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GENDER INEQUALITY AS A HUMAN RIGHTS ISSUE: ROLE OF CUSTOMS AND BELIEFS IN OPPRESSION OF WOMEN

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I. ABSTRACT

Human rights deal with various issues like trafficking, refugees' crisis, labourers problems, genocide, war crimes, sexual crimes, lgbt rights and many more. However, the gender inequality problem has been one of the issues that has existed for a considerably long period.

Even in this modern era, it is not accepted by the 'whole' world that gender equality is a human right. India faced various dimensions in gender justice. There are a lot of changes in the number of rights given without any gender biases provided before and now in India. Because when it comes to the context of India, it is said as one of the countries which was underdeveloped in the past for various reasons, however one of the causes was the setup of patriarchal society of India. In this article it is discussed about the status of gender equality in the past and the legal changes brought up. There is a role of customs, beliefs and practices for the unempowered situation of women of India. Culture and religion are treated as crucial institutions in Indian society. Thus, are any beliefs followed in the society being a cause of Gender inequality? If it is, then what are the practices that bring underdevelopment to women and what legal implications are there? These are the matters which are to be analysed in this article.

II. KEY WORDS

Gender equality, human rights, women empowerment, gender justice, equality.

III. INTRODUCTION

In the era of modernity and liberal minds, it is hard to accept that still human rights violations are happening around us. Women's rights are especially offended from ancient periods till today. There will be a number of reasons behind the oppression of

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women. The reasons will be different for different places. When it comes to an Indian society, at some particular period of time men started to dominate women and even their basic rights were infringed. Patriarchal setup of society became a major factor of violence against women and in addition to that, the beliefs and customary practices based on religion, caste and other backgrounds plays a vital role in hurting women mentally and physically. It is widely understood that traditions are important in various aspects of life. Following those practices based on religion and other backgrounds gives several benefits such as pleasure, bonding's, unity, and so on. However, it's also crucial to know how some customary practices and beliefs became the cause of infringement of women's rights. Numerous acts based on these beliefs are violent in nature that affects women physically and mentally. Such practices and the legal framework for implications are to be discussed in this article.

IV. REVIEW OF LITERATURE

Patriarchy plays a great role in violence against women, and it is addressed about the practice of dowry and sati. Dowry system has killed and harassed women, and several times the harassment is not because the dowry is not paid, it's often for the reason that the in-laws demand more from the bride's family. When it comes to sati, in old times it's practised in most of the parts of India except some castes. However, sati is criticised by Hindus itself that it's not a part of Hindu religion. Different researchers claim that different numbers of sati incidents are held after its ban, thus it is not accurately understood about the prevalence of sati (Pamela S. Johnson et al, 2001)²

Gender inequality in India is prevalent because of social, economic and religious factors. This caused a major gap between the gender of male and female. Girl children are discriminated against in every aspect and in illiterate societies, people are happy with the birth of male child and unhappy with female children as they consider them as a burden. There are various discriminatory practices faced from ancient times till today like sati, marriages of widows, child marriages, dowry, female Foeticide, infanticide, etc. Causes of these inequalities can easily be determined as lack of education, culture, religious beliefs, caste, customs, conditions of family and so on.

² Pamela S. Johnson, *The oppression of women in India*, volume 7, Sage journals, 2001

Various legislations and initiatives in the modern period have been brought to aid women of India to come out of these situations. However, even if laws and acts are enforced, the discriminative mentality from the mindset of people should be thrown away to change the condition of women (Kumar, 2019).³

V. RESEARCH METHODOLOGY

Doctrinal research methodology is used for the study of legal implications for the issue in this descriptive article about the human rights violation against women in India. Also, information from secondary sources like other research articles and essays are utilised to structure this paper.

VI. STATUS OF WOMEN IN VARIOUS PERIODS

Vedic period is said to be the most supportive period for the welfare of women in India. The major reason is, women are not only provided with their basic rights, however they are also highly respected. Women like Apala, Visvaea, Yamini, etc were mentioned as great idols. Women were well established in manners and etiquette at that time. Even Female 'Rishis' are being said about in Rig veda. Discriminative practices between women and men were not practised. A man will not be competent to perform religious duties without his wife. The equal treatment of men and women is stressed in the same right vedas (Book 5, hymn 61, verse 8).⁴ Access to education was available to the women and most of them according to the texts were great in art and defence. It is mentioned in the Vedic literature, (Mahanirvana Tantra) that "A girl should be cultivated and given education with great effort and care".⁵ The epics Ramayana and Mahabharat are a clear proof that women were considered as immensely prestigious, and no disparities were there at Vedic period.

