



Women
Empowerment
**ISSUES,
CHALLENGES
AND
STRATEGIES**

Editor: Dr. Razia Chauhan



Women Empowerment, Issues, Challenges and Strategies

Editor: Dr. Razia

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REVENGE PORNOGRAPHY: THE LESSER-KNOWN CYBER CRIME

*Dr. Yashfeen Ali*¹⁵⁸

Introduction

Revenge pornography is the more eye catching phrase for what actually is intimate pictures taken consensually but made available to the public non-consensually. It has been defined as sexually explicit images of a person posted online without the person's consent especially as a form of revenge or harassment¹⁵⁹. For the purpose of the article, revenge is the term that would be focused on entirely. The object of this article is to clear the concept of revenge pornography so as to come up with more effective laws to curb this crime. The subject matter of the article is the situation in which private and personal photographs of an individual have been disclosed by a person whom they trusted and this was done without their consent. Hence, revenge pornography is to be defined as the non-consensual disclosure of intimate and sexual films or images that were made with the consent of the depicted person but were released in public non-consensually. The article aims at bringing to light the difference between private and public images, naked images taken of an individual in public and naked images taken in private. When pictures are taken in private, there is a reasonable expectation of privacy and when that is breached, it constitutes an offence¹⁶⁰.

The first instance of this appeared in the year 1980 when Hustler's magazine started placing sexually explicit pictures of real women in their magazine. This was mostly done without the consent of these women. Ex partners of these women would provide these pictures. After this, many sites started featuring content like these and started blackmailing women for money in exchange for

¹⁵⁸ Assistant Professor, Faculty of Law, Integral University, Lucknow

¹⁵⁹ Goudsmit Marthe. (2017). Revenge pornography: A conceptual analysis undressing a crime of disclosure. 10.13140/RG.2.2.20568.80647.

¹⁶⁰ Ibid.

taking down their videos. However, the sad part about the internet is that it is easily accessible¹⁶¹.

People had the option of downloading and hence once uploaded, it could never be erased forever. It was seen that instead of lack of consent being a complete put off, these videos excited people and the audience starting demanding for more content like this. This enabled websites to put up more content and that led to encouragement of non-consensual pornographic films. "Revenge porn isn't just something spiteful exes upload to exact revenge. It's something that lots of people actually want to watch." The lack of consent seemed to be a factor of attraction rather than disgust.

The demand for such kind of pornography was such that production of consensual pornography was put up as revenge pornography. Words such as "ex" or "revenge" were put in the title so that people who were interested in this would get easy access just by search terms as it becomes difficult to distinguish between such pornography and consensual pornography. This first came into light when a major hack leaked intimate moments and pictures of celebrities against their will. Revenge porn is a subject of severe importance to the society and yet we find very little attention given to it. The laws that exist for a heinous crime like this are not adequate and do not focus on the various elements of non-consensual pornography¹⁶².

Classification between Consensual and Non-Consensual Pornography

Pornography is defined as "Printed or visual material containing explicit descriptions or display of sexual organs or activity, intended to stimulate sexual excitement". However, the difference between consensual and non-consensual pornography is the underlying factor of revenge pornography. Even though consensual pornography is frowned upon by many people, it still has consenting adults in the frame.

¹⁶¹ Matthew Hall and Jeff Hearn, *Revenge Pornography: Gender, Sexuality and motivations* (Palgrave Macmillan, 2017).

¹⁶² A systematic review of the current knowledge regarding revenge pornography and non-consensual sharing of sexually explicit media, available at <https://www.sciencedirect.com/science/article/abs/pii/S1359178917302008> (last visited on July 25th, 2020)

Non-consensual pornography is a wider term which consists of revenge porn, uninvolved revenge porn and edited portrayals. Even though revenge pornography comes under the ambit of non-consensual pornography, there is a difference of intent between the two. However, the intent is to have stricter laws for both, no matter what the motive and intent may be. The defining trait of non-consensual pornography is the act of publishing. Before the publishing of the non-consensual material, the act cannot be considered to fall under the ambit of pornography as there is no audience for the same¹⁶³.

It is believed by many scholars that the term "revenge porn" can be misleading as many offenders are not motivated by these feelings. It has been argued that by using the term revenge, the focus goes on the motive and not the harm of the crime which should ideally be the defining factor. However, other researchers have argued that there is a need to acknowledge the motive of certain activities for which the distinction of revenge pornography from other forms of pornography is important. The distinction helps in suggesting the various ways a victim is harmed and the reasons behind these movies.

International Legislative regime

The apparent confusion of what exactly is revenge pornography is very clear in the failure of most of the countries not having laws regarding the same. Some states have failed to do so due to the confusion regarding what falls under the ambit of revenge pornography while others have never felt the need to criminalize the issue. Countries like Germany, United Kingdom and a few states in the United States of America have legislations that criminalize revenge pornography¹⁶⁴. Their underlying principle is the same, which punishes non-consensual disclosure of private, sexual images or films that have been made specifically with consent. However, states like Canada, Japan, Israel have criminalized the non-consensual disclosure of private, sexual images or films either made with or without consent.

Here, even though this is punishable, there is an apparent failure in distinguishing between different types of non-consensual pornography which

¹⁶³ Adrian J Scott and Jeff Gavin, "Revenge pornography: the influence of perpetrator-victim sex, observer sex and observer sexting experience on perceptions of seriousness and responsibility" Volume 8, *journal of criminal psychology* (2018).

