

EVOLUTION OF THE LAW THROUGHOUT TIME IN REGARD TO SEXUAL OFFENSES AGAINST WOMEN

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ABSTRACT

The act of sexual offense dates back to the beginning of human civilization. The earliest known sexual offence include murder, abduction, and rape, particularly among nomadic societies. Civil laws as we know them now developed much later. In ancient times, it was common for victors to sexually assault women from the defeated group during wars between nations. The abuse of women from the defeated group was a common practice by the triumphant army soldiers. The evolution of women's movements in British period can be categorized into four distinct periods. The initial period, spanning from 1840 to 1870, saw women's organizations addressing various concerns. The second phase, from 1871 to 1905, was characterized by suffrage groups focusing on obtaining voting rights, employing aggressive tactics that eventually led to women over 30 gaining the right to vote in 1918. The following period, from 1919 to 1930, was marked by further expansion of voting rights to all women over 21. In the Indian subcontinent, the status of women has undergone diverse changes based on cultural, familial, social class, caste, property rights, moral and ethical influences. Though everyone in society views sexual offences with the utmost hate, it is also true that since the dawn of human civilization, one of the most fascinating areas of jurisprudence has been the study and investigation of criminal law. As old as civilization itself, in actuality, is the law of crimes. In all societies where individuals have grouped together to form associations or groups, there has been a perceived need for rules to govern the behavior of those individuals within those groups. In societies where rules exist, breaking them is inevitable, so strategies to stop these social tendencies that result in breaking rules must be developed. In each societal structure, there are some behaviors that are prohibited under penalty of law. If an individual causes harm to another and the harm is sufficiently compensable with money, the offender must recompense the victim with damages. However, in some instances, in addition to the need to provide compensation, the State imposes additional sanctions on the wrongdoer with the goal of preserving social harmony and encouraging good conduct toward one another and the community as a whole. The issue lies in deciding which actions society should prohibit or choose for punishment within the community or State. In simpler terms, it involves determining what behaviors should be deemed criminal. As Terence Morris puts it, "Crime is defined by society as a breach of the

law. Without laws, there cannot be any crimes, even though there may be moral outrage leading to the creation of laws.”¹

HISTORICAL BACKGROUND AND IT’S INTRODUCTION

The idea of crime has always relied on public perception. It is recognized that law mirrors public opinion, and to grasp the essence and details of crime, it is essential to understand the concept of law. The relationship between crime and law is so interlinked that comprehending one without knowledge of the other becomes challenging. Law comprises regulations established by a politically superior entity, commanding a code of behavior to be followed by all members of society and enforced by a penalty. The command can originate from a sovereign, a political superior to inferiors, or legislation enacted by a legally constituted legislature and directed at society members as a whole.

Law sets out specific guidelines for behavior that society as a whole agrees upon. The majority of society is in agreement with these principles. Any departure from the norms of conduct established by society is met with consequences. Consequently, behavior that deviates from the established norm is sometimes referred to as criminal activity. Given that this is how laws are defined, breaking the law might be considered a criminal sexual offense. Crimes are defined as behaviors that members of the public “consider worthy of serious condemnation” by the average person.² A crime is defined as “an act which is against the moral sentiments of the society and forbidden by law.”³ Crimes include things like rape, murder, robbery, theft, and cheating because they are actions that are not acceptable in a civilized community. Thus, for an action to qualify as a crime, it must both violate the law and be in opposition to societal moral standards. However, morals are arbitrary, and morality is a dynamic idea that constantly evolves to suit the demands of the modern society. Sometimes moral standards differ between nations, and sometimes they differ inside a single nation. This is demonstrated by the fact that various countries do not consider the same act to be criminal for instance adultery, polygamy, and so forth. The Indian Penal Code considers adultery a felony, but several continental nations do not. Hindus are forbidden from polygamy under the Hindu Marriage Act of 1955; Christians and Muslims are not subject to the same legal restrictions. Their own set of personal laws governs them.

Therefore, all attempts to define sexual offence and crime perfectly have failed due to the variable character of its substance. As Russell correctly points out, no writer has been able to define sexual offence to a satisfactory degree to date. Sexual offenses are actually essentially the product of the criminal policy that is periodically adopted by those segments of the community that are strong or cunning enough to protect their personal safety and well-being by compelling the sovereign power of the State to suppress behavior that they believe could jeopardize their status.⁴ Because of this, it is exceedingly challenging to define sexual offence in a way that is appropriate for all nations at all periods. “Unlike sin, which has a definition and a reality that extends beyond what people may say and do, sexual offence is not absolute. It is basically a description of conduct that is relative and ever-changing”.⁵

¹Khare H.J.; “Changing Concepts of crime and its treatment” p.17 quoted from S. N. Mishra, Indian Penal Code XVI Edn.

² Huda, “The principles of law of crime”, p.19

³ Stephen General view of criminal law of England. p.3

⁴ Russel Crime. Vol I (11th Edn) p.98

⁵ Terence Morris, “The social toleration of crime” included in “Changing concept of crime and its treatment”, edited by Khare H. J. p.16.

SEXUAL OFFENCES IN ANCIENT INDIA

In ancient India, women were highly esteemed and revered as goddesses, as evidenced by various historical texts that speak positively of women's roles in society. Women were educated, some even trained as warriors, and some chose celibacy to become scholars. However, there were also darker practices such as sati, sending widows to ashrams, and a preference for sons over daughters that led to infanticide, highlighting the complexities of women's status in that era. It must be noted that two major conflicts in Indian mythology, Ramayana and Mahabharata, were sparked by the mistreatment of women. Ramayana begins with the kidnapping of Sita, the princess and wife of a prince, who is held captive against her will. In Mahabharata, Draupadi, who was married to five men, was publicly disrobed due to a bet. These timeless epics highlight the longstanding issue of crimes against women in society.

The vulnerability of women in India has led to pervasive gender-based violence. This issue encompasses various forms of discrimination, such as sex-selective abortion, infanticide, high female infant mortality rates, child marriage, teenage pregnancy, unequal wages, unsafe working environments, domestic abuse, maternal mortality, sexual assault, and neglect of elderly women. These biased attitudes persist throughout different stages of life, highlighting the deep-rooted problem of gender inequality in the country. While the ancient text about women may present an overly idealized view that is difficult to fully trust, further exploration reveals a different perspective. For instance, the Rig Veda discusses a rape incident involving a woman named Ushas, who experienced trauma and found refuge in a cave after escaping. The hymns also mention that the perpetrator was punished by being shot with an arrow. Additionally, the society in the hymns supported Ushas in overcoming her trauma and encouraged her to resume a normal life, demonstrating a supportive community.⁶

In different Puranic texts, there is a story about Brihaspati's brother's wife being sexually assaulted and raped. Despite this tragic event, she became a mother to a child who was cared for by her parents and later adopted by Brihaspati. Surprisingly, the husband accepted her without abandoning her, showing a unique acceptance and lack of stigma. In the Ramayana, a Suryavanhi prince named Danda committed a heinous act by sexually assaulting and raping the daughter of Guru Shukracharya. In response, Danda's own father decided to punish him by sending him into exile and removing him from the line of succession to the throne. The girl who was assaulted, Abja, was brought to the capital city of Ayodhya by Danda's father, where she was honored as the queen. Their child, born from the assault, was recognized as the rightful heir to the throne. This story stands out because the society portrayed in it did not stigmatize the woman for holding power or question the legitimacy of the child.

The Rigveda portrays women as being supported by society, especially during difficult times such as the loss of a husband. There are hymns that describe how women were encouraged and motivated by society to consider remarriage after their husband's death. Additionally, some Vedic texts mention women who were warriors, like Mudgala's wife who ensured the return of her stolen cattle, and Vispala, who lost her leg in battle but continued fighting with an iron leg. After researching, it was found that there was no specific written law addressing sexual offenses, but there were numerous warnings and prohibitions in place to protect women. For instance, the Kamasutra contained a warning

⁶Brishti Guha, "The Moderns of Ancient India", <https://timesofindia.indiatimes.com/blogs/toi-edit-page/the-moderns-of-ancient-india/> last accessed on 23, March, 2024.

advising husbands against forcing themselves on their wives, particularly in arranged marriages. Vatsyayana stressed in the text that woman, who are delicate by nature, prefer gentle approaches and may develop aversions to sexual encounters if approached forcefully by men they barely know. The man should approach the girl based on her preferences. Marriage does not justify exploiting women and going against their wishes, as marital rape is still not acknowledged as a crime in modern Indian society. Arthashastra, in addition to Vatsyayana, endorsed the concept of divorce and remarriage, offering women a chance to leave abusive marriages.

