



“Women Rights & Children Rights: A Step Towards A Re-Vision Of Human Rights”

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Abstract

“All human beings are born free and equal in dignity and rights.”¹

Human rights are the basic rights and freedoms that every person in the world should have. Everyone has the right to life and liberty, Freedom of expression, Equality before the law, the right to be free from discrimination, the right to participate in culture, the right to education. People with may experience unfair treatment because of factors such as how they look, how they identify, their age or gender, or who they choose to love. In women's rights the gender dimension is an essential element. In the field of children's rights, the generation and age dimension are of great significance. Women's and children's right played an important role in the development of human rights between private entities.

Rights are not luxuries. Although rights cannot be realized, if needs are not met, simply meeting needs is not enough. The problems facing vulnerable women and children have immediate, underlying and structural causes and many have common roots. These could be discrimination in various forms, including gender bias, unsafe environments or chronic poverty.

Through this paper I would like to provide a conceptual framework for understanding human rights. It also offers a brief look at the evolution of the women's and children's rights movements and explains why an emphasis on women in development eventually gave way to a focus on gender equality. Finally, it describes the legal instruments and mechanisms that have been created to protect and promote these rights, foremost among them the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It shows where the rights of women and children intersect and how both conventions and the committees that monitor them can be successfully employed to safeguard these rights.

¹The Universal Declaration of Human Rights,art. 1

Key words: -Constitutional Safeguards, Discrimination, Empowerment, Gender Equality, Women Rights.

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“When God created man and woman, he was thinking, ‘Who shall I give the power to, to give birth to the next human being?’ And God chose woman. And this is the big evidence that women are powerful.”

Malala yousfzia

Introduction

All human beings, both adults and children, have the right to enjoy their right and freedom granted to them simply because they are human. Rights of human being are based on mankind increasing demand for a civilized society. Despite having so many rights and laws to protect them still they are not protected. Women, Children and Elderly people are the most vulnerable groups of our society. If today we ponder about the word “protection”, then women, children and elderly people are tagged with it automatically. Though women, children, classes are believed to be the most delicate and pampered ones their rights are being encroached every day, everywhere in the world and protection of them comes naturally to balance the human rights scale.

The words Human Rights of women and children were written in the **“Universal Declaration of Human Rights”** which was adopted in the year 1948 by the United Nation under the chairmanship of Eleanor Roosevelt. People across the world irrespective of their caste, color, sex and religions are entitled to live with dignity and respect without any fear or oppression of anyone.

It is inevitable truth that women have been ill-treated in every society for ages and India is no exception to that.² Persona of a developed nation is reflected within the condition of women of that nation. If society is a bird and men and women are the two wings of society, as bird’s need both of wings to fly, so society needs the empowerment of both men and women to uplift itself. Swami Vivekananda says that **“It is impossible to think about the welfare of the world unless the condition of the women is improved, it is impossible for a bird to fly on one wing”**. Time has helplessly watched women suffering in the form of discrimination, oppression, exploitation, degradation, aggression, humiliation. Indian women through the countries remained subjugated and oppressed because society

²“Law and Gender: A Quest for Justice” by Dr. Ratin Bandyopadhyay & Dr. Rajendra Dhar Dubey” Alfa Publication New Delhi-110002 (India). See Prof. (Dr.) M.K. Bhandari; *“Domestic Violence: Threat for Gender Justice vis-a-vis Human Rights at Home: An Evaluation of Relevant Legislations”* p. 31.

believed in clinging on to orthodox beliefs for the brunt of violence—domestic as well as public, Physical, emotional and mental.

Violence against women is very important and contemporary issue of discussion in India. Women in India constitute near about half of its population and most of them are grinding under the socio-cultural and religious structures. There are several causes of sexual as well as moral abuse which are very often highlighted by the media in Indian modern society, and a lot of those also remain unexplored.

India is fast developing country but the condition of women has continued to be discriminated. They are victims of crime directed specifically at them, rape, kidnapping and abduction, dowry-related crimes, molestation, sexual harassment, eve-teasing, etc. It is realized that the long run supremacy of male over female in all respect in the patriarchal society is highly responsible for arresting the empowerment of women. Women are being trafficked for sex, harassment at workplaces and tortured in family and society.

