

**CHAPTER-I**  
**INTRODUCTION**

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### INTRODUCTION

The full bloom period of Indian womanhood can be historically witnessed during the *Rig Vedic* period. The epic period of *Ramayana* and *Mahabharata* too had a respectable place for women. After that a gradual downfall and degradation of women started during the period of the Smriti's, the most obscure and hazy picture of women has witnessed during the medieval period, where she was subjected to all sorts of tyranny, oppression, atrocity and exploitation. The custom of *Sati*, *Devadasi*, Dowry, Child marriages, and restriction of widow remarriage ousted and uprooted the dignity and decency of Indian womanhood. During the 19<sup>th</sup> century Indian socio-cultural renaissance, certain reformers tried to eliminate the social evils and improve the status of women in India.

During last Six decades after independence, the Government of India launched massive programmes concerning socio-economic transformation and development of women through planned approaches and time bound programmes, and projects. But even today Indian women are awarded stereotype, traditional and rigid role, inspite of the fact that they tie up with men in every field. Inspite of various rights guaranteed to women and the noble observation that discrimination against women violates the principles of equality and respect for dignity, discrimination against them are still going on.

Women enjoy a unique position in every society and country of the world. In spite of their contribution in all spheres of life, they suffer in silence and belongs to a class which is in a disadvantaged position on account of several barriers and impediments. India being a country of paradoxes, is no exception. Hence too, women, an epitome of *Shakti*, once given an exalted status are in need of empowerment legal, social, political and economic. However, empowerment and equality are based on the gender sensitivity of society towards their problems. The intensification of women's issues and rights movement all over the world is reflected in the form of various Conventions made by the United Nations. These international protections have helped in the articulation of feminist ideology.

Gender equality, an ideal has always eluded the Constitutional provisions of equality before the law or the equal protection of the laws. This is because equality is always supposed to be between equals and since the judges did not concede that men and women were equal, gender equality did not seem to them to be a legally forbidden inequality. Justice Bradley of the United States Supreme Court said:

*"The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator."*<sup>1</sup>

The concept of Violation of Rights of Women not only suggest exploitation and discrimination but also of deprivation of certain facilities like upholding of an equal economic and social structure. Thereby annealing an atmosphere of terror and a situation of threat. The present work covers all those areas of oppression against the women and the impact of Human Rights Movement in preventing the exploitation of women and ensuring their rights and entitlement to equally with men .Education is the basic requirement of a civilized society. Education is enlightenment. It lends dignity to a human being. Actually education is a preparation for living and for life. The framers of the Constitution were aware of the fact that more than seventy percent of the people to whom they were providing the Constitution of India were illiterate, so they incorporated the right to education within our Constitution. They knew that an individual can not be assured of human dignity unless his/her personality is developed and the only way to do that is to educate them. This work attempts briefly to highlight the yawning gap that exist between a plethora of Indian Constitution and other laws on the one hand and on the other hand the actual inequalities and deprivation of a women in her accessibility to education.

Gender justice is a comparatively recent concern of the law. Dispensation of justice to women, the world over, is an age-old problem dating back to the origin of the human society on this planet. The intensification of women rights movements all over the world and the inclusion of women's right in the charter of human rights at the global level reflected in the passing of the Convention on Elimination of all forms of

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<sup>1</sup> *Bradwell v. State of Illinois*, 83 Us 130 (1973)

Discrimination against women in 1979. While India has completed 60 years of Independence and the women of this country have entered in all fields from medicine to politics, from politics to law and law to police force and piloting planes. But it is strange to know that they are generally being harassed physically and mentally at the place of work. Sexual harassment at the place of work is assuming new and subtle dimensions each day. Between 1992 and 1997, of the 1,817 complaints received by the National Commission for Women, as many as 49 related to such harassments. According to a survey conducted by the National commission for Women to assess such harassment both in the organized and un-organized sectors, nearly 21 percent women stated that the men whom they work under harass them. Nearly 20 percent said that they were harassed by their male colleagues while 6.02 percent blamed the male subordinate too. Surprisingly the percentage of outsiders causing harassment were found to be as high as 40 percent. Sexual harassment at work place is partly an expression of gender bias and partly a power game. Where a man might make sexual advances taking advantage of his superiority. There are a number of cases involving sexual harassment at work place but two of these cases *Vishaka's* and *Rupan Deol Bajaj* have ventured new vista for solving out this problem treating the crime of sexual harassment at work place as the crime of a different kind, directions given by the Supreme Court which have to operate until suitable legislation is enacted by Parliament against sexual harassment of working women and to most events which reflected the priority given by the Apex Court to gender issues. Generally most working women regarded sexual harassment at work place as an occupational hazard, and prefer to bear in silence reporting the matter for fear of job-loss, transfer, adverse confidential report disrepute to her family etc. This study had made a contribution in this direction as how to protect the rights of women and provide equal opportunity to people of *Bharat*.