However, the oppression of women began at the time of the post vedic times. The Smritis and Dharmashastra put down the position of women. It is evident that in Manusmriti, Manu openly says that women are not equal to men and induces

³ Sanjeev Kumar, Gender Discrimination against women in India: laws and policies, volume 5, International journal of legal development and allied issues, 2019

⁴ www.wisdomlib.org, (last visited June 2, 2024)

⁵ Sreenivasa Rao Subbana, Rig Veda- position of Women (part 2 of 2), Medium, (last visited June 1 2024 8PM)

patriarchal setup in the society. Women are not allowed to get educated and child marriages are in practice. They were treated as servants as it is mentioned in the texts that “men are the controllers of women”. Women are not allowed to take thread ceremony (upanayana sanskara), which was allowed in Vedic times. The post Vedic period initiated various toxic norms and the highest of them was the caste system. Caste based separation of people from one another started from that time and continues till today, as we can still witness discriminatory practices. Thus, in addition to the existing issues, females at that time also suffered caste discrimination. For instance, it is cited that women of low caste are not allowed to marry higher caste men otherwise severe consequences will be faced. Dr. Gadgil says that through the various cruel practices like child marriages, polygamy, sati, the Arya samaj tried to destroy the matriarchal system.⁶ Therefore the situation of women was difficult in those times due to joint family, lack of education, rigid caste system, Brahmin culture and more issues.

Christianity entered in the British period and the widespread preaching of Christianity is done by missionaries. In that way, some women achieved equal rights as in Christianity differences in treatment of men and women are not there. Even though various struggles were faced by Indian citizens during British rule, several Legislations for developing women's conditions were brought at that period. For example, abolition of sati by Lord William Bentinck. After independence, more laws were implemented for female rights.

VII. VIOLENCES AGAINST WOMEN BASED ON TRADITIONS/ CUSTOMARY BELIEFS

Some of the practices that are against women's rights are still prevalent. Most of such acts are eradicated by legal frameworks. However, these practices will be great examples of how some specific traditions and beliefs affect women.

A. Devadasi system

⁶ Dr. Ramesh H. Patil, *The Social Status Of Indian Women of Different Periods In the Patriarchal Society*, vol. 5, *Research Ambition: An International Multidisciplinary e-Journal*, 2021

One of the traditions which are completely against human rights is the devadasi system. 'Devadasi' is said to be a girl who devotes herself to God, which is typically becoming a wife of God. In the old times, the young girls voluntarily became devadasis in the desire to serve the god. The practice began in south India, which is noted in the inscriptions found in the temples of Tamil Nadu. At that period, those women were highly respected in the society as they were married to gods and given enough freedom to choose their spouse.

However, at some stage it became an evil system which made the young women as sex slaves. In this process, Mostly the girls of low castes are selected to be devadasi' and considered married to a deity and sent to the temple. They are made to dance and entertain to please the deity in front of the priests and other privileged men. When the girls hit puberty, they are used in wrongful ways for sexual advancements. The girls are exploited and left with no rights to marriage, inheritance and finally they even struggle for food and shelter. The Bombay Devadasi Protection Act, 1934⁷ came to abolish the system and after The Madras Devadasi Act, 1947⁸ was enacted. Several states then enacted acts for Devadasi abolition.

It is reported that this system is still in practice in states like Karnataka as per the recent statistics which shows that 45000 children in Karnataka are born to devadasi women.⁹ 'Sneha' is a voluntary organisation which focuses on empowerment of former Devadasis and their children in Bellary and koppal in North Karnataka. It said this cruelty is happening to many women and their girl children. Research conducted by Akkamahadevi Women's University in Vijayapura and 'Sneha' in 2017 discovered that the amount of devadasis may double than estimated, and requested the government for conducting a re-survey.¹⁰

B. Honour killing

⁷The Bombay Devadasi Protection Act, 1934, No.10, Acts of Bombay State legislature, 1934

⁸ The Madras Devadasi Act, 1947, No.31, Acts of Tamilnadu State legislature, 1947

⁹ Zoya Hussain, Explained: Who are devadasis, their history and current status, India Times, (last visited June 2, 2024, 1:31 PM) [indiatimes.com](https://www.indiatimes.com)