In domestic violence women are treated like a slave and are being robbed of their dignity which is raising questions whether the 498A section of Indian Penal Code is a shield or sword. Trafficking of women, especially minor girls, has jeopardized the basic esteem of women besides exploiting them in their most despicable manner like prostitution, destroying them physically, socio-economically and in many other respects. ‘The Vishaka³ Guidelines’ are being made laughing stock satyriasis in many work-place in every single day. The unborn baby-boy has not also got respite from the vile desire having baby boy. Last but not the least modern naked cyber pornography has labeled women as sex-pricking doll. Due to the social stigma most of them could summon up the courage to reveal those heinous acts committed against them in every sphere of their life. Rights of women include the rights against sexual exploitation, right against discrimination, and right to privacy, right to life and even right to employment. The right to live with human dignity not merely includes physical or animal existence rather it embraces several other aspects in its fold.

“There can be no keener revelation of a society’s soul than the way in which it treats its children.”⁴Currently the children comprise of 26.3% of the world population.⁵ Societies are greatly hampered from the violation of their rights. Rights of the children include the

³*Vishakav. State of Rajasthan*(1997) 6 SCC 241, AIR 1997 SC 3011, (1998) BHRC 261, (1997) 3 LRC 361, (1997) 2 CHRLD 202

⁴ Nelson Mandela, The president of South Africa from the year 1994-99.

⁵ United Nations, Department of Economic and Social Affairs, Population Division (2011), World Population Prospects: The 2010 Revision. Available in <http://www.un.org/esa/population/umpop.htm>:

right against exploitation of sexual abuse, right to education, right against discrimination, right to live, right to survival and right to development. Children always live under the thumb of their parents, all the decision concerning them, from clothes to education are taken by their parents. Psychologists also condemn the carrot and stick approach some parents use with their children. When a child is been trafficked or sexually exploited there is a violation of their right to life, survival, protection and participation. Because of the fear of their parents and society the children often do not complain on violation of their rights. Parents should be made aware of the laws regarding child protection and child abuse. Parents should be made well versed that if they violate the right of the children then they would be punished sternly by the law.

Concept of Human Rights:

Every person has rights simply by virtue of being human. At first the people who have the power is having the rights and the people working under them were having no rights. Slavery and death of people was a common thing happening with the people but after conquering the battle of Babylon in 539 BC Cyrus the Great did something very revolutionary. He announced that all slave is free to go and all people have the right to choose their religion no matter what crowd they were part of. His words were written on clay known as **Cyrus Cylinder**. This led to the birth of the concept of human rights.

Though there was no any articulated law at that time but people started making their own rules and regulations-based morality and justice. These rules and regulation later on came to be known as natural law. These laws were always tampered by the people who were having power until in the year 1215 AD King John of England created Magna Carta., or Great Charter in which the people's basic legal rights were preserved and even the king was not allowed to infringe the rights of the people. In the year 1628 Petition of Rights were made by Charles I .The Petition of rights demanded⁶ : (1) that no freeman should be forced to pay any tax, loan, or benevolence, unless in accordance with an act of parliament; (2) that no freeman should be imprisoned contrary to the laws of the land; (3) that soldiers and sailors should not be billeted on private persons; (4) commissions to punish soldiers and sailors by martial law should be abolished.

Many other bills and declarations like Bills of Rights (1688), American declaration of Independence (July 4, 1776) were made to preserve the rights of the people. Despite of all these declarations and bills two World Wars took place and all the people's rights were shattered. Finally in the year 1945 United Nations Organizations (UNO) was formed. The 'Charter of United Nation Organization' adopted in June 1945 declared one of its objects as

⁶ Morris, Charles, ed. Winston's Cumulative Lose-Leaf Encyclopedia. Vol VIII. Chicago: John C. Winston Company, 1921. np. Available at <http://www.luminarium.org/encyclopedia/petitionofright.htm>;

to reaffirm faith in fundamental Human Rights' and its purpose of 'promoting and encouraging respect for Human Rights.'⁷

The International Perspective:

The United Nations Charter and Universal Declaration of Human Rights (UDHR) are considered to be the basic documents to preserve the human and both these documents ensure about the protection of the rights of women, children and elderly. There are many kinds of rights mostly applied to a certain kind of restriction but human rights are the only right that is universally applicable to everyone. Everywhere, that means kids, children, woman, elderly etc. The UDHR adopted various rights in its articles for the preservation and protection of women, children and elderly, like the right to life, we are all free and equal, right against discrimination, right to live with dignity, right against torture, right against slavery etc. Violence against women is a common problem faced by every country of the world. In order to protect the women many conventions, laws were made by the countries and the United Nations. U.N organizations like ILO and UNESCO have also adopted convention concerning the problems related to women. The two International Covenant- **International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR)**, enforces the concept of equality. Optional protocol to the Convention on the Elimination of all forms of Discrimination Against women, 1999 laid down the provision for non-discrimination of women. **Convention on the Political Rights of Women (1952), Convention on the Nationality of Married Women (1957), Convention on the Consent to Marriage, Minimum Age of Marriage and Registration of Marriages, 1962** and the Committee on the **Elimination of Discrimination against Women (CEDAW)** are some of the UN human rights conventions which specifically related to women. Convention on the Elimination of all forms of Discrimination against Women (CEDAW), 1979 is the most comprehensive instrument on the human rights of the women and contains more concrete provisions aimed at the real implementation of the rights already recognized.⁸ The role of women and need to improve the status of the women were internationally recognized in the year 1975 and the General Assembly proclaimed that year as "**International Women's Year**" and 1975-85 was declared as the "**Decade for Women.**" Beside all these Conventions, there are four International Conference on Women and the latest was held in the year 1995 at

⁷Supra note 3,p.312.

⁸ S.K Verma, "*Human Rights of Women: International Standards and The Indian Law,*" Orient Publishing House, 2003, p. 485

Beijing. Hence, the issue of women was addressed at the International front and at different countries.

The recognition of the human rights of children came under the umbrella under the International Law in 1924 with the adoption of Geneva Declaration of the Rights of the Child, 1924⁹ to some extent this convention abolished the custom of treating the children as the property of their father.¹⁰The conventions also recognized various other rights of child like the child must be given requisite means for its normal development, the hungry child should be fed, the sick child must get proper treatment, the orphan and the street child must be given shelter. The child should be carefully nurtured and provided with ample opportunities to live a decent life. **The Universal Declaration of Human Rights**, 1948 has laid down many articles for the protection of the child rights. The observance of **“International Year of Child”** in the year 1979 have created global awareness which led the United Nations to draft Convention on the Rights of Child, 1989.¹¹ To protect the children from pornography, sale and trafficking International Convention for the Suppression of the Traffic of the Women and Children, 1921 and Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography, 2005 was made.

The National Perspective:

The Universal Declaration of Human Rights, which consists of 20 Articles, is a reflection of the basic rights, in which human beings both adults and children require living and enjoying a life of freedom, without fear or oppression and abuse, in a healthy environment. The very same thought was contained and reflected in Part III and IV of the Constitution of India. While Part III speaks of fundamental rights enforceable by the Courts, Part IV contains ideas and guiding principles for good governance, and enacting legislations in the best interest of the citizen of the country. Our revered Constitution makers were well aware of the condition of these classes so they drafted the Constitution in the manner in which these people right would not be hampered by anyone. In the year 1993 the very first time a separate law relating to human rights was enacted¹². Under which the human rights were defined¹³ and National Human Rights Commission (NHRC) and State Human Rights Commission was set to protect the rights of the human. Currently, 18 State Human Rights Commission are working in India to look after the people of that particular state.

⁹ Adopted by the League of Nations on 26th September 1924

¹⁰ *Human Rights Year Book 2011*, Universal Law Publishing Co. Pvt. Ltd., p.106

¹¹ Adopted by the United Nation General Assembly on 20th November, 1989.

¹² Protection of Human Rights, 1993.