It is safe to say that in the past, society wasn't well-organized when it came to crimes specifically targeting women; however, efforts were made to protect women to the best of their ability. The texts above illustrate the importance given to women, with precautions taken to safeguard their physical well-being through warnings. It is evident that sexual crimes against women have existed for a long time, but recognition of these crimes was limited in the past, and the various forms seen today did not exist then. As society evolved, especially with the concept of 'Kalyug', the chances of crimes against anyone, including women, significantly increased. The issue lies in the crimes occurring in the external world and the perpetuation of abuse and dominance in a male-dominated society, leading to greater vulnerability for women. Ancient texts often portray a positive image, yet it is important to acknowledge that there are two sides to every story. In discussions about the Ramayana, King Ram's courage and honor are highlighted while Sita is typically portrayed as a victim, overlooking her strength as a warrior. Similarly, in the Mahabharata, the incident where Draupadi was shared among the five brothers raises questions about consent and autonomy, as she was not given the opportunity to voice her wishes in that situation.

The researcher is emphasizing that women are often intentionally made vulnerable by societal norms, family members, or people around them, which can diminish their ability to protect themselves. Patriarchy significantly contributes to this issue. It is noted as a positive that historical societies were somewhat more considerate towards women compared to modern times, making it harder for women to defend against vulnerabilities today. Looking back at traditional practices may offer some level of security for women.

STATUS OF WOMEN IN ANCIENT PERIOD

Women in an ancient Sanskrit saying were praised as "Yatra Naryastu Pujyante Ramante Tatra Devatah," emphasizing their role as mother goddesses and the source of Shakti. While once enjoying equal status with men in Indian history, women's status declined gradually from the Vedic Period to modern times.

The complex variations in Indian views on sexuality can be most effectively illuminated by exploring their historical background. India has been influential in the evolution of sexual attitudes, starting with early texts that approached sex scientifically, to recent times where it has influenced the spiritual aspects emphasized by contemporary groups. It can be suggested that India led the way in promoting sexual knowledge through artistic and literary expressions. Like in any society, there existed disparities in sexual conduct in India between the general populace and ruling elites, with those in power often embracing hedonistic behavior that differed from the moral standards of the common people.

Certain early Indian texts, when translated early on, were commonly referred to as 'law-books' and played a significant role in shaping the colonial understanding of traditional Indian law. These texts fall into two main categories: dharmastras and dharmasastras or smritis. The dharmastras, being the older

of the two, were written around the middle of the first millennium BCE by Gautama, Baudhayana, Apastamba, and Vasiṣṭha. As society became more structured, the dharmasastras or smṛitis emerged as a new literary form. The Manusmṛiti or Manavadharmasastra is often seen as the most significant text in this category. Following Manu, various other ‘law-givers’ such as Yajavalkya, Visnu, Narada, Bṛhaspati, and Katyayana composed their own treatises. These texts were predominantly written by brahmana males and exhibited a clear bias towards the highest caste and males. The texts often depict the householder’s life as the desired ideal, emphasizing the importance of a wife’s submission to her husband in maintaining household discipline. The concept of a man having ownership over his wife’s body is crucial in this context.

Marriage is presented as the act of entrusting a daughter to a man, with women and property frequently associated together and the need to safeguard both emphasized. The lack of control over a wife and property is viewed as leading to chaos, highlighting the significance of maintaining order.⁷ Kingship originated to protect property and women, with the initial king agreeing to this responsibility in exchange for a portion of his subjects property and women.⁸ Women were viewed not just as valued possessions from a wish-fulfilling tree⁹, but were sometimes associated with livestock, likely seen as assets that could be moved. They, like other property, were capable of being bought, used as collateral, or gifted. In the Garuḍa Purāṇa, it is stated that a man should be willing to protect himself even if it means sacrificing his wealth and wife.¹⁰ King Harischandra demonstrates a similar concept by offering his wife to Visvamitra in the Markaṇḍeya Purāṇa.¹¹ Additionally, the Agni Purāṇa mentions an interest rate of 1/70th of the initial value for women and animals that are pledged.¹² Vijay Nath notes that according to lawgivers such as Apastamba, Manu, and Yajavalkya, it is stated that family members are not to be given as gifts, sold, or used as collateral. Manu distinguishes the wife, who is considered a divine gift, from cattle or gold, which can be acquired through trade.¹³ This distinction highlights the wife’s unique status as a form of property, yet does not completely dismiss the notion of women being seen as property. Manu explicitly states:

“In her early years, a girl is under the authority of her father; as she grows older, she is under the control of her husband; if her husband passes away, she is then taken care of by her sons, and it is believed that a woman should not have the freedom to make her own decisions.”¹⁴

Seen from this perspective, the idea of a woman’s body being identified as her husband’s possession is a component of the historical legal customs in ancient India. The less, it does not imply that we should unquestionably adhere to this tradition without seeking modifications. Additionally, the credibility of these writings is questionable. It is essential to note that these texts did not serve as the official laws of

⁷ Valmiki, The Ramayana Ayodhyakanda II.67.11 (Sheldon Pollock trans., Vol. II, 1987). (For the original text, see the text with the same translation, published from the New York University Press, New York, 2007).

⁸ Vyasa, The Mahabharata Santiparvan XII.68.15-24 (Shripad Krishna Belvalkar ed., Vol. XIII, 1961).

⁹ Harivamsa, I.86.56 (P.L.Vaidya ed., 1969).

¹⁰ Garuḍa Purāṇa, 109.1 (M.N. Dutt trans. & ed., Delhi, 2009).

¹¹ Markaṇḍeya Purāṇa, VII.24 (F.E. Pargiter trans. & ed., 1969).

¹² Agni Purāṇa, 253.63.4 (A. Gangadharan trans., 2006).

¹³ Vijay Nath, Women as Property and their Right to Inherit Property up to the Gupta Period, 20(1- 2) Ind. Hist. Rev. 1-15 (1993-1994).

¹⁴ Manu, The Ordinances of Manu, V.148 (Arthur Coke Burnell & Edward W. Hopkins trans., 1971). (Wherever, Manu has been quoted this translation has been used. For the original Sanskrit passages, see Manu, Manusmṛiti with the commentary Manubhāṣya of Acarya Medhatithi, (Ganganath Jha ed., 1998).

early Indian governments. Instead, they are advisory writings where particular authors recommended certain regulations that they deemed suitable. The enforcement and recognition of these regulations as legal codes remain uncertain.¹⁵

The creative literature and royal decrees provide valuable insights into the actual functioning of society and politics. Even within the normative Brahmanical texts, such as the lawbooks, there is not absolute authority. The normative Brahmanical perspective viewed human life from four different dimensions:

1. Dharma refers to social ethics.
2. Artha refers to profit.
3. Kama refers to Pleasure.
4. Moksha is referred to Emancipation.

The material world is relevant to three of these dimensions, not the last one. Scholars specialized in each of these three dimensions of human life and wrote detailed texts on them. This is why the traditions of dharmaśāstra, arthaśāstra, and kamaśāstra have parallels. Manu's *Manavadharmaśāstra*, Kautilya's *Arthaśāstra*, and Vatsyayana's *Kamasutra* are important texts for guiding different aspects of human life. Relying solely on lawbooks like dharmaśāstras and dharmaśāstras is not sufficient to fully comprehend early Indian legal tradition.¹⁶

This is how the early Indian tradition was described by the colonial rulers. They attempted to analyze Indian tradition through the perspectives of Hindu Law and Muslim Law, based on the dharmaśāstras and sharia. The issues with Hindu Law have been addressed, and the problems with Muslim Law are equally significant. In Brahmanical Law, there isn't a singular strand in Muslim Law since it follows different schools of Islamic jurisprudence. Muslim Law is primarily based on Quranic instructions, but the Quran itself doesn't function as a legal code, containing scattered and sometimes unexplained injunctions. Historically, Mohammed aimed to reform tribal customs in Arabia and introduce new injunctions, yet there isn't one universally recognized compilation of these laws. Muslim Law consists of rules put together and codified by various jurists. Sharia comprises several schools, with the Hanafi, Maliki, Shafii, and Hanbali being the main Sunni schools, along with other minor Sunni and Shiite schools. In India, the Hanafi school has been the most prominent.