¹⁶⁴ Ibid.

defeats the entire purpose of the term "revenge". The failure to make laws specifically in regards to revenge pornography comes from the confusion of considering non-consensual pornography and revenge pornography as the same thing. The distinguishing characteristic of revenge pornography from other forms of non-consensual pornography is the non-consensual disclosure of intimate pictures or films that were taken with consent.

Legislators have failed to make laws that take into account the minor details. Even though some countries have managed to criminalise this offence, these laws are not complete in their implementation. In making the laws, the intentions of the perpetrators have been taken into consideration. For example in the U.K, the laws focus on the intentions of the perpetrators. Disclosing of private images in itself is not a crime, the crime is not punishable if it was done in a funny or joking manner. Revenge pornography that has been released with the motive to harm the victim is punishable. However, the outcome for victims of revenge pornography out of revenge and revenge pornography for other reasons is the same: private, intimate and sexual images or films of the victim are disclosed without their consent. The cause of the crime or the intention is to be determined to decide the severity of the punishments, but in any case, the crime needs to be recognised and punished no matter what the motive. Every state that understands the right to privacy has to take a crime like this seriously due to the clear breach of privacy and also a breach of trust in this case. The fault in the legislation lies in the inability of the legislators to look at different kinds of non-consensual pornography in its individuality.

Indian Legislations

The surge of such cases has forced many states to contemplate on issues and laws regarding revenge pornography. India currently has no specific law that deals with revenge porn. However, in instances and cases of revenge porn in India, the perpetrator is punishable under Sections 292, 354 C, 499 and 509 of the Indian Penal Code and Sections 66E, 67, 67A and 72 of the Information Technology Act¹⁶⁵. The first ever Indian case on this subject is said to be the case of *State of West Bengal v Animesh Boxi*.¹⁶⁶ The accused being in a relationship with the victim had promised marriage and has obtained intimate

¹⁶⁵ Yesha Paul, "Dealing with Revenge Porn in India", CCB Blog, (2018).

¹⁶⁶ *The State Of West Bengal vs Animesh Boxi* C.R.M. No. 11806 of 2017.

pictures under that pretext. After the victim broke off the relationship, the perpetrator uploaded pictures of the victim on pornographic websites. The perpetrator was punished under Sections 354, 354A, 354C and 509 of the Indian Penal Code and Sections 66E, 66C, 67 and 67A of the Information Technology Act. In the said case, the victim was asked to be treated as a rape victim. The perpetrator was sentenced to five years imprisonment with a fine of Rs 9000¹⁶⁷.

Issues and analysis

The big confusion surrounding what is revenge pornography and how it is different from non-consensual pornography has been visible in the lack of attempt of the legislation in making proper laws for this crime. Some states have made standardised laws for it while others have still not criminalised this issue. Lack of research into the concept has caused various states to not implement proper laws on the same. Victims of pornography who have had the courage to speak have done so out of helplessness. Many of them don't come out and speak due to the shame and embarrassment they feel. Tiziana Cantone, a woman who tried to take her own life after her intimate video was leaked, won a court case regarding the right to be forgotten. However, she was still ordered to pay a certain amount in legal costs that implicated guilt on her part. Many people found her to be accountable for her own misfortune. This goes to show that so many people believe that the victim is at fault for such a heinous crime that is committed against them. The freedom to decide and have autonomy over one's body is seriously violated in such cases. An actor in a pornographic film is given the choice to act or not act. In such cases, consent plays a vital role. However, victims of revenge pornography are denied that choice.

The need to have stronger implementation is so that the individuals can be protected and in a way, a message is sent out to the public. If there are proper laws in place, it will prove that the perpetrator was at fault here and the victim is not to be blamed for her own misfortune. Criminalising an offence of this kind is important as it preserves the right to privacy and the right to autonomy

¹⁶⁷ India: Revenge Porn And The Efficacy Of Indian Laws, available at <https://www.mondaq.com/india/it-and-internet/437942/revenge-porn-and-the-efficacy-of-indian-laws>, (last visited on July 25, 2020).

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over one's body. With regard to legality, legislators often confuse consensual pornography and revenge pornography and treat them similarly. The reason for weak legislations regarding this crime is also because of the fact that it is a private affair. However, something of this nature automatically becomes a public concern due to the impact it can have on society.

Conclusion

Minimal discussion and confusion has led to a lack of efficient laws for a crime of this nature. Revenge pornography violates a person's right to privacy and violates the person's trust. The problem in the legislation is the lack of understanding of various concepts under non-consensual pornography. The objection of a person's body and the breach of trust has the ability to scar a huma for life. Intense research and more discussion on this topic would help to understand the content of this subject in greater detail. In terms of the law, more definitions need to be put in place so as to differentiate between various concepts and the definition of revenge in such cases should be considered in a different light altogether.

THE CUSTODIAL RIGHTS OF WOMEN IN INDIA

*Wasim Ahmad*⁵⁴

Introduction

The Constitution of India protects the rights of convicted persons under Article 21 and 22 under part-III and gives them certain fundamental rights. The objective of this paper is to look into the safeguards currently in place when it comes to the prisoners and further narrow it down to the women looking at several statutes, particularly in this regard. To be able to firmly state what could be an adequate solution to the burning question of violation of the rights of the women prisoners in India, the first part of this paper looks into the current safeguards that exist within the country generally, irrespective of the gender of the prisoner as well as specific acts, case laws that set a precedent relating to such rights specifically of women.

Once the grounds of safeguarding rights of women have been mentioned, the need to look at it from the perspective of Human Rights has been established not only with reference to the mandates of National Human Rights Commission (NHRC) but also the body of National Commission of Women (NCW) so as to understand the underlying necessity to protect and preserve the rights in prison concerning women in India. The gross violation of human rights, rapes, molestation, exploitation and custodial deaths of women in prison, to name a few, are some amidst the vast conglomeration of violations of women and their rights in prison that have been witnessed time and again in this country. The watchmen turning into beasts has not been a current affair and in fact, has been recurring in the Republic.

