
FROM IGNORANCE TO EMPOWERMENT: LEGAL LITERACY HOLDS THE KEY

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Seven years have elapsed since the adoption of the *Millennium Declaration*. India, too, has pledged to meet these goals by 2015. Our paper questions whether these goals, especially Millennium Development Goals 2 & 3, relating to universal primary education, and gender equality and empowerment of women, can be achieved without the elimination of all forms of violence against women and girls.

Gender based violence is a significant barrier to achieving MDGs 2 & 3 in India. It is unfortunate that the elimination of violence against women, especially the girl child, is missing as an MDG. We believe the MDGs are not comprehensive enough. It has been left to the governments of Asian countries to expressly address gender issues at their own initiative, and this is harming the overall achievement of the MDGs.

Lack of security for the girl child is one of the main challenges to achieving universal primary education in India. The living conditions in India's villages, i.e. the lack of roads and electricity, the shortage of class rooms and female teachers, the inability to pay any school fees whatsoever or provide a proper dress for the girl child in which she can attend school, the lawlessness, especially abduction,¹ trafficking and rape, all these problems are responsible for the low enrolment in primary schools. Later other factors kick in, for example, social norms, according to which water is drawn and firewood collected only by females, and parents arrange child marriages, resulting in a high dropout rate for girls.

By the time they reach puberty, most rural girls are engaged or married because parents fear the loss of their virginity through violence and want them off their hands as soon as possible. Before Independence in 1947, Mahatma Gandhi said, "India will not be free till the time it is safe for a woman to walk alone late at night..." In 2007, women are unsafe even in broad daylight and Delhi is the rape capital of the country: there is more than a rape a day in the city.²

The reason for this shocking state of affairs is that sexual crimes against women, and girls as young as three and four, go unreported and unpunished: According to court records, four out of five men accused of rape are acquitted.³ Countrywide there are about 56,343 cases pending in court, with many dragging on for more than ten years. Corruption, inordinate delay, exorbitant legal fees, and fear of scandal or reprisal are some of the reasons why women do not report a crime. They may not even recognize when a crime has been committed; understand when a conflict is a legal conflict; know their legal rights and responsibilities or how to use the legal system to get justice. For these reasons we believe legal literacy holds the key to bringing about a change in this situation.

However, legal literacy is a difficult goal to reach in India as it still has one of the lowest female literacy rates in Asia. Only about 40% of women in India are literate while the percentage for men is above 60%. Where literacy is high, as in the states of Kerala, Mizoram, Tamil Nadu or Punjab, women have challenged discriminatory laws and practices. With the help of grassroots NGOs, they have become agents for change despite only functional literacy. The biggest challenge before us is how to educate and help women from all strata to effectively use the legal system, imperfect as it may be.

Putting an end to gender-based discrimination in a country where religion and the prevailing culture, traditions and social attitudes sanction inequality is an enormously difficult task requiring very strong political commitment, enlightened governance, and the backing of the UN and other international institutions.⁴ First, the laws of the land must enshrine and protect gender equality, and I am happy to say that India appears to be ahead of all its neighbours in progressive legislation.

Gender based crime is increasing in rural as well as urban India because of:

- The erosion of traditional moral values.
- Increase in insensitivity towards violence in general and in the TV, media and film industry in particular.
- Prevalence of drug and alcohol abuse.
- Ignorance of women's rights.
- IT and the Internet and changing economic realities brought about by globalization.
- Widening gap between the rich and the poor, and the 'digital divide'.
- Caste wars and insurgency in some states.
- Increase in trafficking in women and girls because of India's porous borders with its neighbours: Nepal and Bangladesh.
- Violence against women in the form of foeticide and girl infanticide.⁵

Officials in India say that the phenomenon of sex-selection using modern technology has become uncontrollable because "it suits so many people including the wealthier and educated".⁶ The numerous instances of mass graves of female foetuses being discovered across the country point to the complicity of doctors, India's most highly respected professionals. What is dubbed as 'gender variety' or 'family balancing' in developed countries, such as the US – both euphemisms for the belief that families should have at least one child of each sex, is deep rooted in the Indian ethos as a preference for sons.

The issue is very complex because previously women would go on having babies until a male child was born. With the highest maternal mortality rate in the world, the cost of serial pregnancies to women is extreme. In situations of poverty, the birth of a son is viewed as an economic necessity for survival. Criminal practices, such as female infanticide or abandoning or selling the girl child, are reprehensible, but sometimes women resort to them when the only other option is unsafe abortion performed by quacks.

The bias against women can be traced back to ancient Hindu civilisation. Although some studies point to the equal status and rights which women enjoyed in the Vedic period (2500 B.C. to 1500 B.C.), patriarchy seems to have been the norm throughout the history of the Indian sub-continent. Other religions, like Buddhism, Jainism, Sikhism and Islam, have questioned some of the inequities preached in Hinduism, but the social reality is that today all religions practice inequity.

