

“Implementation of Women's Rights- A Socio Legal Dilemma”

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ABSTRACT

WOMEN – THE STRENGTH OF NATION

‘We cannot succeed when half of us are held back’, in this 21st century we are still fighting for women’s right, the battle is still there for equality. On one hand we want everything to be equal and on the other hand we do not want to count women in that ‘everything’. Woman can be said as the God’s complete creation. She is the symbol of independence, love, caring, gentleness and intensity- both in love and in hate. Women are emotionally stronger than man. Undoubtedly women endure much more pain than men do. No men do go through even half the pain a woman goes through during labor. Margaret Thatcher, Benazir Bhutto and Indira Gandhi have shown that women can rule a country even better than men... and maybe even the world!

The nation could never be developed until each and every member of it has put on their equal efforts, it could never grow until we see people from different eyes. What is the reason for believing man superior to woman, just the masculine force? We all are human beings, man and woman are mere genders, and they are not sign of superior or inferior.

This paper is talking about the rights which law provides but society doesn’t. The women are fully loaded with opportunities but on papers and when it comes to real life men still dominate them.

This paper is highlighting the steps to be taken by government which should directly affect the action of society in regard to implementation of laws given to women. Both man and woman to be considered equal, no domination. Proper functioning of laws and harsh punishments to law breakers. ‘Individually we are a drop and together an ocean’.

Rights may be self-evident and constitutionally secured; however, they do not automatically implement themselves

In the last two years the highest courts in the country have responded to a mass call for more protection for women. Alongside, there have been many judgments from non-constitutional decision-making bodies like khap panchayats and kangaroo courts sanctioning violence against particular women or curtailing women’s freedom in significant ways. Why is it that while there has been a legal expansion of women’s rights in India, the societal trends that maintain a violent order against women have remained intact?

Recently, a 20-year-old Santhal tribal woman was raped by 12 men in West Bengal on the orders of a kangaroo court called a salishi sabha. Her crime was to have fallen in love

with a man outside her community. The couple were tied up and “tried” and asked to pay Rs.25,000 as payment. The man was able to pay but the woman could not. The headman reportedly decreed that she could be “enjoyed” by several men and that they could “have fun” with her.

The tone of this diktat parrots what Nirbhaya’s rapists said — they were out to “have some fun” and a “good time.” She later died after having sustained massive injuries but left behind a mass political movement calling for more rights for Indian women.

Societally sanctioned rape and sexual assault is not new in India. It has been repeatedly established that Indian men assert a claim over the bodies of women because somehow, families believe that in Indian society a woman exists as an appendage to some man in her life — father, brother, son or husband. If a woman steps across an invisible line (lakshman rekha), where her behaviour is seen as outrageous and unacceptable, then many people still believe that she is opening herself up to sexual assault. The most recent such pronouncement came from Ms Asha Mirje, a member of the Maharashtra State Commission for Women who stated: “Rapes take place also because of a woman’s clothes, her behaviour and her presence at inappropriate places.” In other words, for many people in society (including many women) such a woman deserves what she gets.

Rights and Resentments

The figure quoted above tells us that legislation alone is not going to stop violence against women from occurring. For every piece of progressive legislation that has upped the ante on women’s rights in India, there is still the struggle against first responders who are often reluctant to register a case of rape or sexual assault. The reporting of rapes is very low in India. Most women do not report assault for a variety of reasons. Last year, India’s National [Crime](#) Records Bureau data revealed that in 2012, 24,923 rape cases were reported across India. Out of these, 24,470 were committed by parents/family, relatives, neighbours and other known persons. This leaves us with a total of 453 cases of stranger rape. In essence, men known to the victim committed 98 per cent of reported rapes. This itself is a staggering figure.

A second cause of concern that emerges from the data is that we have to think about why, despite far-reaching legislation, rape and sexual assault is still common. Romit Chowdhury suggests that for Indian men the demonstration of masculinity, which has always problematically rested on harassing women, has now also become linked to breaking the laws that protect women.