Nevertheless, Imam Abu al-Hanifa, the school's founder, left no written legacy. His ideas are therefore only known through the many interpretations provided by his pupils and adherents. Furthermore, because the Mughal Emperors and the Sultans of Delhi scarcely followed the shariah and kept a distinction between *dindari* (religious administration based on normative Islamic injunctions) and *duniyadari* (practical governance), Muslim law in India remained as prescriptive as Brahmanical law. The colonial administrators and lawmakers, who favored to view Indians as deeply religious individuals, virtually ever remembered this historical reality.

¹⁵ See Nandini Bhattacharya Panda, *Appropriation and Invention of Tradition: The East India Company and Hindu Law in Early Colonial Bengal* (2008) for the argument that Hindu Law was a colonial invention and the Dharmaśāstric Tradition was not a legal tradition.

¹⁶ For recent scholarly works on various alternative traditions within the Brahmanical practices, see Livia Holden, *Hindu Divorce: A Legal Anthropology* (2013) for the tradition of divorce within Brahmanism, or Mridul Eapen and Praveena Kodath, *Family Structure, Women's Education and Work: Re-Examining the High Status of Women in Kerala* (2002) for the various family structures and prevalence of polyandry in Kerala.

The current Indian state continues to follow Hindu Laws and Muslim Laws, which are partially remnants of the colonial era. The Manusmriti, one of the earliest Sanskrit texts translated into English, significantly influenced the colonial understanding of ancient India. This resulted in early India being portrayed primarily as a land of religious practices, focusing on the laws of Manu, the emphasis on chastity seen in figures like Sita and Anasuya, and the practice of Sati. On the other hand, aspects like the poetry of Amaru and Bhartṛhari, the architectural beauty of temples in Khajuraho and Konarak, the diplomatic strategies of Kautilya, and the writings of Vatsyayana were overlooked. This selective interpretation of Indian tradition aligned with the Victorian Puritanism brought in by the British colonial government in the 19th century.

This Puritanical perspective, especially regarding attitudes towards women's bodies, influenced the drafting of the Indian Penal Code (IPC) in 1860 under Thomas Babington Macaulay's leadership.¹⁷ The IPC, which remains a crucial legal code for addressing sexual offenses in India, reflects the historical background discussed, emphasizing notions of female modesty and the protection of women as possessions of their husbands.

STRUGGLE OF WOMAN THROUGH AGES

During the Vedic period, women enjoyed freedom and equality, participating actively in various aspects of life. Women such as Apala, Visvara, Yamini, Garge, and Ghosa stood out and excelled in society, showcasing their skills in arts, music, and social welfare. Texts like the Aitereya Upanishad and Rig-Veda highlighted the respectful and equal companionate relationship between husband and wife, emphasizing the esteemed position of women as symbolized by the term "Dampati" used for both spouses. In the Mahabharata, the wife is regarded as essential for prosperity, joy, and religious duties. Without his wife, a man cannot fulfill his religious obligations. During that time, there was no strict segregation between men and women, and the practice of polygamy and dowry was limited to the ruling class. Widow re-marriage was allowed, and there was no bias against boys or girls. Similar to the status of women in the contemporary Western world, women in India were valued for their freedom, equality, and cooperation. The distinctiveness lay in the focus on spirituality, religious responsibilities, and family unity.¹⁸

During the Post Vedic Period, women faced severe challenges and limitations according to Manu. He aimed to establish a society where men held more power. The birth of a daughter, previously not a concern in the Vedic era, now became a burden for the father. Girls were denied education and excluded from the thread ceremony. Additionally, a new system of marrying girls before puberty was introduced, lowering the acceptable age for marriage to 9 or 10 years. While girls from the ruling class had access to some education, military training, administration, and fine arts, overall, females were oppressed during this time. The subordination of women is clearly captured in the well-known rules of Manu, which dictate that women should never be self-reliant. A woman is to be under the authority of her father as a daughter, her husband as a wife, and her son as a widow. Interestingly, despite the emphasis on women being "loved", protection was also highlighted. In the later Vedic era, women's property rights were acknowledged, and the concept of Stridhan emerged. Stridhan, as defined by

¹⁷ For this paper, we focus on comparing early Indian beliefs with the IPC and other contemporary Indian laws. We will only consider these texts for our analysis, although the Islamic Law and Hanafi interpretations are important and warrant a detailed discussion in a separate paper. A medieval scholar well-versed in Arabic and Persian would be the most suitable person for this task. As a result, our observations on Islamic Law will only be brief.

¹⁸ MacDonnell, A.A. and Keith A.B. Vedic Index. 2 Vol. 1912.

Manu, refers to gifts given to a woman before marriage, during the wedding ceremony, as symbols of love, and from her father, mother, brother, and husband.¹⁹

During the Medieval era in India, women faced hardships. The influence of Muslim invaders brought a culture where women had limited rights and were viewed as possessions. This influence also affected Hindu society, leading to the adoption of practices like the "purdah" system to protect women from the prevalent polygamy among Muslims, who could forcibly take women for themselves. The shift in Indian people's thinking led to girls being seen as a burden who needed protection, while boys were viewed as able to support the family financially without much care. This change in mentality during the medieval era brought about issues like Child Marriage, Sati, Jauhar, and restrictions on girls' education, considered a dark period for women's empowerment in history.²⁰

In Hindu society, these negative aspects are limited, while religions like Jainism, Buddhism, and Christianity offer women freedom and education. These religions are more progressive and open-minded, where gender is not a barrier to attaining salvation. They believe that every individual has the right to receive the blessings of God.

During the British era, the status of women experienced significant transformations largely influenced by Western ideas on Indian society.²¹ The rise of the middle class introduced liberal ideologies such as liberty and equality through the English language, albeit with limitations to protect the rulers interests. Two significant movements occurred under British rule:

1. Socio reforms movement; and
2. Nationalist movement

During the 19th century, social reform movements addressed the issue of women's equality. This included concerns about the practice of Sati, restrictions on re-marriage, lack of property rights, child marriage, and education for women. Swami Vivekananda, Dayanand Saraswati, and Annie Besant advocated for a return to the principles of the Vedic era, which they believed offered a better status for women.²² Mahatma Gandhi strongly opposed practices such as child marriage, Sati, widow remarriage prohibition, and the Devdasi system. Gandhi emphasized the importance of educating women for their moral development and equal standing with men. He believed that women were not the weaker sex but rather exemplified virtues like knowledge, humility, tolerance, sacrifice, and faith, which were crucial for practicing Satyagraha. Gandhi noted that women had the unique ability to endure immense suffering. Gandhi promoted the concept of ahimsa which involves embracing suffering, particularly exemplified by women, showcasing their important role in promoting non-violence. He highlighted the significance of women by referring to ancient Indian female figures like Draupadi, Savitri, Sita, and Damayanti, to demonstrate that Indian women are strong and capable. Gandhi emphasized that women possess equal intelligence to men and deserve the same rights and freedoms. He emphasized that wives are not meant to be subservient to their husbands but are meant to be companions, helpmates, and equal partners in all aspects of life, with the freedom to choose their own paths.

¹⁹ A.S. Alteker; The position of women in Hindu Civilization, 1962.

