

## INSUFFICIENT JUSTICE TO WOMEN : A RESULT OF THE AGE OLD PATRIARCHY?

“ *At the stroke of the midnight hour, when the whole world sleeps, India will awake to life and freedom.*”(1) – Pt. Jawaharlal Nehru.

As we touch the 73<sup>rd</sup> year of Indian independence, the injustice against women only seems to increase. The question arises as to who is actually accountable for the pain of every other woman who is raped, assaulted, sodomized or burned to death every 21 minutes, regardless of her age, caste or creed. Today, India, ironically symbolized as mother India, stands to be one of the most insecure countries for women. In spite of that, the punishments for outraging the modesty of women do not include chemical castration, bobbitization or death sentence.

Through this article, I have aimed to shed light on the fact that the government of our country has faltered in providing adequate justice to women whose lives have been destroyed. I have tried linking the shortcomings of our government with the age-old patriarchal system. I have laid emphasis on the fact that every government officer is just as responsible for the pain of an Indian woman as is a stalker, rapist or any other man who tries to outrage her modesty, as they all are the products of our impaired society and its principles and hence, share the same patriarchal ideology.

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### **THE SOCIAL POSITION OF WOMEN IN ANCIENT INDIA**

To understand the flaws in any system, one needs to understand the origin and causes of it, thus, in this limb of the article, I have tried to draw the reader's attention to the social positioning of women in ancient India in order to understand the origin of rape culture in India. In a culture where the *Devadasi system*, the *Sati Pratha* have been so prevalent, I think it is but natural for a condition like this to arise. Since time immemorial, women in India have been looked upon as second grade citizens, regardless of what the constitution of our country provides. The ancient Indian system appears to be flawed when it comes to building an egalitarian society. This sense of inequality has been passed on to us by our ancestors and has, as result, become deeply rooted in our minds.

## THE GRADUAL TRANSITION IN THE STATUS OF INDIAN WOMEN

The economy of a country serves as its underpin. Monetary possessions determine the power of an individual. Even in ancient India, economy played a major role and determined the social positioning of women.

Indian history can be divided into three fragments, namely- Early, Medieval and Modern. Each limb has witnessed different roles and statuses of women. The plight of the Indian females was a result of nothing but the invasions of different communities, which through their respective ideologies and cultures attacked our golden, egalitarian society.

In the primitive Indian society, the condition of Indian women was much better than other primitive cultures or communities across the globe. Rather, it was beyond what we could have expected or imagined.<sup>1</sup> Women played a crucial role in the society as mothers. They were not only in charge of the household chores but they also participated in the agricultural work along with men. Their participation in both agricultural and domestic work, was viewed as a major contribution to the economic production of the society. Thus, they were highly respected by all. They were indeed equal to men and walked shoulder to shoulder with them, be it contributing to the economy or attaining education. Such was the egalitarian Indian society.

However, the advent of the Aryans can be considered as the beginning of the end of freedom enjoyed by women. The Aryans brought with them, the idea of a patriarchal society. Although women were still enjoying their rights as before, but this idea of male dominance was somewhere planted in the minds of people, which turned into a bigger evil afterwards.

The Aryan society also advocated a simple division of labour between the two sexes, whereby, women were given the domestic responsibilities whereas men found them in-charge of hunting and food gathering. Through such division of labour, women still enjoyed authority over an important sphere of the economy and thus, did not lose their importance completely. Equal education was given to both males and females ( Upanayana and Bramhacharya )<sup>2</sup>. Sarvanukrantika, an ancient scripture, suggests that out of the authors of Rig-Veda (

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<sup>1</sup>Jaiswal, S. (1981). WOMEN IN EARLY INDIA : PROBLEMS AND PERSPECTIVES. *Proceedings of the Indian History Congress*, 42, 54-60.

<sup>2</sup>Tharakan, S., &Tharakan, M. (1975). Status of Women in India: A Historical Perspective. *Social Scientist*, 4(4/5), 115-123.

India's oldest religious scripture) twenty were women. This depicts that women could attain formal education and scholastic training.

Nonetheless, such liberty and freedom could not last longer and it was snatched from the women through the introduction of the caste system. The birth of this evil system blew the conch shell of the superiority of men over women. By 1000 BC, several advancements had started taking place in agriculture. Plough was invented. This invention eliminated the significance of women as productive participants in the economy. This transition in the division of labour put men in a favourable position as all the significant developments now took place under their sphere. With this new advancement, man assumed the ownership of the economic means of production. As a result, the females could only share the wealth of males and thus, did not have any control over it. This was the first instance of dependency of women.

Secondly, the Varna system introduced lower castes and hence, slavery came into existence. All the lowly activities were now performed by these slaves. The agricultural tasks which could have been given to women were now a responsibility of the lower classes. This practice confined women to their households.

Thirdly, polygamy was introduced. A man brought female slaves, concubines and other wives despite the existence of his first wife. This resulted in distribution of authority of a single woman and the power that she formerly enjoyed over the domestic activities was now dissipated.