The recent case of Safoora Zargar has also been assessed and depicted as one of the burning examples of how more often than not, the women have been booked under legal provisions for acts that do not amount to an offence, in this case, protesting against the Citizenship Amendment Act and how she was kept in custody even during her pregnancy. Several such offences, cases and problems have been highlighted for which solutions like strengthening of the judicial mechanism have been proposed as the need of the hour to foster and

⁵⁴ Research Scholar, Department of Law, Aligarh Muslim University

regain the beliefs of the people in the justice delivery mechanism of the country.

Historical background

India has historically been a patriarchal society. There are not much evidence prisons that existed centuries back in India. It is a more of western concept which was introduced primarily in the British rule. The first formal introduction of prisons as we know of now was the Central Prison built at Agra⁵⁵. Women prisoners in these early British jails were mostly political in nature or with very grave crimes. There was no idea of prison rights of citizens at that point as India citizens were treated as second class subjects to the British State. It was not until very late in the 20th century when feminist jurisprudence on the rights of women evolved, and governments started thinking towards females in the inhumane prison conditions. In more than seven decades of Independent India, The Constitution, various recommendations, committees and legislation provide for guidelines for women prisoner and custodial rights. However, a single one of them is implemented by a binding effect. Most of these are enabling provisions which direct governments are overlooked and taken for granted.

As our society remains to be mostly patriarchal, women deal with unique problems in custody. Women have different hygiene requirements, mental and physical issues which are often overlooked by the governments and legislators primarily because these law-making agencies are male-dominated. Historically speaking, sexual violence has been the most prominent of them all. The journey of Human Rights in general starts with the Universal Declaration of Human rights in the year 1948. The Declaration grants equal rights to all human being irrespective of their caste, creed, sex, and nationality⁵⁶. Although the Constitution of India provides for prisoner's right and equality of all people in prison, the journey of custodial and prison reforms specifically started from The Committee on Jail Reforms, 1983. It was followed by another prominent Justice Krishna Iyer Committee in 1988⁵⁷.

⁵⁵ Report of the Indian Jail Committee 1919, 30

⁵⁶ The Universal Declaration of Human Rights 1948, Article 1. ⁵⁰ The Committee on Jail Reforms 1983.

⁵⁷ The Justice Krishna Iyer Committee 1988.

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These committees in general provided for special cells for women, more female guards for the prison and better hygienic conditions, further, The Code of Criminal Procedure⁵⁸, Indian Penal Code⁵⁹⁵³ are the significant legislations which were amended in the course of Independent India and special provisions for custody and rights of women was inserted. However, the pertinent question which stays is, did these legislations and laws bring out notable changes? If we look at the statistics historically, a simple answer is no. The primary reason being the ineffectiveness of the present laws. Historically speaking all these laws have been merely recommending or enabling in nature, there is no punitive action on non-compliance of these laws. What makes the issue even worse is the lack of proper legislation for custodial confinement of women.

Recently custodial deaths made headlines in the mainstream media; however, if we look at the custodial archives of prisons, death and rape of women and transgender people are not even reported. The demand for accountability of custodial atrocities on women first rose in the 70s, prominently after the Declaration of Emergency. This experience awakened an acute consciousness in the civil society and the judiciary, of the dangers of state power and how it could be used to violate and trample personal liberties⁶⁰. It was in this climate that three cases of custodial rape occurred in quick succession: of Mathura in Maharashtra (1974)⁶¹ and Maya Tyagi in Uttar Pradesh (1980)⁶². Although the issue of rape and death by men in uniform came into light in the mainland India, a large of these cases go unreported in places where there is the rule of the police like J&K and AFSPA hit Northeast states.

Current laws and legislations

As discussed earlier in the paper, there have been various laws and legislations which enable the states to make sure of the rights of women in custody. This section will expansively elucidate these laws. The Constitution of India provides for safeguards of women in custody under numerous articles. The

⁵⁸ The Code of Criminal Procedure 1973.

⁵⁹ The Indian Penal Code 1860.

⁶⁰ Sahar Bhog, 'What Is Custodial Rape and Why We Need to be Discussing It' (*Feminist in India*, 16 April 2019) < <https://feminisminindia.com/2019/04/16/custodial-rape-india/> > accessed 31 August 2020.

⁶¹ *Tuka Ram v State of Maharashtra* [1979] 1 SCR 810.

⁶² *Sheo Kumar Gupta v State of U.P* [1978] 37 FLR 118.

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Primary articles dealing with the issue are Article 21⁶³ And Article 22⁶⁴. Article 21 is the flagbearer of liberty and freedom in India; it has been given the most expansive interpretation possible under the Indian Constitution. Therefore it also protects the rights of women under trial, custody and imprisonment, in the landmark judgement of *Hussainara Khatoon (IV) v Home Secretary, State of Bihar*⁶⁵, The Apex Court, while going through the statistics of custodial imprisonment and on-going trial of citizens was alarmed. It held that no under trial person could be detained in prison for periods longer than the maximum term for which they would have been sentenced if convicted and if so continued, it amounts to a violation of their fundamental rights under Article 21. Further, the court said Women prisoners have the right to a speedy trial. The court has a continuing responsibility to ensure that the prison administration does not defeat the constitutional purpose of the deprivation⁶⁶. However, it is reported on various occasions that several prisoners, including women, go through more sentence than required.

