selling minor for purpose of prostitution.	372	-	10 years and also fine
12.	Buying minor for purpose of prostitution	373	-	10 years and also fine
13.	Rape	376	7/10 years	10 years and also fine
14.	Sexual intercourse with one's wife living separately	376-A	-	2 years and also fine
15.	Intercourse by public servant with women in his custody.	376-B	-	5 years and also fine

Beginning with the battle against the social prejudice in the society which was mixed with modernity and traditional conservative law played a very important role as it lead to social transition aimed at equal Citizenship and Rights for women in the colonial and post colonial India.

After the promulgation of Constitution the Indian democracy marched towards maturity and it has witnessed many social changes which resulted in acceptance of democratic principles like liberty, equality and justice for the every citizen of India without the old social prejudices. The question inclusion of women into the mainstream socio-economic and political set-up along with deprived section of the Indian society has been always remained a debatable issue. The assertion of the feminist groups and academicians in the mid of 1970's has questioned the basic set-ups of the policy and decisions making and their impact on the women in India from the gender perspective.

The sincere efforts to change the patriarchal set-up and to ensure the equal public space for women were initiated with the setting of the **Committee on the Status of Women in India (CSWI, 1975)**, which highlighted that the majority of the Indian women are facing a situation of subordination and deprivation, which has increased the gender inequality in society. The Committee revealed that although women are

participating in increasing numbers in economic and political activities and in the process of change, they are not necessarily the actual beneficiaries, nor are they able to control the process of change to meet their needs or aspirations. They are increasingly becoming victims along with other weaker sections.<sup>ix</sup>

After the recommendation of the CSWI and the movements lead by the feminist academicians a movement for the enactment of the progressive laws has been initiated in India. Many new laws like The Family Courts Act, 1984, The Muslim women Protection of Rights on Dowry Act, 1986, The Indecent Representation of Women (Prohibition) Act, 1986, The Commission of Sati (Prevention) Act, 1987, Mental Health Act, 1987, National Commission for Women Act, 1990, The Protection of Human Rights Act, 1993. As amended by the Protection of Human Rights (Amendment) Act, 2006, Protection of Women from Domestic Violence Act, 2005, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, The most progressive is the Maternity Benefit Act 2019, which provides the facility of the Crèches at the workplace where 50 workers in a single premises work, irrespective of their gender.

Irrespective of the legal protection to the women efforts has been made to change the political set-up through the

Constitutional and legal enactment and the passing of the 73<sup>rd</sup> Constitutional Amendment was enacted by the Congress government of Narshima Rao for the 33% of reservation of women in the three tiers of the Panchayati Raj and the 74<sup>th</sup> constitutional amendment was enacted in 1993, which provided for 33% reservation for women in urban local bodies.<sup>x</sup>

It is evident from the above that laws have played a dominant role to the change the patriarchal socio-economic and political set-up of the Indian society. The role and status of the women in the India has been varied from the ancient India

to global India. Although the genesis of the concept of rule of law in India are traced back to modern India, however a cursory glance over the history of India reveals that a certain kind of the socio-religious norms has been existed in India which effects the role and status of women in India. It is also to argument that these norms were not static and they were flexible to adopt the change with demanded of society. It can be said that laws have played an important role to change the Indian society to accept the women as an equal citizen.

## References

- i Friedman, Lawrence M. and Jack Ladinsky, *Social Change and the Law of Industrial Accidents*, Columbia Law Review, 1967, p.50
- ii Cotterrell, Roger, *The Sociology of Law*, Oxford University Press, 2007, p. 47
- iii "Elizabeth kolks'y, [Colonial Justice in British India: White Violence and the Rule of Law](#)", *lawandotherthings.com* › 2010/10 › rule-of-law-in-colo. Accessed 11-1-2018, 10:00amz
- iv Devendra Kumar Chaudhary, *Arya Samaj in Punjab 1877-1901*, M. Phil Dissertation (Unpublished), Punjabi University, Patiala, 1979, pp. 121-122.
- v R.S. Sharma, *Material Culture & Social Formulations in Ancient India* Macmillan, India Ltd, Madras, 1983, P-89-134, see also, V. S. Singh, *Indian History*, Allahabad Law Agency, Faridabad, 1986, P.65.
- vi V.Janapathy, *Indian Women: Through the Ages*, Gyan Publishing House, New Delhi, 2002, p.141.
- vii Padmalaya Mahapatra & Bijoyini Mohanty, *Elite Women of India*, APH Publishing Corporation, New Delhi, 2002, p.57.
- viii Charles H. Heimsath, *Indian Nationalism and Hindu Social Reform*, Princeton University Press, Princeton, 1964, P.147, also see, Thomas, n.10, p.338.
- ix Government of India, "Towards Equality", *Report of the Committee on the Status of Women in India*, Ministry of Human Resource and Development, New Delhi, 1974, p.81, see also, Naryan S. Kotvi, 2001, "The Myth of Gender Equity", *World Affairs*, Vol.5, No III, July-September, pp.105.
- x Iqbal Naryan, "Panchayati Raj Democracy and Development" Ramesh Arora (ed.), *Peoples Participation in Development Process*, State Institute of Public Administration, Jaipur, 1979, p. 39, see also, Biduyat Mohanty, "Panchayati Raj, 73<sup>rd</sup> Constitutional Amendment and Women", *Economic and Political Weekly*, vol. XXXIX, no. 49, December, 1995, p. 3348.