Various studies have suggested that economic dependence of women is a prominent characteristic of their subordinate and that the changes in the structure of economy which offer women a greater role in the productive functions could be a major way of improving their status. Economic independence is seen to be the foundation on which any structure of equality for women can be built. It seems to be quite natural that waged employment outside the home would have provided women in the increase in

income which presumably should improve their status. The present study discusses the aforesaid issues.

Health is a matter of concern in every society. It is central of all Human Rights. Women's health in India is inextricably linked to their social status. General evidence shows that women are biologically more robust than man and consequently have a natural edge in terms of expected life span. Discussion in this work concentrates upon issues as to how this biological advantage can be completely cancelled by women's social disadvantages. Indian women suffer lack of access gravely to health facilities due to the relative inaccessibility of such facilities to them. In India another problem is that of decline in male-female ratio. This problem is also focused in this study. Women of India are chronically ill due to ill health and malnutrition. This study makes an attempt to discover the contributing factors responsible for such health. The advent of HIV/AIDS has added a new dimension to the already poor health situation of the population, with specific and serious implications for women's health. The answer to the question why women in India are vulnerable to HIV has been examined in this work.

Today an idea has emerged that unequal status of women is offensive to human dignity and is also a violation of human rights. In India, despite the social reform movement started in the last century and the Constitutional provisions aimed at security equal provisions for women, the status of women remains more or less same. Violence against women has become a global problem. It is a popular misconception that the home is a place of safety, violence against women does not occur within the four walls, but the fact remains that this is the most likely place for it to happen and the persons are most likely to perpetrate the assaults is the husband. All over the world, in the recent past there has been precedent of and frequent commission of crimes in different shapes and sizes violating women's basic rights and outraging women's dignity and modesty within the domestic spheres. The present study attempts to identify the areas of major causes of injuries to women within the domestic sphere and the appropriate remedies which will result in human dignity as the basic factor of the human rights jurisprudence and without which all human rights are meaningless. Dignity is the finest graces of a woman's life without which she can not think of her living. The deep concern for protection of human rights of women and to ensure the human dignity to them has attracted its attention in certain areas. Some of the important areas of isolation of human dignity of women have

been discussed in the present study. Dignity of rape victims is another issue. As a rapist degrades the very soul of a woman, destroys her self esteem and dignity, a critically analysis of this area has been discussed and all possible means and strategies have been worked out to strengthen and ensure the Fundamental Right to Life and Liberty to the rape victim.

Privacy rights are the natural quest of every woman so as to establish individual boundaries and to prosecute every trespasser in that area. Issues related to rights of privacy which have been discussed in this work, are mainly of reproductive freedoms and matrimonial rights and privacy of prostitutes. No praise is high for two judgments of the apex Court where privacy rights of women of easy virtue were upheld. These decisions are specifically highlighted because they serve to correct certain indefensible extensions and assumptions drawn by practical laws which violate the human rights and right of privacy of a category of women-referred to "women of easy virtue." Issues like conception, abortion, and love together has been also highlighted in this study.

The word 'Police' derived from the *Greek* word *Politia* or its *Latin* equivalent *Politia*. The term *Politia* stands for the 'State' or administration. In the present context, the term 'police' connote a body of civil servants whose primary duties are preservation and detection of crimes and enforcement of laws. As pointed out by Ernest Frond, function of police generally relates to promoting public welfare by restraining and regulating the use of property and liberty of persons. Police force has always been an indispensable appendage of state organization in almost all the civil societies of the world. Only the persons of proven ability and those having through knowledge of local region and its people were recruited in the police force so that they could tackle the problem of law enforcement efficiently. However, with the progress of civilization and development of knowledge, the dimensions of police functions have extended beyond limits, now it has assumed that the role of a social service organization in the modern welfare states has no longer remained as a mere watch-dog agency.

Police as a functionary of Criminal Justice System, has to play a crucial role in maintenance of peace and enforcement of law and order within its territorial jurisdiction. Its primary duty is to safeguard the lives and property of the people and to protect them against violence, intimidation, oppressions and disorder. Crime prevention certainly

involves the services of apprehended criminals for prosecution in law Courts. Usually the transgressions of law are brought to the attention of the police which prepares the grounds for future criminal investigation. Therefore, the charges against accused persons have been framed; his trial begins in the appropriate Criminal Court. The Court records the evidence and decides whether the charges against the accused are proved or not. In case the guilt is proved, the accused is convicted by the Court and sent to prison or some correctional institution to undergo a term of sentence. Thus a number of functional institution to undergo a term of sentence. agencies, notably, the police, the Courts and the prisons or after-care institutions, involved in the administration of criminal justice. To these may be added the institutions of probation and parole which seek to bring about reformation of offenders, particularly, the young and juvenile delinquents. Before entering into a detailed discussion about the functioning of each of these law-enforcing agencies, it must be stated that all criminal trials do not necessarily involve the services of all these agencies. In several cases the offender is discharged by the police after preliminary investigation while in others, prosecution against the accused is dropped by the Court at some stage or he is finally acquitted from the charge. Again, even after conviction many offenders are released on probation and are not required to be sent to prisoner or correctional institution. Those who are sent to prison may also be granted parole. Thus it would be seen that from the point of view of the sentence, the role of police comes first in the administration of criminal justice while those of Courts and prisons is followed subsequently.