Sensitisation of society through every means available regarding gender equality and women's empowerment would help greatly in humanizing modern Indian society. The custom of *sati* was abolished in 1829, but it is practised in some states to this day. So much so that in July 2007, the Ministry for Women and Child Development proposed new amendments to the Commission of Sati (Prevention) Act, 1987, seeking to make the entire village or community, where a widow has burnt herself on her husband's funeral pyre, culpable for coercing or aiding and abetting. This became necessary because even today a woman who commits *sati* is venerated and a temple is built on the site commemorating her 'glorious' death, bringing renown to her (husband's) family.

Male family members of victimized women, whose support is often the most helpful for securing justice for women, need to be sensitised, but the change has to come within women themselves: They must never condone or perpetuate gender based violence. The women's cell in Tihar Jail in New Delhi, the largest jail in Asia, is overcrowded with mothers-in-law convicted of murdering their daughters-in-law.

Women's own denial of their exploitation makes positive transformation of the whole of Indian society difficult. In the most popular TV serials, the virtuous daughter-in-law is stereotyped as one who internalises conflict philosophically and bears the brunt for the entire family. One of the biggest producers of TV serials, also a woman, has achieved success by catering to widespread social sanction of *self-sacrifice* as the only means to domestic harmony. If you surf TV in the evening, the image most common to all the serials and film channels is that of the 'good woman' crying helplessly.

The principle of gender equality is enshrined in the Indian Constitution, in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles, and the Constitution not only grants equality to Indian women, but also empowers the State to adopt measures of positive discrimination in favour of women. However, in our experience we have found little understanding amongst men, and even women, who are the main beneficiaries, of the principle of 'positive discrimination' (underscoring recent legislation supporting women's rights).

To safeguard various constitutional rights of women, the Parliament has enacted women – specific legislations such as the following:

The Dowry Prohibition Act⁷ prohibits the practice of giving and taking dowry, however, Section 406 of the Indian Penal Code punishes the misappropriation of the *stridhan*, i.e. the jewellery and cash given to the bride at the time of her marriage by her parents and in-laws. If a woman dies within seven years of her marriage, her family has to inform the authorities, and if investigations point to an unnatural death, the same is presumed to be a 'dowry death' (Sec 304 B). Delhi alone accounted for 94 of the 492 deaths reported in 2005 (about 19 per cent), the highest for any metro city. ⁸

Under Sections 354 and 509, assault or criminal force 'with intent to outrage the modesty of a woman' is an offence, for which the offender may be jailed. Under Section 494, bigamy is an offence. Under Section 497, adultery is also an offence; however, there the National Commission for Women has advised that adultery be deemed a civil rather than a criminal offence.

Having sexual intercourse with a girl below 16 years, with or without her consent, and with a girl above 16, without her consent, constitutes rape under Section 375. Of course, the reality on the ground is that more than fifty per cent of brides in India are child brides, that is, below the age of 18. The courts have consequently ruled that if a complaint is lodged that

an underage girl has married of her own volition, without inducement or enticement, the 'runaway marriage' should not be rendered void or voidable⁹, even though she is below 16 years of age. Sadly, social legislations, such as the Child Marriage Restraint Act, 1929, and the relevant provisions of the Hindu Marriage Act, have failed to change the mindset of India's masses.

The Indian Penal Code, which was established, more than a century ago, on the basis of British Law, contained provisions according to which abortion was a crime, but in 1971 abortion was legalized,¹⁰ allowing termination of pregnancy under certain circumstances. In 1994, India not only banned the misuse of ultrasound and other medical techniques to determine the sex of the foetus and abort the female foetus but also condemned sex determination as a criminal offence.

The Equal Remuneration Act¹¹ ensures that employers do not discriminate based on gender in matters of wage fixing, transfers, training and promotion. It provides for equal wages for workers but in practice women prefer to accept a lower wage without complaint rather than lose a job opportunity. The Industrial Disputes Act¹² provides for dignified working conditions for women in the workplace. In the Vishakha¹³ judgment, the Supreme Court has ruled that an employer must provide a safe working environment for its women employees, as the fundamental right to life includes in itself the right to live with dignity. The Sexual Harassment of Women at their Workplace (Prevention) Bill¹⁴ has also been tabled before both houses of Parliament. It upholds the principle that the sexual harassment of a woman in the work place is a violation of her right to life.

With regard to personal laws, The Hindu Succession Act, by a recent amendment¹⁵, has provided equal status to the daughter and son in the Hindu Joint Family.

Although the Indian Constitution provides in Article 44 that it should be the endeavour of the State to secure for its citizens a Uniform Civil Code throughout the territory of India, even after Independence, the Indian Government has continued with the English legal system, giving special privilege to religious communities to follow their community's personal laws. Hindus and Christians have their separate personal laws and the same have been codified. However, Muslim personal laws have yet to be codified.

The most progressive law enacted since 1990 is the Protection of Women from Domestic Violence Act, 2005. The problem of domestic violence has been widely prevalent in India but until now, it had remained largely invisible in the public domain¹⁶.

All these Acts have been bold steps in the right direction under the civil laws of the country. However, the question remains: Are women reaping the full benefits of the progressive laws currently being framed by Indian legislatures? The answer is 'no', especially in rural areas, among ethnic minorities and disadvantaged castes, and among displaced people and migrants. Refugees and internally displaced women, and women in conflict affected areas, are still exposed to high levels of human rights violations, discrimination and injustice.