Article 22 of The Constitution provides for protection against arrest and detention in various cases. As our Constitution ensures equality, liberty and similar treatment of all, it covers the custodial rights of women. This section shall be read along with several other sections for providing an effective implementation. For example, Article 39A⁶⁷ of The Constitution, which provides for free legal aid to the women in custody, women have the right to be informed about their legal and constitutional rights. She has the right to proper hygiene, sanitation and health as provided under Article 21 and confirmed by the Supreme Court in the case of *State of Punjab v M.S Chawla*⁶⁸. In a nutshell, The Constitution, along with the judiciary, have a strict approach when it comes to enforcement of rights to women in custody.

Certain other legislations like The Code of Criminal Procedure also provide for methods and procedure of approaching women suspects and arresting and interrogating them. Section 46 of The Code⁶⁹ Provides for, in case of female

⁶³ The Constitution of India, Article 21.

⁶⁴ The Constitution of India Article 22.

⁶⁵ (1979) 3 SCR 532.

⁶⁶ Varsha Purohit, 'Custodial Rights of Women In India', [2016] IJLLJS 4.

⁶⁷ The Constitution of India, Article 39(A).

⁶⁸ (1997) 2 SCC 83.

⁶⁹ The Code of Civil Procedure 1973, s 46.

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accused, it will be the female police officer who shall make the arrest. Further, no woman shall be arrested after sunset and before sunrise and should be brought to the judicial magistrate as quickly as possible, within 24 hours. Section 51(2)⁷⁰ says that women must not be searched except by female with strict regard to decency. Further section 53(2) says that whenever a female is to be examined by the medical practitioner at the request of the police officer, the examination shall be made only by or under the supervision of, a female, registered medical practitioner. This section has been violated several times in past, especially when there are rape survivors who are sent to medical examinations. Section 24 of The Prisons Act⁷¹ also deals with the same issue deals with Prisoners to be examined on admission.— 'In the case of female prisoners the search and examination shall be carried out by the matron under the general or special orders of the Medical Officer'. The Indian Penal Code under section 376(C)⁷² provides for rape and sexual violation by Jail Superintendent, which shall amount to rape under the Rape laws. However, we see cases like The Mathura Rape Case, where a Dalit minor girl was raped by policemen on duty infringing all the statutes discussed in this section. What further astounded everyone in the given case was that the lower courts said that there was no prima facie case of rape.

Internationally too, India has ratified and part of numerous treaties and conventions which provide women rights under custody. The core of all treaties is the Universal Declaration of Human Rights. Article 1⁷³ of the Declaration provides for the grant of equal rights to all human beings irrespective of their caste, creed, sex, and nationality. Additionally, The Standard Minimum Rules for the Treatment of Prisoners, 1955 also provides for these rights. Article 8⁷⁴ of the Rules provide for separate cells for male and female prisoners. In the same Rule, Article 23 talks about proper medical and sanitation facilities being provided for women and minor girls. Although the Indian legislators have heavily relied on making guidelines with these treaties, the effectiveness of the same is still very doubtful.

⁷⁰ The Code of Civil Procedure 1973, s 51(2).

⁷¹ The Prisons Act 1894, s 24.

⁷² The Indian Penal Code 1860, s 376(C).

⁷³ The Universal Declaration of Human Rights 1948, Article 1.

⁷⁴ Standard Minimum Rules for the Treatment of Prisoners 1955, Article 8.

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Now coming to the role of Judiciary in the issue in hand, the Apex court has laid down various guidelines for custody, investigation and imprisonment in various landmark cases like *D.K Basu v State of West Bengal*⁷⁵. In this case, the Apex Court not only laid down extensive guidelines but also advised the legislature and the executive to cooperate and help in the implementation of these guidelines to the ground level. Another significant case was of *Sheela Barse v State of Maharashtra*⁷⁶ where the court extensively laid guidelines for women rights during custody and imprisonment. This includes separate cells for separate genders, interrogation only in the presence of women police officers and informing the women and her family/friends of her bail rights. The Apex court has used its judicial powers to a great extent in providing for the right to women in custody. Hence it is the onus of the legislature to ensure strict implementation of the same.

Contemporary issue

Associating the matter of custodial rights of women in India with a rather recent event of how it was encroached upon, we could look into the case of Safoora Zargar who is an Indian student activist and leader hailing from Jammu and Kashmir. She, as any other citizen of India had exercised her right to protest against the government and took part in the Citizenship Amendment Act⁷⁷ (CAA) protests from the reputed Jamia Millia Islamia University. For exercising her constitutional right to dissent and protest in an otherwise democratic set up, she was taken into custody by the police for a period spanning little over a period of two months that is from the 10th of April until the 24th of June 2020. The reasoning given by the police for this uncalled-for arrest was that Safoora Zargar was involved in a 'sinister design' and was part and initiator of a conspiracy⁷⁸, the prime objective of which was to uproot a democratically elected government.

⁷⁵ (1997) 1 SCC 416.

⁷⁶ (1983) 2 SCC 96.

⁷⁷ Valay Singh, 'India: Charged with Anti-terror Law, Pregnant Woman Sent to Jail' *Al Jazeera* (New Delhi, 28 April 2020).

⁷⁸ Seemi Pasha, 'Safoora Zargar Denied Bail as Judge Finds Prima Facie Evidence of Conspiracy' *The Wire India* (New Delhi, 4 June 2020).