¹⁰ Bala Chauhan, Decades after ban, Devadasi system lives on surreptitiously in Karnataka, The New India Express (last visited June 2, 2024), [newindiaexpress.com](https://www.newindiaexpress.com)

It is a brutal act of violence which is majorly based on the reason, which is performing inter-caste and inter-religious marriages in India. In this the females are killed by the other members of their own family, for the cause of bringing 'dishonour to their family'. It is miserable that not only because of marriages, however offenders do honour killing for reasons such as women being a victim for sexual assault, divorcees, etc. Practice of Honour killings are dominant in the states like Haryana, Uttar Pradesh, Madhya Pradesh, and also practised in some South states of India. Indian societies are deeply positioned with the caste system and that becomes the basement for various crimes, which also involves honour killings. In *Kodungallur Film Society Film Society v. The Union of India*, WRIT PETITION (CIVIL) NO. 330 OF 2018,¹¹ The honourable Supreme Court, states that honour killing is an act of mob violence and the whole community can be involved in the crime.

The resolutions made in 2003 and in 2005 by the United Nations General Assembly urged the members to take actions to eradicate this act of honour killing. There is a need for separate laws for this crime, as it is in an increasing state. According to International Human rights law, this act is a brutal violence against women as it violates the articles in International Convention on Human Rights (1948) by infringing right to life and security.

The Dalit Human Rights Defenders Network (DHRDNet) report criticises that the bill which is passed by Rajasthan Assembly- 'Rajasthan Prohibition of Interference with the Freedom of Matrimonial Alliances in the Name of Honour and Tradition Bill 2019' for the aim of eradication these crimes, has not become an act¹². Therefore, honour crimes still fall under The legislation of the Scheduled Castes And the Scheduled Tribes (Prevention of Atrocities) Act¹³, 1989 and section 300 and 302 of Indian Penal Code.¹⁴

C. Female Foeticide and infanticide

¹¹Kodungallur Film Society vs Union Of India WRIT PETITION (CIVIL) NO.330 OF 2018

¹² Dalit Human Rights Defenders Network. (2019). Report on Honour Killings in India

¹³ Scheduled Castes And the Scheduled Tribes (Prevention of Atrocities) Act, 1986, No. 33, Acts of Parliament, 1986

¹⁴ Aishwarya Avraj, A socio legal reading of honour based killings in India, THE LEAFLET,(visited Jan 3 2024, 8:40 pm), theleaflet.in

Till today, Female children are considered as a burden in Indian societies as it is useless to spend for them according to certain people. Culturally, a girl should get married and settle in a well honoured family before a specific age. Except these, no other things are expected from a woman. Dowry system is practised in many places of India, and there are also marriage expenses of girls. Thus, female children are considered very hard to raise in Indian society. When it comes to men, they are supposed to live with their family and should look after their parents. So female children are mostly not provided education and not allowed to choose their career paths, as they are only sent to other homes. In contrast to this, men are expected to land in good jobs. In these grounds, giving birth to male children are preferred by parents in some rural areas, due to the male preference the female babies are even killed as foetuses or infants. Technological advancements allow the parents to know their baby's gender through ultrasound scannings and India also is not backward in those advancements. However, while assuming a baby's gender through these processes are common in other countries, PreNatal gender screening is illegal in a few countries including India. As per the Preconception and Pre - Natal Diagnostic Techniques Act 1994 (PCPNDT)¹⁵ Determination of the sex of a foetus is illegal in India. Despite these restrictions many people are doing this act illegally and it is evident that sex selective foeticide business is a 1000 crore industry in India¹⁶. Low sex ratio is one of the consequences of the act as there are only 933 women in this country for every 1000 men. India also ranks one of the highest in female infanticide rates. Above 200,000 girls under the age of five die each year in India.¹⁷

D. Menstrual taboos

In many rural parts of India, it is believed that menstruation of females is a form of impurity. The bodily excretions including menstrual blood is considered polluting, regardless of the caste of the women. They are not allowed to touch several things on their period cycle. Mostly water is a form of purifier of impurities, thus for certain

¹⁵ The Preconception and Pre-Natal Diagnostic Techniques Act, 1994, No.57, Acts of Parliament, 1994

¹⁶ Janmejaya Samal, *The Unabated female Foeticide is leading to bride crisis and bride trade in India*, PMC, 2016