¹³ *Supra* note 13, s 2(d)

Constitutional Protection:

The Constitution is known to be the supreme law of any country. It mentions the rights and the freedom of the citizens of a nation. The preamble of our Constitution guarantees justice, equality, liberty and fraternity to the people of the country.¹⁴ The Constitution not only assures equality to everyone, but also an unequivocal prohibition against discrimination on grounds of religion, race, caste, sex or place of birth.¹⁵ The state is also empowered to make special provisions for women and children.¹⁶ There are other Fundamental Rights viz. Right to Life, Liberty and Constitutional Remedies.¹⁷ The Supreme Court has expanded the scope of Rights to Life in many cases viz. *SiddharamSatlingappaMhetrev. State of Maharastra*,¹⁸ *Suchita Srivastava v. Chandigarh Administration*.¹⁹ Women also have Fundamental Rights to human dignity,²⁰ to privacy²¹ to health,²² to primary education,²³ to free legal aid,²⁴ to speedy trial²⁵ as adjunct to right to life. Under Article 41 of The Constitution of India the state is directed to provide maternity relief to women. Under Article 51A it is a Fundamental Duty of every citizen of India to renounce practices derogatory to the dignity of women.

The Constitution of India has also taken care of the children and there are various articles in our Constitution which protect the rights of the children. The Constitutional concept of children in India is the realization of a healthy childhood with a pace for all round growth and development, and protection from exploitation and abuse by child labour forces on them due to economic necessity,²⁶ The constitution guarantees right to education,²⁷ prohibits discrimination on grounds of religion, race, caste, sex or place of birth,²⁸ prohibit traffic in human being and forced labour,²⁹ prohibits employment of children in factories.³⁰ Article 39 (e) and (f) provides as under (e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;(f) That

¹⁴ Preamble of the Constitution of India.

¹⁵ The Constitution of India, arts 14, 15(1)

¹⁶ The Constitution of India, art 15(3)

¹⁷ The Constitution of India, arts 21, 19 and 32

¹⁸ JT 2010 (13) SC 247: (2010) 12 SCALE 691.

¹⁹ AIR 2010 SC 235.

²⁰ *Francis Coralie v. Union Territory of Delhi*, AIR 1981 SC 746

²¹ *People's Union for Civil Liberties v. Union of India*, AIR 1997 SC 568

²² *Indian Council for Enviro-Legal Action v. Union of India*, 1996 3 SCC 212

²³ *J.P Unnikrishnan v. State of Andhra Pradesh*, AIR 1993 SC 2178.

²⁴ *KadraPahadiav. State of Bihar*, AIR 1981 SC 939

²⁵ *Ibid.*

²⁶ *Human Rights Year Book* 2011, Universal Law Publishing, p.91

²⁷ The Constitution of India, art 21A

²⁸ The Constitution of India, art 15

²⁹ The Constitution of India, art 23

³⁰ The Constitution of India, art 24

children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment. Article 45 of the Constitution laid down the provisions for free and compulsory education for children. It is thus seen that the Constitution of India has taken care of the health and education and all-round development of the children. The Supreme Court of India has dealt with the rights of children in many landmark judgments viz. Sheela Barse'sv. Union of India,³¹ Md. Giasuddinv. State of Andhra Pradesh,³² M.C Mehtav. State of Tamil Nadu,³³ Elizabeth Dinsnawv. Arvind Dinshaw,³⁴ Vishal Jeet v. Republic of India.³⁵

The Constitution of India has also advocated the rights of elderly people Right to work, to education and to public assistance in certain cases: The State shall, within the limits of economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.³⁶

Promotion of educational and economic interests of Scheduled Caste and Scheduled Tribes and other weaker sections. The State shall promote with special care the educational and economic interests of the weaker sections of the people.....and shall protect them from social injustice and all forms of exploitation.³⁷

Protection under Other Laws and Act:

Apart from, The Constitution of India the Central and State Government has passed many Acts to protect the rights of the women, children and elderly. During the last six decades after Independence, the government has launched massive programs concerning socio-economic development of the women children and elderly. To protect the women from trafficking 'Immoral Traffic (Prevention) Act', 1986 was passed in the year 1986. The act was further amended in the year 1986 and came to be known as PITA previously known as 'All India Suppression of Immoral Traffic Act' (SITA). This act only deals in trafficking in prostitution, it does not have any provisions for trafficking in domestic work, child labour, organ harvesting etc. A separate act was made for protection of women from sati³⁸, domestic violence³⁹ and dowry prohibition⁴⁰. The Supreme Court has framed guidelines in

