

CHAPTER - I

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Our social structure is based upon two pillars i.e. men and women. Their rights and duties must complement and supplement towards each other. If one of the pillars is weak the other cannot bear the burden of society and the whole structure of the society will fall. Hence, to run the society we need both of them, neither is inferior to the other and both of them should be kept in the equal footing. Ironically, out of these two pillars women is the weaker one or in other words, the men exploited women to such an extent that she became weak. Since time immemorial women has been at the receiving end of the men's atrocities. Their rights are frequently violated and crimes against women are on rise. In the name of the religion, custom, and tradition she is subjected to various forms of injustice committed against her such as, polygamy, child-marriage, prostitution, sexual abuse, dowry related crimes, foeticide, rape, etc. All these customs and traditions give unequal status to the women.

Women constitute almost half of the world population, yet she is subjected to various forms of atrocities committed against her in the society. The Supreme Court in *Madhu Kishwar vs. State of Bihar*¹ too has stated that “*Half of the Indian population is women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their mobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.*” Women are

1. (1996) 5 SCC 125.

not secured in the society whether they are outside their home or inside it. In fact, she is subjected to heinous forms of crimes inside her household domain. She is not safe even inside her house. Crimes against her are committed inside her home which is more dangerous in nature. The crime which is committed against her inside the house is known as “domestic violence”. Protective laws have existed in our statute books since a very long period and with the passing time more laws are being added yet there is sudden increase in the violence committed against the women in our society especially at her house whether matrimonial or paternal home. She is subjected to brutal crimes such as financial dependence, marital rape, dowry death, infanticide, foeticide, sexual abuse, wife-beating, bigamy, etc.

Discrimination, oppression, prejudice and violence against women in this male-dominated society can be seen since the dawn of our civilization. The status of women of a nation is the mirror of its civilization. The development of a nation is measured by the status of women held in that nation. Where a woman enjoys a good status it shows that the society has reached a level of maturity and sense of responsibility. However, if she is deprived of a good status, it conjures up the image of a nation. The glimpses of history are evident that the women have contributed tremendously for the development of the society and they enjoyed equal status with men in the society.

The present work studies the status and position of women in the Indian society which has undergone various changes. The status and position of women in the Indian society is studied under the four heads viz. ancient India, medieval India, pre-independent India, and post-independent India. The present study dwell the status and position of women in Indian society which has suffered gradual deterioration and has gone from bad to worse. It discusses the historical retrospect of the status and position of women in the Indian society i.e. from ancient India till today. The present work also discusses the position and status of women in the Hindu society and their status in other religions such as Jainism,

Buddhism, Sikhism, etc. It also studies the impact of invasions of the Muslim rulers and British rulers on the status and position of women in Indian society. Various social evils existed in the Indian society at the beginning of the 19th Century which still hold place in our society. The women during pre-independent period actively participated in the freedom struggle which to some extent changed their position in the society for better. After the independence the Government passed certain enactments to curb the existing social evil in the society. Thus, the historical retrospect of the status and position of women in Indian society, thus, helps us to understand the origination of such social evils which causes the discrimination of women in the society.

The violence against women is not a new phenomenon. It is as old as our civilization. It is not confined to a particular class or to a particular country. It is a global problem. Women are placed at various disadvantageous positions due to gender differences and biasness. Gender discrimination represents the ugly face of the society which is not only offensive to human dignity and human rights but has also emerged as a fundamental crisis all over the world. The question of gender justice and gender equality is a very old and burning problem because contribution of both the sex is essential in order to attain a developed nation. It is important to recognize the inherent dignity, equality and inalienable rights of all the members of the society which will lay the foundation of freedom, justice and peace in the world. Despite playing major roles during various stages of her life as a daughter, wife, mother, sister etc and in spite of her contribution to the society she is still suffering from discrimination, exploitation and victimization.

The present work discusses the history of women empowerment which was started with the Declaration of Sentiments. The idea of protecting the rights of women started with a small tea talk which resulted in the Declaration of Sentiments which was the seed for the women empowerment all

over the world. Frequent commission of crimes in different shape and size violating the basic rights of the women gave rise to various international instruments which dealt with the protection of right to life, liberty and security of a person; protection against gender discrimination; right to education; political rights of women; protection of women against discriminatory customs, laws, regulations and practices etc; elimination of all forms of discrimination and violence against women etc. In the national front the Constitution of India provides certain provision, which protect women from gender discrimination and exploitation and other forms of atrocities committed against them. The present work also discusses various other enactments which have been made to promote gender equality and protect women from exploitation and fight against the atrocities committed against them. The prime question which is raised in the present study is: How far the International instruments have changed the perspective of the society towards women? Whether these instruments have curbed the inequality in the society towards women? To what extent the Indian Constitution provides the concept of equality irrespective of one's sex? And How far the legislative enactments support the cause of equality to women? Are they sufficient to curb the unequal status of women in the society?