¹⁷ Gender biases kills over 200,000 girls in India each year: *Lancet, India Today*, (visited Jan 4, 2024 12:15 am) www.indiatoday.in

days the menstruating women are not supposed to bath as they are not allowed to touch water. It is even believed that if a woman touches a cow, the cow will become infertile¹⁸. Women across the country still suffer from inconveniences as their family members set various restrictions at the time of their periods, by the cause of beliefs they have. It is known that some women have severely painful menstruation, and these taboos make them more distressed physically and mentally. Recently The Gujarat High Court put forward a set of guidelines for the state government that should be followed to stop menstrual taboos in religious and educational institutions.¹⁹

E. Virginit testing

Virginit of a woman is considered as an indicator of her character, purity, and reputation in Indian society. Thus, a woman's virginit is given great importance. In ancient times, Virginit of a woman was not taken as a crucial thing as sex outside marriages and sex with multiple partners were prevalent as per the epics. In the Mughal period, the kings practised intimacy with various partners while the wives should be virgins, except the widows. Even in the modern time, the male domination is prevalent as the concept of virginit is strictly practised to females and male are not highly questioned about this. The virginit testing of married women is common in several communities of the country. Illiterate people believe that the hymen of girls indicates virginit. Still today in many newly married houses, the bed sheets are checked for blood stains and it's hard to believe that according to them if no stains are found, it is determined that the girl is not pure. Hymen reconstruction surgery is undergone by numerous women in cities to have a fake representation of their virginit.²⁰

Two finger testing is another form of cruelty which is said to violate women's fundamental and basic human rights. It is tested by the medical professionals with two fingers to find out whether a woman is virgin or not. This process is a clear form

¹⁸ Suneela Garg and Tanu Anand, *Menstruation related myths in India: Strategies for combating it*, PMC, 2015

¹⁹ Live Law, [livelaw.in](https://www.livelaw.in), (last visited June 2, 2024)

²⁰ Samyukta Nair, *The History Of The Concept of Virginit In India, And what makes it such a big deal today*, (visited Jan 4 2024, 8:01 pm), [edtimes.in](https://www.edtimes.in)

of offending the dignity of a woman and affects them psychologically and physically. It is criticised by WHO and other medical organisations as the practice is dishonourable and violative of privacy rights. Virginity testing is unscientific, and the shame and guilt feelings will affect the women's mental health. The United Nations called for a ban of this act and Legally it is prohibited in India as this infringes the Article 21²¹ of the Constitution.

F. Child marriages

It is reported that more than 40% of child marriages in the world are happening in India. A study conducted in a district of Rajasthan states that most of the bride's are between 14 to 16 years. Child marriage is an illegal activity in India as the consent of children cannot be taken valid. However, many reports show that child marriages are still common in India. Several difficulties helds in the life of a woman who is married in early ages. In this era, for children whether it is male or female there is no possibility of having maturity to run an adult life. Girls who are married young struggle from different kinds of disputes in their life, most of them are not allowed to study, work, and as a role of patriarchal society, the family members completely restrict the girl's freedom. Girl children's education is the main thing which is affected by child marriages. When a girl child is married to a grown middle-aged man, they have to bear with domestic and sexual violence. The Prohibition of Child Marriage Act, 2006²² deals with this offence in India. Additionally, the amendment bill for this act which increases the marriage age of women from 18 to 21 was introduced, however not made as law. A recent study by the National Family Health Survey (NFHS) by the UNFPA showed a decline in young marriages from 37.7% in 2005- 06 to 16.3% in 2019-21.²³

G. Sati

Sati is the suicidal practice of women dying after husband's death by throwing herself into his pyre. One of the most evil traditions practised in India against women is Sati and it was abolished in 1829. The most recent case of sati was the horrifying death of

²¹ INDIA CONST. Art. 21.

²² The Prohibition of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2006

²³ Child Marriage in India: key insights from the NFHS-5, UNFPA

18 years old Roop Kanwar who burned herself alive on her husband's pyre in 1987. These kinds of brutal social evils are the effect of a male dominant society. Even though the extremely toxic rituals like sati are fully banned, female oppressive behaviour is still prevalent in some communities. In many places of India yet sati is forgotten, the widows are not permitted for remarriage while men are given freedom in these things. Women when expressing their will for a second marriage are often character shamed and looked in dishonourable manner.