³¹AIR 1986 SC 1773

³²AIR 1977 SC 1926

³³ AIR 1977 SC 699

³⁴ AIR 1987 SC 3

³⁵AIR 1990 SC 1412

³⁶The Constitution of India, art. 41

³⁷The Constitution of India, art. 46

³⁸Commission of Sati (Prevention) Act, 1987

³⁹Protection of Women from Domestic Violence Act, 2005

the case of **Vishaka v. State of Rajasthan**⁴¹ for protection of women from sexual harassment in work place. On the guidelines of the case '**Protection of Women against Sexual Harassment at Work Place Bill, 2007**' was brought in the parliament. To set up National Commission for women, The National Commission for Women Act, 1990 was passed by the parliament.

All children have same rights but their situation vary. Keeping this in mind many Acts were passed to remove the social evil existing in the society. The first act to protect the children was 'Guardians and Wards Act' which was passed before Independence in the year 1890. A separate act was passed to protect the children from labour,⁴² marriage,⁴³ trafficking,⁴⁴ organ transplantation⁴⁵ and sexual offences.⁴⁶ In order to safeguard the interest of the child 'Juvenile Justice (Care and Protection) Act', 2000 further amended in 2006 was passed. To widen the scope of Article 21A a separate act was passed named The Rights of Children to Free and Compulsory Education Act was passed in the year 2009 and many the 'Sarvya Shiksha Abhiyan' was implemented in all the state.

Protection under Criminal Law:

Apart from separate act for protection of women there are also provisions for protection of women from rape, dowry death and cruelty towards them in the Indian Penal Code, 1860 and Indian Evidence Act, 1872. Section 304B of Indian Penal Code and 113B of Indian Evidence Act, 1872 deals with dowry death. Section 375 deals with rape of women and children. Section 498A of IPC, 1860 deals with the cruelty done by the husband on his wife. The court has held in *Krishna Lal v. Union of India*⁴⁷ that the social evil should be eradicated and to ensure that the married women live with dignity at their matrimonial homes.

Section 312-318 of IPC, 1860 deals with the protection of unborn child. If a person tries to kill a child before birth in the form of doing miscarriage that person shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine.⁴⁸ Rape of a child come under Section 375 of IPC, 1860 and the punishment for rape is given in Section 376 of IPC, 1860.

⁴⁰ Dowry Prohibition Act, 1961

⁴¹ 1997 6 SCC 241

⁴² (Bonded Labour Act, 1976) and (Child Labour Prohibition and Regulation) Act, 1986)

⁴³ Prohibition of Child Marriage Act, 2006

⁴⁴ Immoral Traffic (Prevention) Act (amended in 1986), 1956 and Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1987

⁴⁵ Transplantation of Human Organ Act, 1994

⁴⁶ Protection of children from Sexual Offences Act, 2012

⁴⁷ 1994 Cr LJ 3472

⁴⁸ The Indian Penal Code, 1860 (Act 45 of 1860), s.313

Violence against Women:

Violence against women include all the violent act committed against them. The United Nations defines violence against women as **“Any act of gender-based violence that results in, or is likely to result in, physical, sexual or mental harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.”** Violence against women have taken place from the time they have treated as a property. The World Health Organization (WHO) reports that violence against women and girls is one of the most widespread violation of human rights.⁴⁹ Violence against women include all forms of physical, sexual and psychological abuse. Violence done by a husband to his wife come under the domestic violence. We may discuss domestic violence under the following subheadings:

(a) Wife Beating (b) Dowry Harassment and Death (c) Marital Rape

(a)Wife Beating:

Declaration on the Elimination of Violence against Women, 1993 clarifies the term ‘violence against women’ means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.⁵⁰The battering of woman, like other crimes of violence against women has been shrouded in myths. Such myths are based on the mistake notice that the victim has provoked her own assault, and some consider it as protection against embarrassment, while for others, it is a phenomenon of masochistic, meaning that such women experience a sense of sexual pleasure only when she is beaten before being subjected to sex.⁵¹Women suffered from ‘learned helplessness’ as a result of repeated battering, which prevented them from resisting the violence or leaving the relationship. Even the parents of the wife neglect the fault of their son-in-law and in way subject their daughter to more torture. It is seen that the wife is not only beaten by uneducated husband but also by educated husband. Unfortunately, in India, there is no specific law against wife beating, but the very act if it were to be simple or grievous can be treated as assault under the provisions of the Indian Penal Code.⁵²Women usually don’t lodge complaint against their husband because if the husband got convicted then she will the only one to suffer the consequences of not having a husband.

⁴⁹ http://www.janedoe.org/learn_more/what_is_vaw

⁵⁰The Declaration on the Elimination of Violence against Women, 1993, art. 1

⁵¹ Patnaik Raghunath, *Domestic Gender Issues*, VIII (II) CILQ, (1995) 141.

⁵²The Indian Penal Code, 1860 (Act 45 of 1860), s.322-326

(b) Dowry Harassment and Death:

The practice of giving and taking dowry has been prevalent from ancient since Vedic period when it was called Vahatu. The Rig-Veda and Athaveda mention that the dowry given to Surya by her father reached her in-laws long before she herself entered it. The Atharveda says that when the bride went to her husband's place her clothes were definitely fine and sanctified by Mantras. Bana in Harsha Charitra also mentioned that large number of horses and elephants were given to Rajyashri as dowry. So also in Mahabharata, we find that Drupada lavished his daughter with pearl. Thus, we see that in ancient time the dowry was voluntarily.⁵³ Previously the dowry was given as a form of gift to their in-laws but that practices changed it into a social evil and now wife has been harassed by their husband and his relatives for dowry. In Shobha Rani v. M.Reddy⁵⁴ the Trial & High Court failed to regard the demand for dowry as harassments and dismissed the wife plea saying that she had not produced any evidence which could be regarded as harassment. When the case went on appeal in Supreme Court Shetty J. referred to dowry as a "deep rooted evil" and that in spite of the law and the amendments, the "pernicious practice continued". Many times, these dowry harassment takes the form of dowry death. In the year 2009, there was a total of 89,546 dowry death were reported.⁵⁵ Despite the amendment in Dowry Prohibition Act, 1986 even today justice remains an elusive dream for many dowry death victims.

(c) Marital Rape:

Section 375 of Indian Penal Code, 1860 discriminates with a wife when it comes to protection from rape. Marital rape creates a mental trauma in the wife because the husband himself is betraying the trust and having sex without consent. By raping the wife, the husband makes her feel insecure in their home where she should feel herself secure. Marital rape is difficult to prove especially when both partners voluntarily engaged in sexual activity in the past and issue of consent arises at a later point when there is a non-consensual sex. What is required is to form a new definition of rape. If the husband insists to have sex with his wife and causes grave injury or damage to life, limb or health, such thing will amount to cruelty as defined in section 498A of IPC, 1860 and the conduct shall be punished as amounting to rape. Women have also been exploited sexually. Sexual violence refers to sexual activity where consent is not freely given or obtained. It lowers the dignity of women in the society. Sexual Violence can be under the following subheading: (a) Rape (b) Trafficking & Prostitution (d) Molestation and Sexual Harassment

⁵³ Gupta Srinivas, *Law on Dowry and Dignity of women*, IXIV CILQ(1996) 448

⁵⁴ 1987(2) Scale 1008

⁵⁵ National Crime Record Bureau.

a) Rape:

Rape is considered to be more heinous crime than murder. In murder people die only once but in rape people die again and again. Rape kills the victim's soul. The position of India is not better than many of the under developed nations and the prime reason of this is that the laws and the punishment for these offences is not to deterrent and every such law suffers some loop holes or have some grey areas which can be taken advantage of by the alleged offenders. The offence of rape though included and defined in the Indian Penal Code along with offences affecting the human body is not a typical offence like any other since, in the offence of rape the aim is not to take, but to humiliate and degrade. The victims of rape do not only suffer from forced genital copulation but they also suffer from humiliation and shame, which the society offers. It would be necessary to remind that the punishment prescribed for rape has not taken into account that, what follows the offence of rape is nothing less than the offence itself and is no less than mental trauma and unbearable pain and humiliation for the victim and her family. In the year 2009 there were 21,413 victims of Rape out of 21,397 reported Rape cases in the country. A person who is accused of such heinous crimes must be awarded the strictest punishments prescribed in the books of law.