In the Indian society marriage has always been considered as a sacramental union since the ancient period. Still the institution of marriage was held in great esteem. It is known as one of the "*sanskars*" which every Hindu must perform. Marriage is the institution wherein the woman has to leave her paternal home and enter her matrimonial home. However, in her matrimonial home another social evil awaits her in the form of Dowry which has many facets i.e. dowry demand, dowry deaths, torture, cruelty etc which are related to the dowry. In India dowry has been identified as one of the most killing problems of women. The dowry system in India prevailed since the *Vedic* periods. However, the concept of dowry at that period was different from what it is now. At that period the dowry

was not based on avarice and extortion but was a token of love to the bridegroom from the bride's parents. It was in fact a religious ritual. The present work discusses the evolution of dowry system in India, the changes in the concept of dowry, the effects of dowry system in the society, and the legislative enactments in India against the evils of dowry system.

The present work discusses the definition of dowry under a special legislative enactment with the help of various judicial decisions. This special legislative enactment also deals with certain provisions wherein taking, giving, and demanding dowry is prohibited and is punishable under the law. This present work also studies the provisions against dowry system under the Indian Penal Code, 1860. The relevant question to be investigated in respect of problem relating to dowry and evils of dowry system is: Whether the dowry system and problems relating to dowry system existed since the ancient period? What are the factors which gave rise to the system of dowry? Whether the legislations are sufficient to curb the evils of dowry system in India? The enforcement machinery, its efficacy and to what extent all these provisions are helpful in curbing the evils of dowry system from our society are some of the matters which find a place in this study. Another important aspect is about the limitation of these provisions.

Women are perceived as the weaker class who is subjugated to the heinous crimes. Various forms of atrocities are committed against women all over the world whether it is a developed nation or developing country or even in the third world countries. The society always focused on eradicating the violence against women outside their homes by the strangers, but it is also a known fact that the cruelest and heinous crimes are committed against women inside her home at the hands of those she trusts and loves. The present work discusses the various forms of domestic violence which a woman has to undergo before her marriage or after it, its prevention and punishments. These crimes are bigamy by the husband, cheating and fraud in marriage, and Sati system. The

present work also dwells upon such crimes which women are subjected to in their matrimonial as well as paternal house. These crimes are not covered under any legislation yet the women are subjected to it and often the abuser gets away without being punished. Such crimes are marital rape, sexual abuse by the relatives i.e. child sexual abuse or sexual abuse by the relatives of the husband etc, and wife-battering. The kinds of trauma which a women has to go through under these circumstances, the effects or consequences of such incidence and the necessity to have legislations covering these crimes, providing provisions relating to its prevention and punishment for committing it find a place in this study.

One of the issue which deals with the deprivation of rights of a women is female infanticide and foeticide. The practice of female infanticide and foeticide is a gross violation of human rights as it not only depicts the low status of women in a society and reflects the issue of gender discrimination which begins from the womb but also hits at women's right over her motherhood. Female infanticide and foeticide is the beginning of the suffering of a woman in the course of her life. The sudden decline in the sex ratio of our country is evident that the ratio of women in comparison to men are decreasing every year i.e. 927 females per 1000 males as per the latest census.

The present work discusses the background of female infanticide in India since the ancient period which reflects the influence of religious practices in our society; causes of female infanticide in India where apart from other causes one of the main causes of female infanticide which has now changed its face into foeticide is the advanced technology which can determine the sex of the foetus; methods of killing infants in India in ancient period and some of the places wherein still the technology of determining sex of the foetus has not reached; effects of declining female sex ratio; the international instruments against the practice of female infanticide and foeticide; the national enactments against the female infanticide and foeticide such as the Constitution of India, the Indian Penal

Code, The Medical Termination of Pregnancy Act, 1971, and the Pre-conception and Pre-natal Diagnostic Technique (Prohibition of Sex Selection) Act, 1994. The implementation of these enactments, whether they provide effective machinery to fulfill the ideals of the legislations i.e. are they effective in preventing the female infanticide and foeticide? What are the measures they are taking to prevent it? And the punishments provided under these Acts are sufficient to curb this societal evil is the matter of concern of this study.