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She was arrested at her residence on the 10th of April 2020⁷⁹ and had immediately got bail the next day but then additional charges⁸⁰ were introduced so as to leave no stone unturned to keep her behind the bars almost as if it was a part of some pre-planned mechanism. While the police firmly stated that the violence at hand which was the protest was caused because of a pre-mediated conspiracy to tarnish the reputation of a democratically elected government and that they had evidence of both scientific and forensic value. But what the police, the ruling party and the several other people involved in that arrest did not have any answer to was the reasoning behind her being placed in the busiest and the most overcrowded prison of India that is the Tihar jail when it was no hidden fact that she was pregnant. This posed a greater threat than it should have especially in the wake of COVID-19.

Several scholars mastering the subject of Constitution have critiqued this continued delay in the release even after constant appeals for the release. The court went on to state that the acts committed as well as the inflammatory speeches made by the co-conspirators were violative of Section 10 of the Indian Evidence Act⁸¹. The dissent in the country was marked by large scale protests as several student activists and human rights advocates came together to protest against how the Freedom of Speech and Expression as enshrined under Article 19(1)(a) of the Indian Constitution was grossly violated. This case was also marked by online vilification of Zargar that went on to further tarnish her image.

Associating this scenario with the holding of the court in the case in the landmark judgement of *Hussainara Khatun v. Home Secretary, State of Bihar*⁸² wherein the court held that the women prisoners have a right to a speedy trial, it was grossly violated in the case of Safoora Zargar. Appeals were filed one after the other but the court kept making as well as establishing new grounds for her to be kept in custody even after repeated bail pleadings even after having fully been aware of her plight as a pregnant woman. Even after the aforementioned provisions in place, the case at hand went on to show

⁷⁹ Geeta Pandey, 'India Coronavirus: Pregnant Student Safoora Zargar at Risk in Jail' *BBC News* (Delhi, 11 May 2020).

⁸⁰ Fatima Khan, 'As Arrested and Pregnant Jamia Student is Slandered Online, Husband Keeps Faith in Judiciary' *The Print* (New Delhi, 4 May 2020).

⁸¹ The Indian Evidence Act 1872, s 10.

⁸² The Code of Criminal Procedure 1973, s 46(4).

a gross violation of the many International Covenants that have been duly ratified to.

The way forward

Several laws have been made and incorporated into statutes and Acts of utmost significance such as the Indian Penal Code, Prisoner's Act, Code of Criminal Procedure, to name a few. Not only that, there have been many special procedures for the arrest of women as have been laid down under the Code of Criminal Procedure. Section 46(4) of the Code states that except under certain circumstances, women shall not be arrested in the time frame that is before sunrise and post sunset. It further goes on to foster how such arrests made have to be done only by a woman police officer and as a matter of fact upon finding of the existence of such exceptional circumstances, it also can't be done in an arbitrary fashion as per the whims and wills of the police officers. Such arrests have to, even under special as well as circumstances need to be done by a process of a Lady Police Officer by the way of making a report which is written, in order to obtain permission that is prior time from the First Class Judicial Magistrate⁸³. This provision and many such other related provisions have been held in high regard in several cases of crucial importance such as *State of Maharashtra v Christian Community and Anr*⁸⁴. The Supreme Court even in *Joginder Kumar v State*⁸⁵ went on to further consolidate this very stance and state that arrests can't be made merely because its lawful for the officer to do so. Arrests so made should be with a reasonable satisfaction, after some investigation that gives away some grounds for the complaint so filed so as to curb the misuse of police power with special reference to women. The forward with respect to several violations, custodial deaths, infringement of custodial rights would definitely have to be extreme and strict compliance to the procedure for arrest of women in place and imposition of strong penalties upon the breach thereof.

Furthermore, a stringent implementation of the National Model Prison Manual, 2016⁸⁶ could provide a better place for women in custody and

⁸³ Ibid.

⁸⁴ [2003] 8 SCC 546.

⁸⁵ [1994] 4 SCC 260.

⁸⁶ National Model Prison Manual, 2016.

imprisonment. The key features of the updated Model Prison Manual 2016 include emphasis on prison computerization, special provisions for women prisoners.

Conclusion

In the above discussion we looked at various aspects of custodial rights of women and the laws that protect them. There are several domestic and international legislations in place for protection of custodial rights of women however on many instances they fail to provide safeguards against the violence on women in custody. One such instance was of Safoora Zargar, a student activist who was arrested during anti-CAA protest. She was kept in custody during pregnancy, which not only violated principles of moral justice but also infringed various Indian legislations. The Indian Judiciary has extensively ruled in favour of women and provided guidelines to be followed during custody and imprisonment. There is no lack of adequate legislations, but a lack of proper implementation. Further it is the job of the legislature to abide with these guidelines and ensure a strict implementation of the same at ground zero. These guidelines should be in consonance with the substantive and procedural laws available to the legislature.

HUMAN RIGHTS AND ROLE OF WOMEN IN THE SOCIETY

Ashraf Azmi⁸⁷

Introduction

Since the beginning of time, men have acted as the superior being in the family because it was on them to protect the women in their family and provide for them while women tend to household chores. This practice leads to a common belief that women are inferior beings who cannot look after them and can never stand up to men. Even in the 21st century, there are millions of people out there who still believe a woman should stay at home and tend to homely chores while a male should go out and earn for the family. There is still this belief that no matter how educated a woman is, she still should know household work because even if she is earning still the role of housemaker is hers and not of her husband. Patriarchy has manifested itself in our lives so much that we still find it difficult to accept that even a man can cook and clean or stay at home to look after his children.

When a woman cooks and cleans and looks after her children and her home, we say it's her duty and there is no appreciation for her but if a man does the same thing, we say he is a great man. The instilled belief that men are superior beings has led to centuries of oppression and deprived women of their basic rights. Today, people call themselves liberal and modern because they "allow" their daughters or wives to study and get a job.