H. Dowry system

Dowry is the reason behind various disputes in households. A specific amount of money or property given to the groom's house by the bride's side of the family is dowry. It is said that the payment is for the husband to take care of his wife for the rest of their life. Women face numerous tortures from their husband's family in demand for dowry from the wife's house. The Dowry prohibition Act²⁴ forbids demanding, taking or giving dowry. Still in many places the system is practised very commonly and abuses, deaths in the name of dowry is a typical story. The dowry deaths in India are 6.4 thousand as per the stats taken in 2022²⁵. Unlike other women hurting customs, the dowry system is not completely eradicated.

VIII. LEGAL CHANGES BROUGHT

Several Legislations in post-independence modern India have been brought for the purpose of decreasing the oppression of women. When it comes to legal protections given for women, The Constitution stands first. Art.14²⁶, art.15²⁷, art.16²⁸, prohibited the discriminatory practices based on several grounds including gender.

Article 21²⁹ of The constitution is for ensuring the right to life and liberty, which has a very wide scope that includes the right to privacy, livelihood, health, etc.

²⁴ Dowry Prohibition Act, 1961, No. 28, Acts of Parliament, 1961

²⁵ Statista, www.statista.com, (last visited June 2 2024)

²⁶ INDIA CONST. Art. 14.

²⁷ INDIA CONST. Art. 15

²⁸ INDIA CONST. Art. 16.

²⁹ INDIA CONST. Art. 21.

Indian Penal Code, 1860³⁰ deals with crimes against women like rape, kidnapping, Dowry, Sexual harassment, etc.

Moreover, there are several crucial laws which stand against these evil practices.

- **Protection of Women from Domestic Violence Act, 2006³¹** - The act gives meaning to domestic violence as not only physical but also emotional, verbal, sexual and economic abuse. Under this act the aggrieved women get protection and support. It includes sisters, widows, mothers, wives or female live-in partners who suffer abuse from their male live-in partner or husband or his relatives.
- **Special Marriage Act, 1954³²** - In a country like India where people of various diversities live, every person has the right to choose their spouse of any faith or caste. This act paves way for establishing those special forms of marriage.
- **Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994³³** - main objective of the act is to stop the decline in sex ratio and increasing female foeticide. It regulates the use of technologies which helps in identifying the sex of the baby, which leads to sex selective abortions.
- **Prohibition of Child Marriage Act, 2006³⁴**- The legislation was enacted in replacement of the old act, Child Marriage Restraint Act (CMRA)³⁵ of 1929. The marriages solemnised whether before or after the act will be voidable at the interest of party who was child at the time of marriage.
- **Dowry Prohibition Act, 1961³⁶**- The act gives prior definition for dowry and not only criminalises the giving and taking of dowry but also the demanding and abetting of giving and taking dowry.

³⁰ Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860

³¹ Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of Parliament, 2005

³² Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954

³³ The Preconception and Pre-Natal Diagnostic Techniques Act, 1994, No. 57, Acts of Parliament, 1994

³⁴ The Prohibition of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2006

³⁵ Child Marriage Restraint Act, 1929, No. 19

³⁶ Dowry Prohibition Act, 1961, No. 28, Acts of Parliament, 1961

In addition, the directive principles of state policy mentioned in the Constitution establishes certain rights like,

- Art.39(a) [all citizens, regardless of gender has equal rights to seek means of livelihood]³⁷,
- Art.39(d)³⁸ [equal pay for equal work for both men and women],
- Art.42 [state to make provision for ensuring just and human condition of work and maternity relief]³⁹,
- Art.39 A [equal opportunities for seeking free legal aid]⁴⁰
- Art. 51A(a)⁴¹ [promoting harmony and renounce practices derogatory to dignity of women]

IX. CONCLUSION

Effective laws and rules are present at current and more of them will be formulated according to change of time. However, it is also a fact that some of the above-mentioned practices that hurt females are still prevailing in some parts of the society. The customs taken from the roots of religion, caste and many other backgrounds are highly crucial according to the Indian population. But educated people will understand that following these systems should not affect any person's basic human rights. That kind of broad-minded mentality makes the citizens aid the country to overcome various toxic norms that violate and hurt certain people, regardless of gender. Thus, there is a crucial role played by certain customs and beliefs in gender inequality.

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³⁷ INDIA CONST. Art. 39a

³⁸ INDIA CONST. Art. 39d

³⁹ INDIA CONST. Art. 42

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