(b) Trafficking & Prostitution:

Trafficking of women is a violation of their rights. The World Conference on Human Rights which was held in Vienna 1993 has acknowledged that one of the Violence against women, is 'forced prostitution and trafficking in women'. Trafficking in human beings take place for the purpose of exploitation which can be categorized as sex-based and non-sex based. The former category include trafficking for prostitution, commercial sexual abuse, pedophilia, pornography, cyber-sex, and different types of disguised sexual exploitation that take place in some massage parlors, beauty parlors, and other manifestation like call girl racket, etc., Non-sex based trafficking include domestic labour, industrial labour, adoption, organ transplanted, marriage related rackets etc. Trafficking of women, minor girls for prostitution and sexual exploitation has emerged as one of the most formidable challenges of the new millennium. Out of human trafficked 43% of girls and women are used for forced commercial sexual exploitation.⁵⁶In the year 2010 there were an increase of 20.2% increase in human trafficking in India compared to 2009.⁵⁷It has threatened the basic dignity and freedom of the women and minor girl which is granted by the Constitution of India.

⁵⁶ International Labour Organization, *Forced Labour Statistics Factsheet* (2007)

⁵⁷ National Crime Record Bureau(Statistics 2009); Available at <http://ncrb.nic.in/CII2010/cii2010/Chapter%206star.pdf>

(c) Molestation and Sexual Harassment:

Molestation and sexual harassment are one of the worst evils of the modernized society caused to the women by their male counterparts and the other members of the society.⁵⁸ In early times, on the one hand, it was believed that where women are honored, God feels delighted, while on the other hand, in the times of Manu, she was considered dependent and a weak human being who is protected by her father, when young, by husband in her youth, and by son in her old age. But now the situation has totally changed now women are given freedom and they are entering in every field. Yet it is unfortunate for us that the women who should be protected and respected in the workplace are being sexually harassed. Molestation and Sexual harassment is just one form of abuse against women against women that occurs in the workplace. Sexual harassment is a violation of the rights under Article 14, 15 and 21 of the Constitution. *Vishaka v. State of Rajasthan*⁵⁹ is the first in which sexual harassment at workplace came before court. The Supreme Court laid down the guidelines for protection of women in workplace and Protection of Women against Sexual Harassment Bill, 2007 was put in the parliament.

Violence against Children:

Each child is having the right to protection from all forms of violence. Children, as human beings, are entitled to enjoy all the rights guaranteed by the various international human rights treaties that have developed from the Universal Declaration of Human Rights.⁶⁰ Violence against children is too common to hear. A child seriously injured by his parent, a child is used as a domestic worker or worked in a factory, a child getting married by an elder man or marriage among the minor and a child being sexually abused. These all are one form of violence against the child. Violence against children can come in the subheading:

(a) Child Marriage (b) Child Labour (c) Child Trafficking (d) Child Sexual Abuse

(a) Child Marriage: Child Marriage means a marriage in which either of the contracting party is a child.⁶¹ Child Marriage is a gross violation of the rights of the child especially girl child. Child marriage destroys a life of child by not providing proper education. Child marriage usually takes place because of poverty and customs. Due to child marriage, there is a greater chance of early birth which creates a risk to the life of both the mother and the child. Studies show that girls who give birth before the age of 15 are five times more likely

⁵⁸ *Supra* note 3, p.323.