The situation worsened when the women were deprived of their right to education. The people were of the view that the age of marriage of the girls shall be reduced. This ended possibilities for girls' education. Ancient scriptures such as the Yajnavalkya Smriti states that a girl should be married before puberty otherwise the guardians were to be held guilty of the destruction of embryo every month. In addition to that, the Manusmriti states –“ In childhood, a woman must be subject to her father, in youth to her husband and when her Lord is dead, to her sons. A woman must never be independent.” Such ideology was threatening for the widows. Although the Sati system, wherein a woman sacrificed herself by sitting atop her deceased husband's funeral pyre, was absent but by the 8<sup>th</sup> century, this custom was heavily practiced as due to the death of their husbands and abolition of widow remarriage, the widows were only considered as a burden on the society.

Worse came to worse when the Muslims invaded the country in the 11<sup>th</sup> century. The Koranic interpretations deprived women of their liberty and this corresponded to the prevalent conditions in India. The Muslims introduced the purdah system (seclusion of women), polygamy and unilateral right of divorce for men. On the top of it, they completely debarred women from the religious and legal affairs.

In the early 19<sup>th</sup> century, the British liberal reformism did uproot some evils from the Indian society but they could not change the mindset of Indians. And this is something that our society witnesses even today. More than a legislative alteration, our country needs a psychological transition.

### THE AGONY OF THE PROSTITUTES (GANIKAS)

“*Rajajnyapurusanabhigacchantiganikasiphasahasramlabheta; pancasahasramvadaudah*” – Kautilya.

The above verse translates to mean that if a prostitute refuses to cohabit with a man, despite the orders of the King, she shall receive a thousand lashes with a whip; or pay a fine of 5000 panas (unit of money).<sup>3</sup>

Well, it would not be wrong to say that the objectification of women has its roots in the ancient Indian civilization. The mention of prostitution can be found in *Rig Veda*, India's earliest scripture. The causes of prostitution were varied but the root cause of this practice was again, the economic dependence of women. India was an agricultural society, wherein the woman had no social mobility. She had to depend upon a male guardian who would look after her needs and thus, she *belonged* to a man, be it her father, brother or husband.<sup>4</sup> Thus, the objectification of women was inevitable. The women who did not have security on the economic front, that is, they did not have a male guardian, had to yield to prostitution. Some texts have also mentioned that a girl who was raped by a man, was socially ostracized as she was not considered eligible to get married and thus, had to yield to prostitution. Another channel through which women entered this profession was them being given away to priests, guests or Brahmins as gifts on special

<sup>3</sup>.Singh, U. (2007).IMMORAL TRAFFICKING OF GIRLS AND WOMEN IN ANCIENT INDIA. *Proceedings of the Indian History Congress*, 68, 162-178.

<sup>4</sup>Bhattacharji, S. (1987).Prostitution in Ancient India. *Social Scientist*, 15(2), 32-61.

religious or secular occasions. In fact, the social status of women was degraded to such alarming levels that they were exchanged in form of *daksinas* (sacrificial fees to officiating priests).

The prostitutes did not have any personal liberty. Their body did not belong to them but the king of that particular territory. If a king ordered a prostitute to serve a man, she had to do so. Failing the orders of the king, she had to face strict penal provisions.

The ancient texts also relate that the prostitutes were treated with contempt. They were ostracized from the society and considered impure. The food offered by them was not to be eaten. In fact, if any person had a sexual intercourse with a prostitute, he had to undergo a purification ceremony.

These women were given away as gifts to Brahmins, along with items like cattle, chariots etc. These women became a charitable commodity. The Brahmins and their relatives used to enjoy these girls sexually and then subsequently sell them off as slaves. The women also used to come with victories as booty for serving the king and other government officials. Post their servitude to the king, they found themselves in the city's brothels.<sup>5</sup>

All these instances fairly point out to the fact that objectification of women has its roots in the ancient Indian history. This ideology that a woman belongs to her husband or male guardians is minacious. The girls of our country are raped every day because the men still believe that they are not human beings but merely objects that are a source of pleasure to them. And this is the reason why even a small working boy's mother is raped thousand times a day by one and all, for every one verbally abuses him, be it the owner, his co-worker or a customer. A rickshaw puller's daughter/sister is raped hundred times a day using foul language against him by bikers, drivers passengers and others even for none of the faults of the poor. We are a culture of sexual slurs, of abuse and rape, of bad language against women, so much so, that even physical attacks on women do not seem to be shameful at all.<sup>6</sup> The children witness these activities every day and grow up to eventually become rapists. And then, as a society, we react to these incidents in the

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<sup>5</sup>Singh, U. (2007). IMMORAL TRAFFICKING OF GIRLS AND WOMEN IN ANCIENT INDIA. *Proceedings of the Indian History Congress*, 68, 162-178.

<sup>6</sup>Shah, A. (2013). The Culture of Rape: Understanding Delhi Rape Horror and Underlying Perspectives. *The Tibet Journal*, 38(1-2), 43-53.

ugliest of ways, either by assassinating the character of the victim or blaming her for not dressing appropriately.

It would not be wrong to say that we are a rape culture. The person who commits this heinous crime, the policeman who records the accounts of the incident and the judge who sentences the rapist, are all the products of this malfunctioned society. They consist of men who have been feeding off the patriarchal system. If the patriarchal system was not in existence, incidents like the Nirbhaya rape horror would have never occurred.