Our finding has been that in spite of new laws being framed to empower women, women's security within the home is undermined constantly by her relatives or neighbours, and winning the battle for equality is sabotaged constantly by her own denial of her exploitation. As a result of cultural, religious and social conditioning, women themselves lay down injunctions that sanction violence against them, for example the dictum taught by mothers and mothers-in-law

to young girls that a woman's only home is her married home. As such, legal literacy must also include changing both women and men's attitude to human rights and gender equality.

What can women do when the abusers are part of her family?

Like technologies, laws often outpace social and organizational change but have little effect until society catches up. However, delay means many lives, families and communities are destroyed. The State must step in to provide human security and support because we have seen from experience women of all ages tend to rely upon their very abusers for justice or for an end to their misery.

Who is responsible for their rehabilitation, treatment and return to normalcy? Presently, the same family system is responsible that has abused women in the first place. The state must step in to provide security and shelter to abused women. It was earlier believed that poverty prevented victims from speaking out and seeking redress but rising incomes have not helped women. It boils down to the values and mores of a society, and these have been codified by patriarchy since time immemorial in India.

Women who are graduates, economically privileged, and who now constitute 30 to 40 % of the well-trained, computer-literate workforce that is fuelling the runaway success of the IT, pharmaceutical and service sectors of the Indian economy, are the only sections of the female population that are reaping the benefits of progressive legislation protecting women's rights. The media panders to elite women, because they are consumers, but does not have the same enthusiasm for the principle of positive discrimination in support of the lower class or tribal or *dalit* or minority women, who are outside the cash economy.

The solution lies in educating children from an early age, giving data to present an accurate picture of the burden of inequity and injustice borne by women and girls in India as compared to other countries with a better record of human rights.

Some actions and recommendations we can use for transforming Indian society and empowering women are:

- Increased civil society (including media) understanding of rights abuses, e.g., violence against women and denying inheritance through legal literacy;
- Improved and expanded alternative dispute resolution (ADR) systems in place to serve the vulnerable;
- Increased awareness of legal aid programs;
- Justice system personnel more knowledgeable and sympathetic on key issues;
- NGOs should pressure national governments to implement international treaties;
- Courts computerized and case tracking systems in place;
- Urge leaders of different religious communities, including 'god men' who are very powerful in India about the need for greater peace, security and equity;
- Stem the breakdown of moral values owing to materialism, greed, commercialisation, and the purveying of violence by the media and Bollywood;
- Reinforce girls' educational skills to empower them to become more self reliant and thus less vulnerable to conditions of poverty.

The huge backlog of cases pending in Indian courts has awakened the government to the need for conciliation, mediation, out of court settlements, etc, in family matters, for ensuring speedier justice. Ironically, women NGOs and grassroots workers are veering round to the view that fighting the system can be dangerous for many women in the present scenario of urban chaos

and rural exploitation. We too believe that women's security today must begin with finding solutions within the extended family and community. Legal action as the first option is untenable.

This paper concludes that the most important challenge to gender equality and women's empowerment in India is violence against women, and legal literacy and legal activism is the most promising intervention to guide future actions until 2015. As the September 2005 World Summit collectively affirmed: "progress for women is progress for all."

¹ National Crime Records Bureau (NCRB) reported 900 cases of abduction in Delhi alone, 2005

² 562 cases as reported by NCRB in 2005.

³ To offset the balance so heavily tilted against the victim, in a recent judgement, the Supreme Court convicted a rape accused solely on her testimony, no medical proof of sexual assault being found.

⁴ With instruments such as the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979), and its optional protocol (1999); the Beijing Declaration and Platform for Action (1995); the Convention on the Rights of the Child (1989), and its optional protocols (2000); and the

Universal Declaration of Human Rights (1948) pledging to create a world where there is an equality of status and this ultimately checks gender based violence.

⁵ India has not only banned the misuse of ultrasound and other medical techniques but also condemned sex determination as a criminal offence (The Pre-Conception & Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994).

⁶ The richest states, Haryana and Punjab, have the lowest child sex ratio. In the Hoshiarpur district of Punjab, despite a literacy rate of 81.4 percent, it stands at 810 females per 1,000 males, according to the last census.

⁷ Dowry Prohibition Act, 1961.

⁸ As reported by National Crime Records Bureau (NCRB) in 2005.

⁹ Manish Singh v. State Govt of NCT[DB](07/12/2005), 2006(126) DLT 28.

¹⁰ The Medical Termination of Pregnancy Act, 1971.

¹¹ Equal Remuneration Act, 1976.

¹² Industrial Disputes Act, 1947.

¹³ "Vishakha Versus The State of Rajasthan". 1997 A.I.R. (S.C) 3011.

¹⁴ The Sexual Harassment of Women at Work Place. (Prevention, Prohibition and Redressal) Bill, 2006.

¹⁵ Hindu Succession (Amendment) Act, 2005.

¹⁶ As stated in statement of objects and reasons of the Act.