Women play diverse roles of a mother, daughter, friend, wife, guide, companion, and nurse through out her life, yet she suffers all forms of violence and atrocities of all kind are instituted against her. Marriage is seen as the social security of a woman but the same becomes the source of various forms of discrimination at the hands of those whom she trust and love. She is often beaten up by her husband, abused by her in-laws, sexually abused by the husband and often denied the minimum bare necessities for her existence. The issue relating to domestic violence has become a major issue all over the world. Despite the laws regarding the protection of women, violence against women has increased substantially. Due to the vast expansion of electronic media large number of cases started to come into light and the existing law was not sufficient to include the expanding horizons of the domestic violence as they were inadequate to deal the domestic relationship. Ultimately, the Parliament passed the Protection of Women from Domestic Violence Act, 2005 to address the problems of domestic violence faced by women in India. The said Act defines the “domestic violence” and provides effective measures through which it can be prevented or punishments can be awarded. The present work also discusses the forms of domestic violence; theories of domestic violence; causes of domestic violence; effects of domestic violence; and domestic violence as a human right issue which will be helpful in determining the scope of domestic violence and through which measures we can take to prevent it and punish the abuser. These will also help us to understand that

why we need a new and separate legislation for the protection of women against the domestic violence.

The present work along with the study of the legislations and policies taken by the Government to curb all forms of domestic violence also critically analyze the said legislations and policies. The reasons for the failure of the legislations to curb the said violence against the women or shortcomings in the legislations and the policies or non-implementation of the said legislation properly are all the subject matter which is the matter discussed in this study. After analyzing the shortcomings and reasons for not its effective implementation the present work also tend to provide some suggestions which can help in making the laws more effective in curbing the domestic violence.

Coming to the framework of the present study, it has been divided into eight chapters. Chapter One introduces the subject matter, the object of the study, and research areas of the present study. Chapter Two deals with the historical perspective, the status and position of women in the Indian society in ancient India which can be studied under the head of primitive period, *Vedic* period and post *Vedic* period. In the ancient India there were other religions which emerged due to social changes, such as Buddhism and Jainism. The said chapter deals with the views regarding the status of women under these religions. In the *Vedic* period the status and position of women in the society was neither too good nor too bad. It was combination of the two as with some restrictions the women had certain freedoms. In the post-*Vedic* period when the Muslims invaded India the status and position of women became worse as in order to protect themselves from the Muslim men the society imposed strict rules upon her and she was denied her basic rights. Similarly, the Muslim women too faced the same fate as men of their society imposed strict rules upon them to follow as they have come to a foreign land wherein she has to save herself from the prying eyes of the foreigners. Hence, the situation became from bad to worse. During this period the Sikhism

was born wherein women were more liberated than their counter parts in the Hindu and Muslim religion. During the pre-independent period i.e. during the reign of British rulers the society in India consisted mainly of two religions i.e. Hindu and Muslim. It also deals with the role of women in Pre-independent India during the freedom struggle along with their status and position.

Chapter Three deals with the efforts made in the international as well as the national front for eliminating domestic violence. In the international front by providing gender friendly Conventions, Declarations and Treaties which binds the member or signatory States to implement the said provisions in their national legislations the world wanted to curb the violence faced by women at homes through gender equality and justice. The Government in India has enacted many legislations and made many policies for curbing violence against women in the domestic front on the guidelines of the international Conventions, Declarations and Treaties. Chapter Four deals with the Dowry System in the Indian society specifically. In this chapter the causes of the system, the effects of this practice in the Indian society and the legislation enacted by the Government to eliminate this social evil from our society is discussed.

Chapter Five include the study of other forms of domestic violence which a woman faces in the household such as bigamy by the husband, cheating and fraud in the marriage, sati system, marital rape, wife battering and child sexual abuse. The present work under this chapter studies the various aspect of the rise of the said violence's and the laws which are present in India against it. Chapter Six consists of the subject of female infanticide and foeticide. Under this chapter various causes for such practices are studied and how this practice effect's our society. The present work under this chapter also studies the legislations for preventing and punishing such offence. Another thing which is dealt in this chapter is the right to life of the foetus vis-à-vis right of the mother to abort the foetus. Chapter Seven discusses why we need a separate law for Domestic

Violence. It studies in detail the provisions of the Protection of Women from Domestic Violence Act, 2005, and how far it is effective in preventing the incidences of the domestic violence. It also deals with the various shortcomings of the existing legislation. Chapter Eight is the Epilogue, the last chapter of the present work, wherein the outcome of the present study and possible suggestion has been summarized.