²⁰ <http://www.mapsofindia.com/culture/indian-women.html> (Visited on January 01,2016)

²¹ U.K. Deewan, „Offences against women“ p.33

²² Neera Desai and M. Krishvaraj “Women and society in India” pp. 38-41

Gandhi emphasized the crucial role of women in India's political, economic, and social liberation. He believed strongly in women's ability to lead non-violent movements and entrusted them with significant responsibilities in the fight for independence. Women organized various activities, such as public meetings, boycotts, and selling indigenous products like Khadi. They fearlessly faced oppression and imprisonment, ultimately contributing to a shift in societal norms and the dismantling of long-standing barriers that marginalized them. Gandhi's encouragement for women to actively participate in the struggle for independence played a pivotal role in empowering them and combating oppressive traditions. Gandhi believed that men and women had distinct roles in terms of economic liberation for women. He suggested that women could engage in activities such as spinning to supplement family income. Additionally, Gandhi saw women as playing a crucial role in combating societal issues like communalism, the caste system, and untouchability. The nationalist movement attracted many women to participate in politics and empowered them with confidence to unite and advocate for their rights. The establishment of the All India Women's Conference in 1927 marked a significant milestone in women's journey towards equality, leading to the enactment of laws aimed at abolishing social injustices such as legalizing widow remarriage, restraining child marriage, and granting Hindu women property rights.

During the British era, in addition to social laws, there were also regulations concerning women's employment, such as banning night work and limiting their work in mines. This period aimed to address social issues, promote education, and enhance women's involvement in politics, consequently empowering women.

SEXUAL OFFENCES AGAINST WOMEN IN VEDIC (ANCIENT) AND POST VEDIC PERIODS

STUDY OF ANCIENT ERA

India has traditionally been a society where men held power and dominance. Despite this, women were respected and revered, with a significant status in society. Historical texts and inscriptions indicate that women made generous donations to religious institutions and participated in assemblies. Women were not limited to the household but actively engaged in various social activities, though they remained dependent on their husbands.²³

The husband and wife were both responsible for secular tasks, with religious rituals requiring the wife's presence. It was the duty of both partners to maintain the household's fire, and the husband was expected to provide the wife with luxuries and care for her well-being. Domestic violence was strongly condemned, as it was believed that any attempts to please God would be futile if violence was inflicted on a woman.

Women in early Vedic civilization were given a high status, while Dravidian culture emphasized women's authority in managing home and family in the south. Women were actively involved in social and cultural activities, with Aryan culture showcasing their participation in various areas like war, horse riding, and education. Additionally, historical evidence suggests that women had a say in choosing their partners, highlighting their strength and character in the past. Women were respected not

²³ Dr. Pragya Aggarwal, "Status of women in India: From Ancient to modern age," International Journal of Advanced Research and Development, Volume 1; Issue 3; March 2016 at <http://www.advancedjournal.com/download/22/1-1-37.pdf> last accessed on 27, October, 2023.

just for their traditional roles but also for their significant contributions to society. They were revered as goddesses and this reverence is evident in ancient texts discovered through archaeological excavations.

They also believed that the life-giving abilities, nurturing powers, and sustenance were attributed to the goddesses. The Rig Veda depicted a respectful view of women and mentioned the dedicated worship of goddesses such as Durga, Aditi, and Sarasvati, who had a large following. Historical evidence shows women in elevated societal positions through sculptures. While sons were typically preferred as successors in a clan, girls were treated equally in terms of importance. Girl's education was valued, with those pursuing education needing to undergo stages of upanayana and brahmacharya, and potentially marriage if desired.

During this period, women's literacy in ancient India thrived due to equal educational opportunities for both genders to study the Vedas. As a result, women such as Maitreyi, Gargi Vachaknavi, Lopamudra, Ghosa, Visvavara, and Sikata Nivavari emerged as influential sages and renowned authors of Vedic hymns. This served as evidence of the significant contributions made by intellectually empowered women in that era.

The ancient Vedic texts highlight the significance of women in education. Women who studied the Vedas were divided into two groups: Brahnavadinis and Sadyodvahas. Brahnavadinis chose not to marry in order to dedicate themselves to learning the Vedas, while Sadyodvahas studied until they got married. Female Vedic educators were known as Upadhyayas or Upadhyayanis, with the former group being unmarried and the latter group being married. Emperor Ashoka supported his daughter in learning and spreading Buddhism. A princess named Jayanti from Kousambi is said to have chosen a celibate life to pursue studies in religion and philosophy, as mentioned in Jain texts.

In those days, marriage was never a forced institution. Girls had the option to marry after reaching puberty and finishing their education; spouses were chosen via a formal process called swayamwara. There is evidence of polyandry as well as polygamy; the Rig Veda mentions 'wives in connection with husbands'. Remarrying was common, with the exception of widows, as divorce was frowned upon. There is also no indication of child marriage. In addition to being viewed as ardhangini, women were also viewed as sahadharmini, which equates to equal partnership with males. Puruharthas were believed to originate from women in the context of dharma, artha, kama, and moksha. The ladies back then enjoyed total economic independence. They participated in all vocations, particularly teaching and promoting wellness and health. Women in this era assisted their husbands in agriculture while also making money at home by spinning and weaving garments.²⁴

Women in ancient India took a strong stance in politics, just like any other person. They played a significant impact on the political scene. According to Megasthenese, Pandya women used to be in charge of the government. On behalf of her son, Nayanika, the widow of Satakarni and queen of Satavahana, controlled the realm. Examples abound, such as Pravbati, the daughter of Chandragupta II, and Princess Vijaybhatarika, who held the position of regional ruler under Vikramaditya I. At the conclusion of the Gupta Era, women ruled over regions like Orissa and Andhra Pradesh. Women held provincial and local administrative positions in the Kannada area.

²⁴Bhaswati Pal, "The saga of women status in Ancient Indian Civilization," MISCELLANEA GEOGRAPHICA - REGIONAL STUDIES ON DEVELOPMENT, Vol. 23, ISSN: 2084-6118 at <https://content.sciendo.com/view/journals/mgrsd/23/3/article-p180.xml> last accessed on 12, April, 2024.
<http://jier.org>

In ancient India, women received education as men did, which enabled them to hold esteemed positions. Hinduism prescribed specific roles for women, such as being a supportive wife, caretaker in absence of the male, maintaining religious practices, and participating in deity worship rituals.

In Vedic times, the status of women and their achievements were widely celebrated. The treatment of women in a society reflects its culture, morals, and spiritual values. The Rig Vedic period, particularly, was known for significant advancements in the recognition of women. Deities like 'Aditi', the eternal mother, 'Indrani', the authoritative figure in the household, 'Vak', representing the cosmic energy, 'Saraswati', associated with arts and knowledge, 'Usha', seen as the life force, and 'Ila', representing the first teacher, all highlight the importance of women. While sons were traditionally preferred, there were instances where couples performed religious rituals to pray for daughters.

Not just Rig Veda, but Atharva Veda also portrays the empowerment of women, stating that a young woman, upon completing her education, could choose her partner for marriage. Girls received education on par with boys, and it is believed that educated maidens had successful marriages. The presence of many scholars indicates a significant number of educated women. Education provided girls with the independence and ability to make their own choices in life, including choosing their life partners.

"A friend thou shall be, a friend, thou hast become, may your friendship be everlasting" meaning thereby that a spouse is meant to be a friend and this hymn expresses the beauty of a lasting friendship in marriage. In the ancient times, wives were highly valued as a divine gift and were to be cherished and cared for by their husbands, even beyond death. During this era, women were given the freedom to remarry after the passing of their husbands. This period also witnessed love marriages, known as Gandharva Vivah, where women could openly choose their partners and be active members of society. The Vedic period symbolized a time of empowerment and growth for women. The overall status of women was quite good, with the community demonstrating appropriate care and respect towards women, granting them significant autonomy in various aspects of social and political life. Through religious backing, societal acknowledgment, familial assistance, and most importantly, the woman's strong self-determination, she achieved remarkable success in any field, excelling and earning commendable accomplishments.²⁵

Where, during the early Vedic period, women had an equal status to men in various aspects of life. Ancient Indian texts by grammarians like Patanjali and Katyana indicate that women received education during this time. From Rig Vedic verses, it can be inferred that women typically married later in life and possibly had the liberty to choose their own spouses. The Vedic period, believed to range from 300 B.C. to 600 B.C., allowed women freedoms and opportunities, with girls marrying after completing their education and having a say in selecting their partners. Although dowry existed as a symbolic gesture mainly among the wealthy and royal families, it was not widespread as a social problem during that era. The practice of purdah and some restrictions on women's rights were present during the Vedic period, but there was no discrimination between genders.²⁶

²⁵ Dr. Baltinder Kaur, "Status Of Women In Ancient India," International Multidisciplinary E-Journal, ISSN2277-4262 at <http://www.shreeprakashan.com/Documents/20151207092457069.1.%2024.%20Jan.2015%20Temp.pdf> last accessed on 10, December, 2023.