The Criminal justice system has been traditionally viewed as having only three components, Police, Courts and Correctional Administration. However in recent years scholars and practioners have come to recognize that a fourth and quite distinct component exists-that of prosecution. As 'Officers of the Court'. The role that prosecutors play in the criminal justice process is both unique and crucial. Indeed in the Court-the centre stage of criminal justice process, the prosecutor is probably the most important actor because implications of his action are felt strongly through the system. This is true in view of the fact that the decision as to what charges, if any, will be filed against an individual in a Court of law is almost entirely that of the prosecutors. They may drop or amend charges with virtually very little effective checks on the exercise of their prosecutorial authority.

As a link between the Police and the Courts, prosecutors hold a strategic position and play a prominent role in the Criminal Justice system. Given their crucial position efficient prosecution management is a critical necessity.

The most important single function assigned to the prosecutors and that holds the key to their authority throughout the Criminal Justice process is charging, i.e. deciding whether individuals should be brought before the bar of justice and to what criminal charge or charges they should be answerable to the process of charging may involve several steps reviewing a case file, deciding on charges, testing charges, testing charges in a preliminary hearing, and deciding whether to withdraw or reduce stages at various stages of the process.

Criminal Justice is a Mirror image of the state affairs in a society and the status of its governance. It is one of the primary functions of any civilized Government. At the time, in a democratic society governed by the rule of law and guaranteed human rights, it is not easy to organise crime control and administer criminal justice according to the expectation of the people. The problems are many and varied. They become more complicated with technological developments, unstable governments and economic globalization. To top it all, advent of terrorism in all its forms and linkages has added a new dimension to criminal justice and governance in a manner never contemplated before. Every Country is experiencing formidable challenges in greater or lesser degree in the matter of social defense and Criminal Justice administration.

India is a huge, complex country with an inherited alien legal system which has not yet penetrated into every sector of society. At the same time, it has a legal system more than anything else, which helped the integration of governance and propelled the social reform agenda according to Constitutional goals. Though not fully appreciated Criminal Justice plays a very crucial role, directly or indirectly in the governance and social reform in contemporary times. At the popular level there is only anger and anguish at the periling state of Criminal Justice, much of which is genuine and justifiable. There have been attempts by Government appointed expert Commissions and committees to study the causes of escalating crime and the inability of the system to respond to the needs and challenges. The recommendation of these expert bodies could not be fully implemented for a variety of reasons. The sad part of the whole story is that even after

introducing many reforms; the system is unable to deliver and is drifting from bad to worse, endangering not only life and liberty, but also the very formation of national security and rule of law in the country.

The problem is the inherent weakness in looking at criminal justice piecemeal, scholarly, divorced from its forward and backward linkages. The problem is also looking at the system at the national level with all its diversities and attempting to recommend generalised solutions applicable to the whole country uniformly. part of the problem is also a very limited role assigned to the union government in criminal justice administration. And above all, it is the absence of reliable data on all sectors of the criminal justice system which inhibited intelligent reform and workable strategies.

One of the comprehensive set of reports available in this regard is the National Police Commission Report which unfortunately is now outdated in many details. At the state level, one can find sectorial reports relating to police, prosecution or prisons but none on criminal Courts or other related institutions. Judicial reforms, though not particularly of Criminal Courts, is the subject of few law Commission reports.

In short for those involved in policy development and institutional reforms in coordinated manner there is no up-to date data on the system as a whole. A critical analysis of the system is not possible in such a scenario. In fact, criminal justice system is sometimes characterized as a non-system, its components almost working at cross-purposes without co-ordination at any level. There could not be any meaningful cost benefit analysis, study of alternate models for achieving results and very little effective planning with achievable targets. The system is drifting, while the problems is developing to alarming proportions.

Coming to the framework of the study the present research work has been divided into eight chapters. Chapter I introduces the subject. The development of women since ancient era and International standard of the rights of women as well as the Constitutional provision related to rights of women, Fundamental rights and the Directive principles find place in Chapter II as historical background. Chapter III discusses various rights of women, their right to work, working condition, equal pay for equal work, right to property etc. Chapter IV finds the, right to life and personal liberty, human rights issues, dignity of women, rights against exploitation and abuse, right to privacy and right to freedom.

Chapter V discusses various rights, social security of women, right to health, social and economic empowerment, employment, wage differential, maintenance etc. Chapter VI discusses the role of police for the protection of women's right, police functions, protection against domestic violence, dowry harassment, dowry death, marital rape. Chapter VII confines itself to the criminal justice system since ancient time till date, function of police investigation, prosecutor, Courts, government policies, judicial decisions have been critically examined in the present work. Chapter VIII closes with the outcome of the research study and few suggestions have been given at the end of the work.