Rape and sexual assault are not only occurring in homes, streets and offices, but also take on a unique group dynamic in situations of communal riots where a woman’s body become a site of violence in the battle between caste or religious groups. Sexual violence was a strong component of the rioting in the 2013 Muzaffarnagar riots in Uttar Pradesh;

13 rape and assault cases were reported. It is suspected that some cases have not yet been reported because the women, now in refugee camps, have refused to step forward as they are afraid of losing their honour.

Last year, the landmark Criminal Law (Amendment) Act, 2013 expanded the definition of rape to include more than just vaginal penetration. Stalking, voyeurism, acid attacks were brought under the Act as punishable crimes. The age of consent was raised to 18 years, below which all penetrative sexual acts will now constitute statutory rape. A rape shield clause was included, where the character of the victim was rendered irrelevant to establishing her consent. However, marital rape did not find its way into the Act and neither was rape and sexual assault removed from the purview of the Armed Forces (Special Powers) Act (AFSPA).

Imperfections notwithstanding, these are still very far-reaching changes. However, for every such legislation passed by the Lok Sabha and courts, there has been a gradual stripping away of the rights of women as well. In fact, the gender situation in India needs to be understood through this process of rights expansion and the pushback it gets from society.

Women in rural INDIA

One of the agents of mass pushback against women's rights is kangaroo courts in India. These clan-based khap panchayats and sabhas have had a long history in India. Khaps are unconstitutional and informal law-giving bodies that have captured much rural terrain in north and eastern India. Why they have re-emerged recently as strong political bodies is still a mystery but one that suggests that they have more than just traditional authority. Khaps in rural India have been asserting much power over the lives of people in rural India, the weakest of whom are women of all communities.

In the last two years alone, khaps have sanctioned several honour killings and have suggested a level of misogyny that is completely at odds with what the leading courts in the country are articulating. For instance, in the State of Haryana, there are several local khaps. Two such jat caste bodies imposed dress codes on women, and one even said that girls are "agents who pollute society and bring a bad name to the community." For these bodies, policing women is easy. In rural India, police presence is low and many local notables have links with local law enforcement agents. These notables are also involved in the functioning of khaps. So, they are reasonably confident that their diktats policing women's behaviour will not be challenged.

What is transpiring in contemporary India is a backlash against an expansion of rights for women that stops women from building capabilities, economic careers and acquiring some independence from male figures in their lives. Second, since khap diktats are

singular statements that send messages to all women, they instill fear in young women and families with daughters, successfully silencing any protest that could arise against their rulings. The Indian state has been quite reticent in initiating any action against khaps even though it is apparent that khap diktats are blatantly undercutting women's rights and thereby contradicting the verdicts of the highest constitutional law-making bodies.

A Mismatch

This process — giving rights with one hand, while the other takes it away — shows that people resent an expansion of rights for women and go to extreme lengths to make sure that the law of the land has no stronghold in their local communities. The Indian state may make many laws that protect women. However, none of this means much unless law enforcement agencies actually implement the law.

This mismatch between the existence of good laws and their actual implementation is itself a commentary on state capacity in India. Many years ago, Francine Frankel and M.S.A. Rao drew our attention to social structures of dominance in India and how they inhibit, negotiate or encourage state power. The Indian state has failed Indian women by allowing khaps to issue diktats that contradict constitutionally sanctioned rights women have. In ignoring the khapquestion and not taking them head-on as groups that violate human rights, the Indian state seems to be saying that its job is done when it passes good legislation. Rights may be apparent or self-evident and constitutionally secured; however, they do not automatically implement themselves.

Conclusion

Constitution is known as the grundnorm and it prima facie grants equality to every citizen, but the real scenario prevailing in our society is way too different. It is a matter of fact that Women are still treated as a second sex. Its horrendous when one picks up newspaper in the morning and goes through a little trauma while reading sexual crimes against women. It's an everyday story and even I would say that it's common than any other crime. It's the 21st century, we've footprints of man on the Moon and on the other side we lack at even providing the very basic right to our own counterpart, are own mother, sister, significant other. There may be provided equality in laws, but what matters is how useful is it, how is it benefiting the one for whom it is being made, the situation is totally different at the ground level. I must say, as a grownup girl of 21 years, I still have to think twice before going outside alone after dark. I've to think, and think before wearing clothes of my choice, to which my parents have no problem with but the society does.