²⁶ Law relating to sexual offences against women. By V.K.Devan, Law relating to offences against women, Second Edition, P-16.

1. The female Brahmin students wear the sacred threads and study the Vedas like their male counterparts, but they beg for alms in their own families, unlike the boys.
2. Sadyo Vadhey, symbolically and formally given just before marriage, used to signify that men viewed women as equal partners in managing household affairs during different stages of life. This suggests that women likely enjoyed a quality of life similar to men in the Grihasta, Vanaprasta, and Sanyasa Ashrams.

In the realm of religion, wives enjoyed equal rights and regularly took part in religious rituals alongside their husbands. The Vedas indicate cases of women remarrying, with texts like the Aharvaveda mentioning such instances. The Dharmasutras clearly permitted women to remarry, with Sage Vashist suggesting a maximum waiting period of five years before a woman could remarry. Similarly, Kautilya and Narada also provided guidelines for women seeking to enter into a second marriage. In around 500 B.C., the status of women in India began to diminish. While certain reform movements, like Jainism, allowed women to join religious communities, overall, women faced confinement and limitations. Women in ancient India may have had a standard of living similar to men's. They did not adhere to "Purdah" and had the freedom to choose their life partners. They had the opportunity for education and widows could remarry. Women were not allowed to divorce, a right even men did not possess. Some ancient Indian kingdoms had customs like Nagaravadhu, where women competed for the title. Amrapali is a famous example of a Nagaravadhu.

In ancient Aryan society in India, severe punishments were specified for women guilty of infidelity. According to Manusmriti, unfaithful women were to be torn apart by dogs in public while the man involved would be burnt on a red-hot iron bed. Infidelity was considered a serious offense, believed to lead such women to hell. Men were also able to curse disloyal wives. For instance, Sage Gautama cursed his wife Ahalya for her relations with Indra, despite her lack of fault in the matter. In the Maurya period, women guilty of certain offenses faced brutal punishments such as the removal of their reproductive organs and ultimately death. Additionally, Aryan husbands enforced restrictions on their wives, including cutting off ears and noses for disobedience. Lord Rama even sanctioned this practice, exemplified when Laxman cut off Surpanakha's nose for expressing affection towards him. Other limitations included women wearing face veils outside, avoiding interactions with strangers, and not sleeping alone but with female relatives in the husband's absence.

During the Vedic era, women were generally well treated and honored, but it is important to note that sons were often preferred over daughters to continue the family lineage. While women had a respectable position in society, certain texts like Manu's had different views on women. According to the verse "Pita rakshati kaumare, bharata rakshati yauvane, Putro rakshati Vardhakya, na stri Svatantrayamar hati"²⁷, women are perceived as being dependent on male relatives for protection at different stages of their life. This suggests that historically, women were often seen as lacking individuality and had to rely on men for their safety and well-being. Although there have been exceptions of strong and independent women throughout history, the common portrayal has been one of fragility and dependency. The Hindu religion was greatly influenced by Aryan culture, known for its strong patriarchal society and support for joint families. The emphasis on patriarchy in the society meant a strong desire for sons, who were seen as important for the family's well-being and to carry forward the family name and heritage.

²⁷ Shodhganga, Introduction and historical background at

https://shodhganga.inflibnet.ac.in/bitstream/10603/132582/9/09_chapter%201.pdf last accessed on 31, January, 2024.

<http://jier.org>

The Hindu religion was greatly influenced by the Aryan culture, known for its strong patriarchal society. Additionally, the concept of joint families was also embraced. The patriarchal structure of society emphasized the desire for a son, who was seen as crucial for the family's and community's welfare, as well as for carrying the family name and lineage forward.

During the era of dharmashastra, the establishment of Manu Smriti marked the beginning of the decline in women's status. Although the Rig Veda period was favorable for women, it is important to note that they were excluded from inheriting property in a patriarchal society where only sons could inherit. Some texts even mention that women were unable to own property unless they were strong, powerful, and classified as warriors capable of protecting their possessions. Unmarried daughters would eventually receive a portion of the property after facing considerable challenges.

Education rights for women were completely eliminated with the advent of the codification of Manu. The societal laws introduced by Manu imposed numerous restrictions on women, marking the beginning of their decline. During this time, child marriages became increasingly common, and women were taught to view their husbands as divine beings according to the teachings of Dharmasastras and Manusmriti. Women were also indoctrinated with the belief that men could have multiple wives to ensure the birth of a male heir, further reinforcing the importance of motherhood for a son.²⁸

During this time, women were not recognized for their contributions to society. Instead, they were often seen sacrificing themselves for the well-being of their families as their duty. Remarrying for widows was frowned upon, and women had no independent identity. Without a husband, they faced numerous challenges, leading to practices like sati being enforced on them.

Women were marginalized and viewed as inferior, deemed impure and restricted from participating in religious rites. As a result, they were unable to inherit their husband's property, leaving them financially vulnerable and deprived of ancestral property rights. Manu legally enforced women's dependence on men by stating that they should not act independently, stripping them of their freedom. This legal system dharmasutra characterized women negatively, labeling them as immoral and only desiring sexual behavior. Therefore, the laws aimed to restrict women's independence in order to control their behavior.

The position of women significantly declined from the Vedic age to the era of Dharmashastra. With the rise of Brahmanism, women were reduced to a status comparable to that of a silent servant, devoid of the right to question and obedient to the master's commands. Education rights were restricted, and any learning opportunities for women were limited to domestic duties during the period of smritis. Women were increasingly viewed as objects of pleasure for men's entertainment.

Manusmriti emphasizes that women's primary obligation is to obey men, particularly in matters of sexual relations. The importance placed on having sons ultimately led to restricting women's freedom in various ways. The severe restrictions placed on women were so intense that they prevented them from asserting their basic human rights. Women were regarded as possessions of men, such as fathers, husbands, sons, or other male figures. The emergence of caste discrimination greatly contributed to the decline of women's status during that period. The prevailing misogyny during Brahminical times excluded women from participating in religious rituals. However, if a woman practiced sati and burned herself on her late husband's pyre, society hypocritically elevated her to the status of a goddess. This

²⁸ Supra note 25.
<http://jier.org>

situation significantly undermined women's position in all areas, including political and economic aspects.

When it comes to how it treated women, Manusmriti turned into one of the most ridiculous texts. With its socially enforced regulations, it brought women's position to an all-time low. It emphasizes the idea that the gods are unhappy and that desires won't be granted if ladies are not respected. However, this is only one side of the story. On the other hand, Manu asserts that women lack a personality and demands total subordination from them to the male, who views them as his property to be used in producing sons. A woman should see her husband as her god, and she should adore him at all times. The god should never be angry. A woman may only reach paradise by being completely obedient to her husband; making amends is not necessary for her to do so. Every fast and sacrifice made by them is directed at their husbands.²⁹

The status of women reached its lowest point with the development of the Dharmasutra and the codification of Manusmriti. Women suffered at that time in every way, and it seemed unthinkable that things could become worse. Under the direction of Sankracharya, Hindu culture was changing with the intention of countering Buddhism's enormous following by extending the influence of the Vedas. But the initial Mughal invasion proved to be a blow to this whole plan. The first Muslim invader of India was Babur. Hindus could still socialize and, to a certain extent, embrace the Aryan civilization. They shared a few opinions or ideas. However, the Mughals presented a ludicrous version of civilization. The principles and schools of thought that accompanied the rise of Brahmanical civilization were incompatible with the Mughals' conquests.

Sexual Offences against Women in Medieval Period

During Mughals Period

During the medieval era in India, the status of Indian women in society worsened with the prevalence of practices such as child marriages, widow remarriage bans, and the introduction of Purdah by Muslim rulers. Additionally, among communities like the Rajputs in Rajasthan, Jauhar was practiced, and Devadasis faced sexual exploitation. Polygamy was common among Hindu Kshatriya rulers for political motives, while many Muslim families confined women to Zenana sections of the house.