### **INFLUENCE OF PATRIARCHY ON THE WORKING OF THE GOVERNMENT**

In a country where men think that it is their birthright to demean a woman, where a daughter-in-law is treated like a maid but a son-in-law is treated like a king, where daughters are seen as a burden on their families but sons, as assets, it is but natural for offences like these to occur.

Our country was not even aware of the concept of women empowerment or equality between men and women until the constitution was drafted. The very preamble of our constitution looks upon every citizen of our country as one. Unfortunately, this concept of egalitarianism is alien to our country.

We often accuse the common citizens of our country for rapes, sexual assaults and all other heinous crimes. But this accusation and blaming is of no use when those in power are themselves guilty of such offences. And why wouldn't the government officials commit these crimes? After all, they have grown up in the same society as the other men have. All their lives, they have witnessed their mothers listening to the rants of their fathers, being called jobless even after working all day, their sisters being confined to their houses. All in all, we have made the men realize that they are in a better position than women and they have more liberty than women. And in the circumstances where they cannot bear working under a woman or having to follow her orders, they either molest their wives or rape a girl belonging to a lower social class<sup>7</sup> just reaffirm their male self-image which has been encouraged and internalized since their childhood.

It shan't be alarming to realize that a lot of these men include policemen, soldiers and other government officials because the society has actually given them the power to do so, firstly, by

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<sup>7</sup>Cover-Up. (1994). *Economic and Political Weekly*, 29(27), 1622-1622.

showering the benefits of the patriarchal system on them and secondly, by not designing adequate laws to punish these offenders. In 2004, in Manipur, a 32-year old lady named Manorama was taken away from home by the soldiers of Assam who accused her of helping insurgents. A few hours later, her mutilated body was found on the roadside, her pelvis riddled with bullets. In 2012, a 14-year old Sonam was raped and killed inside a police station in Uttar Pradesh. In 1972, in Mathura, a 16 year old tribal girl by two policemen inside the police station and the rapists were never convicted because the courts said that the girl never raised an alarm, she was not injured and as she was sexually active, she would have voluntarily consented to the rape. On January 5, 1986, Guntaben, a 22-year old tribal woman was assaulted in a police truck and again assaulted in the police station where she was kept for two days<sup>8</sup>. On her release, she tried to file a complaint but no one ever lodged the complaint. In fact, she was forced to produce a false affidavit, denying any offence committed against her. The Prem Chand's case where a girl who had attempted to flee with her boyfriend was kept in custody and whilst that, she was raped by two policemen. The response of the judiciary was even more shocking than the incident itself. The apex court reduced the 10 years' imprisonment to 5 years' on the grounds that the girl was of a loose character<sup>9</sup> as she had tried to flee with her boyfriend.

The one thing that remains common in all these cases of custodial rape is that the girls who were raped were either financially weak or belonged to a tribal area or the scheduled caste. Thus, it can be said that it was nothing but an attempt by men to reaffirm that we live in a patriarchal system and no matter what women achieve, they will always be inferior to men. And our 'remarkable' judicial system, instead of putting an end to such ideology, encouraged it on unreasonable grounds. Sometimes, the courts would reduce the punishments, sometimes they would let off the accused on the argument that he, belonging to the upper caste could not rape a woman of the lower caste or the woman was of a loose character. It is quite unfortunate that a man is actually accused of rape and still his character is not questioned whilst a woman, who is rather a victim of rape is blamed on the assumption that she might have had a loose character. What kind of society is this? Women fight millions of such battles every day where their character is questioned even when they are innocent. And worse comes to worse, when the doors

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<sup>8</sup>Government Indifference. (1988). *Economic and Political Weekly*, 23(1/2), 5-7.

<sup>9</sup>Bag, R. (1997). DOMESTIC VIOLENCE AND CRIME AGAINST WOMEN : CRIMINAL JUSTICE RESPONSE IN INDIA. *Journal of the Indian Law Institute*, 39(2/4), 359-375.

of justice are not open for them. There might be millions of ArunaShanbaugs and Nirbhayas who could never get justice as they might have been silenced because of their dignity or the system would not consider their cases. Our country records the highest number of rape cases every year yet it is quite unfortunate that women who are put through this pain are never empathized with, rather they are ostracized from the society.

It is quite difficult to be able to solve the problem in a society which treats its women as “second-grade citizens” and regards them as inferior to men until the social attitudes change and women are respected and treated as equals. As sir Rabindranath Tagore quoted,

*“Where the clear stream of reason has not lost its way*

*Into the dreary desert sand of dead habit*

*Where the mind is led forward by thee*

*Into ever-widening thought and action*

*Into that heaven of freedom, my Father, let my country awake.”*

If the legislature of our country includes stricter punishments for crimes against women, success wouldn't be too far. Fear of getting chemically castrated or bobbitized will certainly stop men from committing such heinous crimes. An alteration in law is imperative to assure safety of women in a country like ours. And, the laws can never be altered until there is a change in the thinking of the law-makers.