Women have been facing discrimination their entire relief in their own homes while being compared to their brothers, in their workplace when it comes to the fair distribution of role and promotion, after marriage when it comes to dowry, right of inheritance, continuing her job after having a child as compared to her husband. People often forget that it's a basic human right to

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get an education and to get a job. Finally, in the 21st century, we have laws to help in empowering women and helping them in getting their basic rights and as Justice Ruth Bader Ginsburg, the second female appointed to the U.S. Supreme Court rightly said, Women belong in all places where decisions are being made⁸⁸.

History and Evolution of Rights of Women

The world in which we live in has always been dominated by men. The patriarchal mindset can easily be seen in the art and literature through ages. One such example is a Couplet by Tulsidasa, a renowned poet, who, in one of his writings, described the status of women as, "Dhol, Ganwar, Shudra aur Naari, sakal taadan ke adhikaari" which means that Drums, illiterates, untouchables and females deserve to be beaten⁸⁹. This mindset was not limited to Indian subcontinent but was prevalent across the globe. Napoleon Bonaparte, a french statesman and Military leader, once said, "We treat women too well, and in this way have spoiled everything. We have done every wrong by raising them to our level. Truly the Oriental nations have more mind and sense than we in declaring the wife to be the actual property of the husband. In fact nature has made woman our slave Woman is given to man that she may bear children consequently she is his property, just as a fruit tree is the property of the gardener."⁹⁰

The dominance of men over women has been so instilled in our culture that a boy's birth is celebrated whereas the woman is considered as a liability. Since ages people have preferred to have sons over daughters because they believe that Men have much more physical strength, and that they are able to remain in the family and continue the family name even after marriage. The practice of dowry also favors the men. This preference of boy is also reflected in sacred literature, including Atharva-Veda.

⁸⁸ Business Insider Australia available at: <https://www.businessinsider.com.au/ruth-bader-ginsburgs-memorable-quotes-throughout-her-life-and-career-2020-9> (last visited on September 24, 2020).

⁸⁹ Sukhdeo Thorat, "Hindu Social System and Human Rights of Dalits" Critical, Quest Pub.2004.

⁹⁰ Emperor Of the French 1769- Napoleon I, Jonathan Burwell Frost, *Sayings of Napoleon*, (BiblioLife, Wentworth Press, 2016).

In earlier times there were several practices that were against Women and affected their status in the society. One such social evil was the Sati Pratha. Sati pratha was a practice in which a woman was set aflame along with the dead body of her husband as it was believed that a life of a woman should end with the life of her husband because they were always considered as a second gender.

The times have changed a lot and Women's rights have subsequently evolved. From 1792 when Molly Wollstonecraft wrote "A Vindication of the Rights of Woman"⁹¹ in which She argued that women are not inferior to men in that they lack the basic access to education and that women should also be allowed to study as a women's participation is important for a nation's development, to the current scenario, where Women now have access to education, are allowed to work, have voting rights, are protected from violence and abuse and have somewhat achieved an equal status, a lot of women have fought several fights to make this happen, be in Universal Suffrage movement or Adoption of CEDAW⁹² in UN, the journey has been a long one with still a long way to go.

During the United Nations Decade for Women (1976-1985), women's human rights arose as a global movement, when women from many different national, cultural, religious, ethnic and class backgrounds came together and worked together to improve women's status. It was during this decade that the United Nations sponsored several women's conferences — Mexico City in 1975, Copenhagen in 1980 and Nairobi in 1985 — to evaluate the status of women and to formulate strategies for women's advancement.

Remedies under Human Rights

Women's rights are human rights. Women have the right to enjoy the same fundamental freedoms as well as human rights as other individuals.

International human rights treaties enable State Parties to take effective action to ensure that the human rights of women are upheld by law and to eradicate sexism, inequalities and practices that have a detrimental effect on the rights

⁹¹ Steiner, E. K. *Called to civil existence: Mary Wollstonecraft's A vindication of the rights of woman*. (Amsterdam: Rodopi, 2014).

⁹² Convention on the Elimination of All Forms of Discrimination against Women, 1979. 134 1956, (Act 104 of 1956).

of women. Under international human rights law, women may also be entitled to specific additional rights such as those concerning reproductive healthcare.

There are several legal protections given specifically to address the Rights of Women in both Domestic as well as International Aspect.

Rights of Women under Domestic Law

Women's rights can generally be divided into two categories: constitutional rights and legal rights. Those provided by the Constitution include the right to equality, no discrimination on the basis of sex in jobs, adequate livelihoods, equal pay for equal work, fair and humane working conditions and maternity assistance, etc. Legal rights are available to women in the form of several laws or enactments in the country.

Few of such legal rights are, Immoral Traffic (Prevention) Act⁹³ which helps in protecting women from trafficking for the purpose of prostitution, Protection of Women from Domestic Violence Act⁹⁴, Indecent Representation of Women (Prohibition) Act⁹⁵, Medical Termination of Pregnancy Act⁹⁶, Maternity Benefit (Amendment) Act⁹⁷, Dowry Prohibition Act⁹⁸, Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act⁹⁹, etc,

Rights of Women under International Law

There are several International human rights instruments that specifically address Women's rights. Following are few such instruments that focus on the rights of women.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)¹⁰⁰, adopted in 1979 by the UN General Assembly, is often

⁹³ 1956, (Act 104 of 1956).

⁹⁴ 2005 (Act no. 43 of 2005).

⁹⁵ 1986, (Act no. 60 of 1986).

⁹⁶ 1971, (Act no. 34 of 1971).