With the Mughal invasion, the ancient times concluded, leading to the beginning of the medieval era. The Mughals, originating from the Middle East, introduced new practices such as inheritance and divorce that were unfamiliar to the existing patriarchal Brahmanical society in India. Both cultures shared a preference for male children over females. Women were still considered inferior and mainly seen as providers for the family. The Muslim traditions varied across regions. While Turks allowed women more freedom compared to Persians who treated women like queens, Persian women still had a better status than Indian women. The invasion by Mohammad Ghazni further worsened the situation for women. The Mughals introduced a culture that created insecurity for Hindu women, resulting in a rise in child marriages where girls as young as seven, eight, or twelve were married off. Along with child marriage, the practice of Purdha started being followed by Hindu women. The preference for male children led to a rise in infanticide, particularly of female babies. During the rules of Firoz Tughlaq and Sikandar Lodhi, women were not allowed to go on pilgrimages. Despite the differences

²⁹ Supra note 25
<http://jier.org>

between Hindus and Mughals, the common ground was the further suppression of women. Additionally, barbaric practices like sati and jauhar were prevalent during that time.

The elements such as religion, caste discrimination, and the dominant Brahmanical tradition aimed to oppress women and make their lives miserable. Prior to the Mughal invasion, only upper caste individuals were permitted to have multiple marriages, provided they could financially support all their wives. The Kshatriyas caste practiced this custom extensively. However, the introduction of Mughal culture led to a trend of multiple marriages being adopted by a wider population. The rise in infanticide led to an increase in the practice of sati, adding another form of oppression for women known as the Devdasi system, which could be seen as a kind of human trafficking. Devdasis were typically unmarried women dedicated to serving a temple from a young age, performing duties for the temple deity, including artistic performances and sometimes extending sexual services.³⁰ Over time, this form of servitude became more widespread with the growth of Brahmanical temples. Devdasis were considered “married to a god” and their role was to entertain and serve the temple deity, leading them to be referred to as god’s slaves. They were often accompanied by attendants in processions and carried ceremonial items like kubharti.

Donating a daughter to a temple to become a wife to a deity was seen as a deeply spiritual act. Devdasi is a religious custom where girls are dedicated to temples after puberty for sexual purposes. These girls were believed to serve society and were considered as courtesans in the divine court. Since marriage often meant women were treated as property passed from father to husband, devdasis were not allowed to marry one man. Being considered as belonging to divinity, the devdasi was seen as belonging to the entire community, leading to the saying, “a devdasi is a servant of god but a wife of the whole town.”³¹

The Brahmanical lifestyle gained prominence during this period, and the devadasi system emerged as a form of oppressing women. Wealthy individuals of that era took advantage of these devadasis, compensating them for their services which became their primary means of income. This cruel practice stemmed from Hindu societal norms.³²

Several parents were aware that by pushing their daughters towards becoming devadasis, they were actually pushing them into brothels. Despite knowing that their daughters were being trafficked, many parents proceeded with it because they found maintaining a girl challenging and prioritized having a boy. Due to the belief that female children were burdens, parents sought ways to alleviate this burden, often by allowing their daughters to be in positions surrounded by divinity and spirituality on the surface. Eventually, these girls would be taken by wealthy individuals or landlords based on their fate. This practice also existed among Muslims, where girls were offered to dargahs and after being married to the deity, they were known as Bibi and later forced into prostitution. Female trafficking is often seen as an organized operation, involving activities such as forced prostitution, organ removal, and slavery through forced labor. Drawing parallels between sex trafficking and the devadasi system reveals many similarities. Devadasis were essentially auctioned off, with the highest bidder being granted the first

³⁰ Y Ramachandra Reddy and RM SrIdevi, “The origin and historical development of Devadasi system in India,” International Journal of Applied Research at <http://www.allresearchjournal.com/archives/2019/vol5issue1/PartB/5-1-11-352.pdf> last accessed on 18, May, 2024.

³¹ Devdasi Practice in India: An overview at https://shodhganga.inflibnet.ac.in/bitstream/10603/174755/9/09_chapter%203.pdf last accessed on 10, March, 2023

³² Umeshwari Dkhar, Devdasi; A sex trafficking, North Eastern Hill University, 2015 at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2696871 last accessed on 25, March, 2024

opportunity to engage with the girl. While devadasis were originally meant to serve as devotees in temples, the sexual services they ended up providing led to some becoming sex workers and even being exploited in brothels. Over time, the devadasi system transformed into a scenario of sexual abuse, rendering women as slaves.

Throughout the medieval era, notable women have left a lasting impact that is still acknowledged today. For instance, Razia Sultana stood out as one of the influential figures who rose to power on the Delhi throne during a period marked by widespread slavery. She made history by becoming the first Muslim female ruler of India, ascending to the throne in Delhi following her father Shams-Ud-Din-Itutmish. Razia Sultana was esteemed for her adept governance and courageous military leadership. Gulbadan Begum, the youngest child of Babur, is known for creating the Humayun-Nama. MahamAnga, a key figure during Akbar's reign, held a prominent political position and was highly respected in the court. Jodhabai, a Rajput princess, married Akbar for the safety of her kingdom, forming a notable Hindu-Muslim alliance. Noor Jahan, wife of Jahangir, became a powerful figure in administering the kingdom during his opium addiction. Zeb-un-nisa, daughter of Aurangzeb, gained political influence by assisting her father in court matters. Durgavati Marvi, also known as the Gond Queen, was a skilled warrior queen who expanded her domain with strength and respect.³³

Durgavati Marvi, also recognized as the gond queen, was the descendant of Maharana Sanga. As a young individual, she received training in combat skills such as horse riding, sword fighting, and archery. Her expertise in warfare contributed to her success as a queen in the southern region. She strategically fortified herself on the slopes of Satpura, which provided an advantage to her troops during times of conflict. Through a combination of diplomacy and military might, she expanded her kingdom. Some women managed to succeed during challenging and restrictive times, leaving a lasting impact as influential figures of their era. Despite the societal challenges and mindset of the times, they persevered and carved out their place in history through their determination and resilience.

Some researchers argue that devadasis enjoyed a respectable position prior to British influence, with a strong social and economic standing. Their presence significantly enriched the realms of dance and music. While primarily serving deities, they also showcased their talents in royal settings upon invitation. Despite being entertainers, they were often exploited for sexual purposes by landowners and influential men. Although predominantly from lower castes, even those from higher castes would dedicate their daughters to this practice.³⁴

At the end of the 19th century, there were several social movements in India due to the rise of nationalism. These movements impacted the devdasi system, which was divided into two groups: the reformists or abolitionists and the revivalists. The reformists viewed devdasis as prostitutes and considered the practice to be immoral. Their first Anti-dedication movement took place from 1880-1890 and involved educated individuals like doctors, journalists, and social workers who campaigned through seminars and conferences to create public awareness. In 1892, they appealed to the Viceroy,

³³ Ms. Shabnam Bharti, "An analytical study: political role of women during medieval period," International Journal of Research in Social Sciences, Vol. 8 Issue 1, January 2018, ISSN: 2249-2496 at https://www.ijmra.us/project%20doc/2018/IJRSS_JANUARY2018/IJMRA-13080.pdf last accessed on 04.07.2020

³⁴ Dr. V. Bharthi Harishankar & Dr. M. Priyamvadha, "Exploitation of women as devdasis and its associated evils," National Commission for Women, New Delhi, at http://ncwapps.nic.in/pdfReports/Exploitation_of_Women_as_Devadasis_and_its_Associated_Evils_Report.pdf last accessed on 8, December, 2023.