⁵⁹ (1997) 6 SCC 241, AIR 1997 SC 3011, (1998) BHRC 261, (1997) 3 LRC 361, (1997) 2 CHRLD 202

⁶⁰ UNICEF (2005). *UN Human Rights Standards and Mechanisms to Combat Violence against Children: A Contribution to the UN Secretary-General's Study on Violence against Children*. Florence, UNICEF Innocenti Research Centre

⁶¹ The Protection of Child Marriage Act, 2006. Art. 2(b)

to die in childbirth than women in their twenties. Furthermore, the infants of child mothers are also at greater risk. If a mother is under the age of 18, her baby's chance of dying in its first year of life is 60 per cent greater than that of an infant born to a mother older than 19. To protect a child from child marriage Protection of Child Marriage Act, 2006 is there.

(b)Child Labour:

Child labour basically means the work for the children that harms or exploit them physically, mentally, and morally or interrupts their education. International Labour Organization has defined Child Labour as works that lead to the depreciation of a child childhood and education opportunities and its effect include a loss of potential and dignity of the child, which is harmful to a child's physical and mental development. According to Section 2(ii) of the Child Labour (Prohibition and Regulation) Act, 1986, 'child' is a person who has not completed his fourteen years of age but child labour is nowhere defined in the Act. In the year \ India 49, 83,871 children are used as a labour in the year 2009-10.⁶² The major problem which the government is facing is to determine the age of the child. Due to poverty many children voluntarily accept the job and if someone ask their age, they either hide it or say that they are above 14 years.

(c)Child Trafficking:

Trafficking in child is done for sexual exploitation, i.e., forced prostitution, pornography, pedophilia and sex tourism. Child trafficking can be for domestic labour, agriculture labour, others form of labour work, begging, organ trade, drug peddling and smuggling. Child is also trafficked as an aid to entertainment like Circus troupes and camel jockeying. The NHRC Committee on Missing Children has the following statistics to offer:

1. 12.6 million (Governmental sources) a 100 million (Unofficial Sources) stated to be child labour.
2. 44,000 children are reported missing annually, of which 11,000 get traced.
3. About 200 girls and women enter prostitution daily, of which 20% are below 15 years of age.

(d)Child Sexual Abuse:

Sexual abuse of a child can take place in many forms which include but is not limited to rape, touching, fondling, assault, sodomy, forcible kissing, pornography and photography a child in nude. In *Sakshi v. Union of India*⁶³ a Writ petition was filed by an organization, in

⁶² NSSO (66th Round of Survey) on Child Labour in major Indian States 2009-10. Available at <http://labour.nic.in/upload/uploadfiles/files/Divisions/childlabour/NSSOEstimateofChildLabourinMajorIndianStates.pdf>

⁶³ (1999) 6 SCC 591

supreme court to widen the scope of Section 375 of the Indian Penal Code, 1860 and include all form of penetration such as penile/vaginal penetration, penile/oral penetration, penile/anal penetration, finger/vaginal and finger/anal penetration and object/vaginal penetration. The court order the law commission of India to examine the precise issue submitted by the petitioner. The court specifically requested that the Law Commission to “examine the issues submitted by Sakshi and examine the issues submitted by Sakshi and examine the feasibility of making recommendation for amendment in the IPC or deal with the same in any other manner so as to unplug the loopholes”⁶⁴. The problems of child sexual abuse should be looked by all the three limbs of the State viz., the legislature, the executive and the judiciary.

Conclusion:

Numerous laws and policies are enshrined to “protect” the rights of women, children and elderly in various national and international statutes. But this “protection” is myth. Reluctant states and central government have done precious little to change the patriarchal and archaic laws relating to women, children, and elderly people. It clearly shows the chinks and the loopholes presently existing laws and policies, as well as the lack of proper implementation of these laws to uproot these social evils. **“I am no bird; and no net ensnares me: I am a free human being with an independent will.”** by Charlotte Bronte in Jane Eyre. It is not applicable to women only, also for children and elderly who are ensnared time and again into devilish desire of man. Everyman now has to search and snatch his rights by the help of Indian Judiciary. But the state can become a smart player by safeguarding women first because **“Anything may happen when womanhood has ceased to be a protected occupation”** by Virginia Woolf in A Room of One’s Own and the heart of these problems pivots around carelessness towards “WOMEN”.So there is a dire need of combined, consistent and concentrated efforts from the government as well as the people belonging to different strata of the society.

⁶⁴ Law Commission of India, One Hundred and Seventy Second Report on Review of Rape Laws (2000)