⁹⁷ 2017, (Act no. 6 of 2017).

⁹⁸ 1961, (Act no. 28 of 1961).

⁹⁹ 2013, (Act no. 14 of 2013).

¹⁰⁰ Convention on the Elimination of All Forms of Discrimination against Women, 1979.

described as an international bill of rights for women. It describes what constitutes discrimination against women, consisting of a preamble and 30 articles, and sets out an agenda for national action to put an end to such discrimination.

Convention on the Nationality of Married Women¹⁰¹, first time in the history of international legal system, provides a legal framework for nationality of married women. Convention protects the citizenship of married women to retain or renounce the citizenship on equal terms of men.

The Convention on the Political Rights of Women¹⁰² was approved by the United Nations General Assembly during the 409th plenary meeting, on 20 December 1952, and adopted on 31 March 1953. The Convention's purpose is to codify a basic international standard for women's political rights.

The Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages¹⁰³ was a treaty agreed upon in the United Nations on the standards of marriage.

Convention for the suppression of the traffic in persons and of the exploitation of the prostitution of others¹⁰⁴ prescribes procedures for combating international traffic for the purpose of prostitution, including extradition of offenders. It also prohibits the running of brothels and renting accommodation for prostitution purposes.

The 1993 Declaration on the Elimination of Violence against Women¹⁰⁵ is the first international instrument to establish a basis for national and international action to resolve violence against women directly. Violence against women is characterized as any act of violence based on gender resulting in, or likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such actions, intimidation or arbitrary deprivation of liberty, whether in public or private life.

¹⁰¹ Convention on the Nationality of Married Women, 1957.

¹⁰² Convention on the Political Rights of Women, 1954.

¹⁰³ Convention on Consent to Marriage, Minimum Age for Marriage, 1964

¹⁰⁴ Convention for the Suppression of the Traffic in Persons, 1949

¹⁰⁵ UN General Assembly, *Declaration on the Elimination of Violence against Women*, GA Res 48/104, UN DOC A/RES/48/104 (Dec 20, 1993)

Human Rights and Role of Women in the Society

The 1993 World Conference on Human Rights¹⁰⁶ recognized violence against women as a breach of human rights and called for, in the Vienna Declaration and Programme of Action¹⁰⁷, the selection of a Special Rapporteur on violence against women. This led to the 1993 Resolution on the Elimination of Women's Harassment. Articles 2,¹⁰⁸ 3¹⁰⁹ and 26¹¹⁰ of the International Covenant on Civil and Political Rights¹¹¹ promote equality between the sexes.

The Preamble of The Universal Declaration of Human Rights¹¹², states "Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom"

¹⁰⁶ UN Commission on Human Rights, World Conference on Human Rights., E/CN.4/RES/1994/95 (9 March 1994).

¹⁰⁷ UN General Assembly, Vienna Declaration and Programme of Action, A/CONF.157/23 (12 July 1993)

¹⁰⁸ 1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

¹⁰⁹ The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

¹¹⁰ In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, **political** or other opinion, national or social origin, property, birth or other status.

¹¹¹ UN General Assembly, *International Covenant on Civil and Political Rights*, United Nations, Treaty Series, vol. 999, (16 December 1966)

¹¹² UN General Assembly, *Universal Declaration of Human Rights*, 217 A (III) (10 December 1948)

The 2011 Council of Europe convention on the preventing and combating Violence against Women and Domestic Violence¹¹³ is the second legally binding regional instrument on violence against women and girls, but it can be signed and ratified by any State, unlike any other regional agreement.

In 2013, by consensus, the Commission on the Status of Women (CSW)¹¹⁴ adopted conclusions on the prevention and elimination of Violence against Women and Girls in All Forms. This represents a historic result because when it was last discussed by CSW in 2003, there were no accepted conclusions on this topic.

Rights of Women under CEDAW

The Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) was adopted by the UN General Assembly in 1979. On 3rd September 1981, it came into force. United Nations has described CEDAW as a landmark treaty in the struggle of women's rights and it has the support of 188 countries. CEDAW works towards bringing the female half of humanity forward that has been ignored for centuries now, into the Human Rights aspect. With the help of CEDAW, state parties have recognized the discrimination and inequality that women have been subjected to. State parties have recognized the need to bring the much-needed change in their working for the betterment of the status of women and stop executing all the acts that have been derogatory to the female gender.

The main principle that CEDAW works toward is equality and non-discrimination. Equality as per CEDAW does not mean endorsing only women's rights or glorifying them, rather it means to work at the root level to ensure the world is no more male-dominated and women could stand a fair chance at excelling in every field.

- As per Article 1 of CEDAW, Non-discrimination means, irrespective of a women's marital status she should not be excluded, restricted, or

¹¹³ Council of Europe, *Council of Europe Convention on preventing and combating violence against women and domestic violence*, (11 May 2011)

¹¹⁴ UN Commission on the Status of Women, *Commission on the Status of Women Report on the forty-eighth session (1-12 March 2004)*, E/2004/27-E/CN.6/2004/14 (12 March 2004).

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subjected to any distinction which would hamper her enjoyment or power to exercise her rights under Human rights and constitutional rights in respect of economic, social, political, cultural or civil field.