Governor General of India, and Governor of Madras to abolish the devdasi system. Raja Ram Mohan Roy, along with other social thinkers like Ishwar Chand Vidhyasagar, Govind Ranade Karve, played a significant role in this movement.³⁵

The immoral tradition of giving women as offerings has been practiced for a long time with various transformations to justify it. However, it is concerning that this practice still exists in our culture. Reasons for its persistence include some women being unaware of laws meant to protect them, some choosing to remain ignorant due to a lack of alternatives, and young girls being innocent and unaware of the situation when given as offerings to temples. In Indian culture, there has been a historical pattern of oppressing women, leading many to become accustomed to this way of life, including both women and men. The dominance of males over females is deeply ingrained and widely accepted. This acceptance of mistreatment and inequality towards women has sadly been normalized within Indian society, becoming a defining aspect of the culture and how outsider view Indian women.

During the medieval era in India, the status of Indian women declined as child marriages and restrictions on widows' remarriage became common in certain communities. Muslim influence brought Purdah to Indian society, while Rajputs in Rajasthan practiced Jauhar. Devadasis were subjected to sexual exploitation in some regions, and polygamy was utilized by Hindu Kshatriya rulers for political purposes. Additionally, in many Muslim households, women were confined to Zenana quarters within the house.

In a Hindu household, a young girl was brought up to honor her family members, particularly the elders, since childhood. She was expected to show reverence to her husband as she would to a deity and adhere to his directives. She was encouraged to uphold her duties as a devoted wife and maintain a virtuous lifestyle.³⁶

Devadasi, commonly misinterpreted as a religious custom, involved women in southern India being ceremonially committed to a deity or temple. This tradition dates back to the 10th century A.D. and was officially banned in 1988. Purdah, observed primarily by Muslim women, was initially less strict, but stricter veiling practices became common with the arrival of Turks in India. Hindu women also embraced these measures to safeguard their dignity from foreign invaders.³⁷

Purdah is a custom observed in certain Muslim societies where women are required to cover themselves in the presence of men as a sign of modesty. In Hindu culture during the Mughal period, the death of a woman's husband was considered a significant tragedy, and unlike Muslim widows, Hindu widows were generally not allowed to remarry except in some lower social classes. Jauhar is the act of self-immolation by wives and daughters of defeated warriors to avoid capture and potential harm by the enemy. This practice was notably followed by the wives of defeated Rajput rulers who valued honor highly, especially during the Islamic invasions in India. Sati, an outdated custom among certain

³⁵ R. Kalaivani, "Devdasi System in India and Its Legal Initiative- An Analysis," ISOR journals of Humanities and social Sciences, Volume 20, issue 2, Version 2, e-ISSN: 2279-0837, p-ISSN:2279-0845 at https://www.academia.edu/27361965/Devadasi_System_in_India_and_Its_Legal_Initiatives_An_Analysis last accessed on 20, December, 2024.

³⁶ Rekha Misra, Women in Mughal India, Delhi Law house, Second Edition, P.133.

³⁷ Jiapalan., Women and !nman Rights, Central Law Agency, First Edition, P. 21-22.

communities, involved a widow being cremated alive on her husband's funeral pyre, though this act, discouraged by Hindu scriptures, is now largely extinct.

The act of willingly participating in sati was an ancient tradition, but over time, the focus shifted towards pressuring a widow to commit sati even if she did not want to. This practice was primarily carried out by women from the Brahmin, Kshatriya, and Baniya communities, and certain Mughal emperors attempted to outlaw it. Jahangir and Akbar are known to have forbidden sati, requiring the King's permission for it to take place, particularly for young widows. In 1633 AD, Aurangzeb officially ended the practice of sati with a royal decree.

SEXUAL OFFENCES AGAINST WOMEN DURING BRITISH PERIOD

The tradition of sati, where a woman would die alongside her husband, started as a voluntary practice in ancient times. Over the years, the focus shifted to pressure women into committing sati even if they didn't wish to. This act was mainly carried out by women from Brahmin, Kshatriya, and Baniya communities, with attempts from some Mughal emperors like Jahangir to abolish it. By the time the British rule began in India, women were in a disadvantaged position, with practices like child marriages, sati, strict purdah for Muslim women, and low female literacy rates.³⁸ In the 1920s, there was a disagreement within the Brahmin community in Mysore regarding the treatment of girls after reaching puberty. In India, women have historically been placed in subordinate roles compared to men. Practices like child marriage, sati, infanticide of baby girls to avoid dowry, restricting female education and remarriage of widows, polygamy, slavery, Purdah system, and dowry system all contributed to women's dependence on men. Thanks to the efforts of reformers like Raja Ram Mohan Roy and Ishwarachandra Vidyasagar, many of these harmful practices were eventually abolished by the end of the century.³⁹

SEXUAL OFFENCES IN MODERN INDIA

Around 35% of women globally have faced physical or sexual intimate partner violence or non-partner sexual violence, as stated in a 2013 review conducted by UN Women. According to the UN report, some national studies indicate that as many as 70% of women have encountered physical or sexual violence from an intimate partner during their lifetime. Recent data from the National Crime Records Bureau reveals that instances of sexual offenses against women have more than doubled in the past decade. An India spend analysis based on the data from the last ten years shows that 2.24 million crimes against women were reported, with 26 crimes against women reported every hour, or one complaint every two minutes. The term 'crime against women' encompasses physical or mental cruelty towards women, whether directly or indirectly, with crimes specifically targeting and victimizing women being classified as such.⁴⁰

- A. Acid Attack (Sections 326A and 326B)
- B. Rape (Sections 375, 376, 376A, 376B, 376C, 376D and 376E)
- C. Attempt to commit rape (Section 376/511)
- D. Marital Rape (Exception 2 of Section 375)

³⁸ T.S. Devadas., Indian women through the ages. In Encyclopaedia of women in India, Fourth Edition P. 43.

³⁹ V.K.Dewan, Law relating to offences against women, Central Law Publications, Second Edition. P.3

⁴⁰ Source: National crime Records Bureau.2014

- E. Kidnapping and abduction for different purposes- trafficking and prostitution (Sections 363–373)
- F. Murder, Dowry death, Abetment of Suicide, etc. (Sections 302, 304B and 306)
- G. Cruelty by husband or his relatives (Section 498A)
- H. Outraging the modesty of women (Section 354)
- I. Sexual harassment (Section 354A)
- J. Assault on women with intent to disrobe a woman (Section 354B)
- K. Voyeurism (Section 354C)
- L. Stalking (Section 354D)
- M. Importation of girls upto 21 years of age (Section 366B)
- N. Word, gesture or act intended to insult the modesty of a woman (Section 509)
- O. Honour Killing

The most common crime against women in India is cruelty by spouses and family members, which is punishable by section 498-A of the Indian Penal Code. Over the past ten years, 909, 713 cases or ten every hour have been registered. Husband and Family Members' Cruelty (Section 498-A IPC). Section 354 IPC deals with assault on women with the intent to outrage her modesty; Sections 363, 364, 364A, and 366 IPC deal with kidnapping and abduction of women; Section 376 IPC deals with rape; Section 509 IPC deals with insulting the modesty of women; and Section 304-B IPC deals with dowry deaths. The second-most often reported offense against women in the past ten years is assault with intent to offend a woman's modesty (470, 556), which was formerly classed as molestation under section 354 of the Indian Penal Code.

The most often reported crimes are rape (243,051), insults to women's modesty (104,151), and dowry deaths (80,833). The third most common crime is kidnapping and abduction of women (315,074). Over the past ten years, more than 66,000 incidents under the Dowry Prohibition Act, 1961, have been recorded. Every hour, 10 cases of abuse by spouses and family members are recorded nationwide. These are followed by incidents of assault on women intended to insult their modesty, kidnapping and abduction, and rape, according to statistics from the National Crime Bureau of India.

NCRB in 2014 introduced three new categories for reporting crimes against women. These categories are attempted rape (4,234 cases), abetment of suicide of women (3,734 cases under section 306 IPC), and protection of women from domestic violence (426 cases). A study in New Delhi in 2010 revealed that 66% of women had faced sexual harassment two to five times in the previous year.

CONSTITUTIONAL PROTECTION AND RIGHTS OF WOMEN

The Preamble of the Indian Constitution includes principles of gender equality, Fundamental Rights, Fundamental Duties, and Directive Principles. It contains special provisions for the empowerment and advancement of women in all aspects of life, without any discrimination based on gender. The constitution framers were well aware of the long history of unfair treatment towards women. In India, the oppression of women has been prevalent for a significant period, leading to the incorporation of both general and specific measures to improve and enhance the position of women. They ensured that women were granted equal status and opportunities in various parts of the constitution, treating them as equal citizens of India alongside men.