- Article 2 to 3 talks about the duties of the states and the measures that need to be taken to make sure there is no discrimination against women and there are necessary steps taken to ensure equality in policies and practices in the legal framework when it comes to the political, social, economic and cultural field.
- Article 4 talks about special measures that the state can undertake to adopt temporary special measures to ensure equality for women and to aim at the protection of maternity rights.
- Article 5 is one of the most important articles in the CEDAW as it talks about working against the stereotypes and cultural practices that are derogatory to women. Article 5 enables states to take appropriate measures so it can work towards removing these stereotypes and social prejudices and discriminatory cultural practices against women and make sure in a country as India people can finally move on from the rigorous age-old practices and give equal rights to women that they rightly deserve.
- Article 6 It talks about the power of the state to take necessary measures to stop all forms of trafficking and exploitation of women.
- Article 7 India is a male-dominated country and since centuries women have always lived in the shadow of the male members of the family and all of the major decisions have been influenced by the males of the family and Article 7 finally enables the state to take necessary measures so that women can have equal rights and they can also vote, hold public office and participate in civil society and finally step out from living in the shadow of the men in their life.
- Article 8 allows the state to ensure that women have complete representation at the international level and they have the freedom to participate in the work of international organizations and be able to represent the government at these levels.

Human Rights and Role of Women in the Society

- Article 10 There are still many places in the world where women cannot travel freely or they cannot travel alone if no male member is accompanying them but as per article 10, the State grants women equal right as that of men to acquire change or retain their nationality and they also get equal rights and respect of the children's nationality so they are no more face restrictions during traveling.
- Article 10 & 11 Millions of women in India does not receive a proper education because at a very young age they are stopped from going to school either due to financial constraints of the family wherein the education of the male member of the family is prioritized or because the family does want to educate their daughters and instead teach them the household chores. As per article 10 of CEDAW State should ensure that the women get equal rights in education as that of men and this includes equal access to school, vocational training, circular and educational resources, and the state should take measures to eliminate stereotypes that limit a woman behind the kitchen bars and household chores by revising school material and teaching methods. The fact that men are not made to think like this at a young age, they grow up and think it is bad for their male ego if their wives or sister earns. After all, it hurts their self-esteem as they want to be the one earning and providing for the family because it is a common belief that male is the bread earners while women should stay at home. Article 11 enables the state to take necessary measures to ensure equal job opportunities to women and a safe working environment.
- Article 12 & 13 It talks about health, economic and social benefits of a woman and recommends state to ensure that women have equal right with men in access to healthcare services and access to bank loans and another form of financial credit and they should be allowed to participate equally in recreational activities and sports and other cultural life aspects.
- Article 14 It talks about rural women and enables the state to take necessary measures to ensure women in a rural area can get equal opportunities as that man gets in terms of healthcare, education, social security, development, planning et cetera because rural women face the

most grievous issues because of the indifference in the mindset of the people and patriarchal stereotypes.

- Article 15 talks about equality before the law and that women should be treated equally before the law as men are treated because in many countries the upper hand always lies with the man and he is given the benefit of the doubt so as per article 15 women have the same legal rights as men and they can also enter into a contract, hold property and choose their place of residence.
- Article 16 It talks about marriage and family life and the state ensures that women should have equal rights as men concerning marriage in respect of other aspects of family life and they should not be forced into a marriage. They should have the right to choose their partner but in India, most of the marriages are fixed by the parents and while the groom gets to decide whether he wants to marry that girl or not, a woman does not enjoy the same privilege¹¹⁵. 156
- Article 17 to 24 It talks about the composition and procedures of the CEDAW committee and its relationship with national and international legislations.
- Article 25 to 30 It talks about the administration of CDAW and its enforcement and ratification.

What is the state doing to upheld women's rights?

India has undergone a drastic change when it comes to the Rights of Women. The patriarchal stereotypes which limited women to the household chores are being proven wrong every single day. Now, more and more people are inquisitive about gender equality. Government has a major role to play in changing the mindset of the people. Some of the laws enacted by the government that has been most effective in upholding women's right and fighting the patriarchy are:

¹¹⁵ International Women's Development Agency, available at: <https://iwda.org.au/assets/files/CEDAW-at-a-Glance.pdf> (last visited on September 24, 2020).

- **Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act**, is an Act passed by the Parliament of India in 1994 to stop female foeticides and to keep in check the sex ratio in India. Sex-selective abortion is a common practice in India wherein people choose to abort a baby after the ultrasound if they find out its a girl. The want for a male heir in India is very common which leads to female infanticide. Therefore, Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, was enacted to prevent the misuse of ultrasound techniques for selective sex abortions¹¹⁶.
- **The Sexual Harassment of Women at Workplace (Prevention, Prohibition, And Redressal) Act, 2013** addresses the violation of a woman's right to safety in a workplace. Sexual harassment violates a woman's right to live with dignity under Article 21 of the Constitution of India. This act provides a safe space for women as it prevents malicious practices in working places¹¹⁷.
- **Hindu Succession Act, 1956** after the 2005 amendment, removed huge discrimination that women were subjected to when it came to the right of holding property. Now, after the 2005 amendment daughters get equal property rights as that a son would get¹¹⁸.
- **Equal Remuneration Act, 1976** mandates that employers have to pay equally to both men and women. Discrimination based on gender in the workplace is very common where a woman is paid less than a man even though they do the same work. This act keeps in check that women are not discriminated against at the workplace¹¹⁹. India is finally taking ample measures to not only stop discrimination of women but is also taking adequate steps to empower them.

¹¹⁶ Pre-Conception & Pre-Natal Diagnostic Techniques Act, 1994 (ACT NO. 57 OF 1994).

¹¹⁷ The Sexual Harassment Of Women At Workplace (Prevention, Prohibition And Redressal) Act, 2013 (Act No. 14 of 2013).

¹¹⁸ The Hindu Succession Act, 1956 (Act No. 30 of 1956).

¹¹⁹ The Equal Remuneration Act, 1976 Sec. [25 of 1976].