Justice K. Ramaswaray in *Madhu Keshav v. State of Bihar*⁴¹ was of the view that women have historically faced discrimination compared to men, enduring denial and ongoing discrimination silently. Despite displaying self-sacrifice and fortitude, they have been unfairly treated with various inequalities, indignities, inconsistencies, and discrimination.

The Constitution of India's original draft did not sufficiently address the issue of gender justice. While it prohibits discrimination based on sex⁴², it overlooks discrimination related to gender. Granting women specific rights as a recognition of their reproductive role is seen as a duty rather than charity. Even though Article 15(3) allows for special provisions for women, this is considered a protective approach rather than a way to promote equality.

Despite the Indian Constitution granting women equality in status and opportunity, discrimination continues in various forms. The above stated reason for the societal discrimination against women is often attributed to their lack of awareness regarding their rights and the equality guaranteed to them by the Indian Constitution and legal framework.

PROVISION RELATING TO WOMEN IN DIRECTIVE PRINCIPLES OF STATE POLICY

Fundamental rights and Directive Principles of State policy serve as the moral compass of our Constitution. While fundamental rights uphold the individual's freedoms and liberties, Directive Principles address societal needs and aim to protect the welfare of the general public. Although not enforceable by courts, Directive Principles carry significant importance in shaping government policies and actions for the betterment of the country. It is the responsibility of both the Union and State Government to work towards achieving the goals set out in the Directive Principles.

Article 44 of the Directive Principles in India enforces the need for a Uniform Civil Code by stating that the State should strive to ensure a uniform civil code for all citizens across India. Despite this provision, women in India still face inequalities and injustices. In the *Sarla Mudgal v. Union of India*⁴³ case, the Supreme Court directed the central government to reconsider Article 44, emphasizing that it is a clear directive in the Constitution aimed at establishing a uniform personal law for national unity.

Pandit Nehru, in 1954 during the introduction of the Hindu Code Bill, expressed reluctance to implement the Uniform Civil Code in India, stating that the timing was not right. It is regrettable that after 66 years, the government still has not taken steps to revive Article 44, which has been inactive since 1949, despite the majority of citizens being already governed by codified personal laws. There is no valid reason to further delay the implementation of a Uniform Civil Code that applies to all citizens in India.

It is regrettable that the government has not taken steps to implement a Uniform Civil Code in India. The Judiciary acknowledges the importance of uniformly applying civil laws related to adoption, marriage, succession, and maintenance. True gender equality cannot be attained without a Uniform Civil Code that combines the best provisions from various religious laws.

WOMEN'S RIGHT AS HUMAN RIGHTS

⁴¹ (1966) 5 SCC. 148

⁴² Art. 15 and 16 constitution of India

⁴³ (1995) 3 SCC 635

Former Prime Minister, the late Smt. Indira Gandhi, stated that women in our country have more rights compared to women in other nations, but there are still areas where women are suffering and may not be fully aware of their rights. The rights of both women and men have been acknowledged in various human rights instruments since the formation of the United Nations. The UN charter itself expresses belief in fundamental human rights.

The Universal Declaration of Human Rights- The preamble of the United Nations Charter (1945) emphasizes a belief in basic human rights, the value of each person, and the equal rights of all individuals and nations. The Charter aims to foster global cooperation in promoting and upholding human rights and freedoms for everyone, regardless of race, gender, language, or religion (Article 1 (3)).

Article 2 of the declaration affirms that every individual has the right to all the rights and freedoms outlined in the declaration, regardless of factors like race, color, gender, language, religion, political views, national or social background, wealth, or any other status. Discrimination based on a person's political affiliation or the international status of their country or territory is strictly prohibited.

Article 16 of the declaration asserts that all adult individuals, regardless of race, nationality, or religion, have the freedom to marry and establish a family. They should receive equal rights before, during, and after marriage. Marriages must be based on the voluntary consent of both parties. The family is recognized as the basic societal unit and should be safeguarded by both society and the state.

According to the Human Rights Declaration, both women and men have the right to civil and political rights as the terms "no one" and "everyone" include both genders.

The United Nations Convention on the Elimination of Discrimination Against women 1967-

The United Nations General Assembly approved the convention on November 7, 1967. Article 10 of the convention states that steps should be taken to grant women, whether married or unmarried, equal rights as men in economic and social aspects. It aims to avoid discrimination based on marriage or motherhood and guarantee women's right to work, including protection against dismissal due to marriage or maternity, provision of paid maternity leave, and ensuring their return to their previous job. However, actions to safeguard women in specific jobs due to physical reasons will be seen as discriminatory.

The United Nations convention for the elimination of all forms of discrimination against women (CEDAW) Vienna declaration-

Article 11 of the convention mandates state parties to take necessary actions to eradicate gender discrimination in employment to uphold gender equality rights. India, as a signatory of the CEDAW in 1979, officially accepted and ratified it in June 1993. When domestic laws conflict with international conventions, domestic courts are obliged to consider and align with the latter.

CONCLUSION

India is quickly becoming a global force in the modern world, yet a significant portion of its population, women throughout the nation still face ongoing challenges in living with respect. Women, regardless of their social class, caste, or level of education, do not feel secure in today's society. For a

long time, women have been subjected to various forms of exploitation in different aspects of their lives, including physical, social, mental, and economic aspects.

The Indian modern society often brings attention to various reasons for sexual and moral abuse, some of which are well-known while others are yet to be fully recognized. These forms of violence against women, such as rape, trafficking for sexual purposes, harassment, abduction, dowry-related crimes, molestation, and eve-teasing, have a long history in ancient India. Women are subjected to crimes that target them specifically, leading to their exploitation at workplaces and mistreatment within both family and society.

The evolution of feminist writing and gender discourse throughout history, especially in India, demonstrates how little has been studied about women's status throughout history and how little has been touched upon in women's history studies. Examining how men saw themselves was another facet of women's history. Researcher has correctly criticized the histories that are now accessible, which only honor women's involvement in public life and value studies that clarify how gender ideology is upheld and perpetuated. Nonetheless, new research is necessary to fully comprehend human history from a scientific standpoint, taking into account how women's position has changed over time in a particular community and the extent to which the legal system and legislature have contributed to women's access to justice who have been victims.

Additionally, it might be argued that modern legislation should only take into consideration the social reality of the present day and should not take into account any historical practice, no matter how progressive or regressive. This argument has a lot of truth, but criminal law evolves through amendments, thus there is a natural flow from the outdated to the updated interpretation of each offense. It is also worth investigating and exposing the alternative trends of ancient Indian culture, if only to demonstrate that "culture" is fluid and multifaceted at all times and that this fluidity should be taken into consideration when creating laws and passing social judgements. Furthermore, a significant portion of Indian society frequently justifies retrogressive provisions in the law on the grounds of the pervasive "Indian culture". The focus is on social judgments since, at least in principle, laws are not designed with consideration for old Indian custom; rather, the application of each law is heavily reliant on social perception, which is nevertheless shaped by notions of what is traditional.

In order to explain, the abstract concept of laws alone wouldn't be useful if a man reporting a rape wasn't taken seriously by a significant portion of society or if a woman facing judgment for losing her virginity decided to keep evidence of her exploitation private instead of seeking legal recourse. These social biases, often rooted in traditional beliefs, should be viewed through a more nuanced understanding of tradition to better comprehend and address contemporary society. Questioning the oversimplified perception of 'Indian tradition' that focuses solely on certain normative texts while disregarding others is crucial for this nuanced approach.

Our laws, which often reflect Victorian Puritanism, are sustained both legally and socially in part due to this incomplete comprehension. Until we address this issue with a more sophisticated understanding of both our traditional and modern social dynamics, the cycle will persist where "heroes" continue to shield the virtue of their female counterparts on screen by engaging in violent confrontations, numerous cases like Nirbhaya's will go unreported and unpunished, and many innocent relationships will tragically end in "honour killings". Even though protests may flicker like candle lights, the influence of figures like Manus and Macaulays will continue to persist if not eradicated.