CHAPTER 5

FRAUD ON FAIR SEX, EMANCIPATION OF WOMEN & ROLE OF CIVIL SOCIETIES

The Hindu religion considers sons essential in the family, because, sons alone could offer oblations to the departed ancestors and save them from suffering the spell of hell in “put’ or ‘pung’. The concept is the abstraction of the belief that men are superior to women1.

In Islam, wives are needed only to legitimize the progeny of children according to *Hedaya* “Marriage (Nikah) implies a particular contract used for the purpose of legalizing generation”2.

In ancient India, marriage was considered as the central purpose of woman’s life.

Marriage policies and a deep mistrust of female sexuality, especially among the Brahmins, resulted in pre-puberty marriages, ban on widow remarriage, polygamy and a benign neglect of female children who were considered economic liabilities, were some of the conspicuous features. Hinduism emphasized on the dual nature of women; “benevolent wives, dangerous mothers”3.

“Equality before the law and equal protection of law” and prohibition of discrimination on the ground of sex is guaranteed by

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1 Maynes, Hindu Law and Usages. 15th Edition p. 100
2 *Hedaya* (Hamilton’s Translated) Edn 11, p. 25
3 Amit Sarkar, social justice, Rhetoric and Reality p 63.
the constitution in independent India. However, these provisions by themselves can hardly be expected to be the assurance for the desired social change and women in India suffer disabilities in many spheres and continue to be the victims of exploitation. Pawning in wives and daughter continues to exist.

Prostitution is not the world's oldest profession, as is commonly said, although it is probably one of the world's oldest forms of men's violence against women and girls. Men's sexual exploitation of women and children is ancient and defended as a part of men's nature. Thus abuse and exploitation of women and girls has resulted from structural inequality between sexes. Prostitution has transformed women and girls the commodities of markets.

The 'Devdasi' system or the practice of attaching dancing girls to temples is of obscure antiquity. 'Devdasis' literally means God's (Dev) female servant (Dasi), where according to the ancient Indian practice young pre-pubertorial girls are 'married off to Lord or local religious deity of the temple before they attain puberty. She serves or rather sexually satisfies the priests and inmates of the temple, the zamindar (local lords) and other men of money and power, in the village or town, for her service to them is considered akin to God. There are more than 45,000 Devdasis trapped in this form of prostitution glorified by the heinous religious sanctions. The girls are enslaved here in the name of tradition and godliness.

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4 Id.
5 Pawning means; if a man wants money he puts these members of his establishment in pawn, on his creditor them until the debt is discharged. The custom varies in different localities.
6 Men Create the Demand, Women are the supply; Lecture on Sexual exploitation, Queen Sofia Center, Valencia, Spain, November 2000, University of Rhode Island.
The core reason found behind the continuance of this practice hitherto is poverty. The Dalit or the untouchables mostly fall prey to the Devdasi system due to their social status and lack of education. They dedicate their daughters in nascent stages for institutionalized exploitation.

This practice has been prevalent in India since time immemorial. Although the government put a ban on it in the year 1982 under the Prohibition to Dedication Act and again in 2004 when the Government of Maharashtra passed an Anti Devdasi Bill, it is still flourishing in parts of Andhra Pradesh, Maharashtra, Tamil Nadu and Karnataka.

The menace of dowry is found among all sections of Hindus and has even spread to Christians and Muslims. The Dowry Prohibition Act, 1961 was passed with the ostensible idea of checking the evil. It was further amended in 1986 but has failed in its operation. Social awareness, especially amongst young men, need to be developed through public co-operation. The education and economic independence of women also needs to be encouraged so that their parents do not feel compelled to marry them to dowry seekers. In 2010, there were 8,391 reported cases of dowry death in the country. Bride burning is on the increase just a decade ago, in 2000, there are 6,995 cases.

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7 'My mother died when I was three, when I was seven my brother got polio and was paralyzed. My father had to take out a loan and I went to work rolling biddies (cigarettes) to help pay it back. But it was not enough and the landlord to whom my father owed the money said that he should send me to be dedicated to the goddess to earn more money. I did not want to go. I felt very bad. My father said: if you don’t obey me, I will die, so I went to the temple.” This is Anjana’s story who was subjected to the ghastly practice of Devadasi or prostitution (with a religious sanction) and the story continues with hundreds of like Anjanas, courtesy: Youth Ki Awaz. June 8, 2011 by – Palak Bhambri.

8 Supra Note 3, p.66.

9 The Times of India Dated January 27, 2012.
Article 44\textsuperscript{10} of the Indian Constitution requires the state to secure for its citizens a Uniform Civil Code throughout the territory of India. The term Civil Code is used to cover the entire body of laws governing rights relating to property and personal matters such as marriage, divorce, maintenance, adoption and inheritance. The object of this code is to enhance national integration by eliminating contradictions based on ideologies. It aims to bring all communities on a common platform on matters, which are currently governed by their personal laws. Art 44 of the Constitution is based on the concept that there is no necessary connection between religion and personal law in a civilized society. Article 25 guarantees religious freedom whereas Art 44 seeks to divest religion from social relations and personal laws. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Arts 25, 26, 27.

Personal laws have also been exploited to the disadvantage of women. There came before the Supreme Court a plethora of cases in which a Hindu husband married under the Hindu Law, converted to Islam and married again. The conversion was undertaken for the sole purpose of enabling him to take another wife. The first wife approached the court alleging bigamy, which is an offence under the Indian Penal Code (IPC). In the case of Sarla Mudgal v. Union of India\textsuperscript{11} the Supreme Court held that such a marriage is illegal. In the above case, the Supreme Court ordered the Government of India to

\textsuperscript{10} Art 44: The state shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.

\textsuperscript{11} [1995] 3 SCC 635.
take immediate steps in order to implement the mandate of Article 44 of the Constitution but even after 65 years of Indian Independence our law makers are yet to give effect to this provision.

The most recently expressed view of the Indian Supreme Court is that a Uniform Civil Code will promote national integration. Religious groups fear that the laws of the majority community may be imposed on them completely bypassing their own laws. This they perceive to be an encroachment upon their fundamental right to religion

The Hindu Marriage Act introduced monogamy as a rule for men as well as for women. It provided for matrimonial remedies like judicial separation\(^\text{12}\) restitution of conjugal rights and divorce, which were not available under the Shastric Hindu Law. The provisions of the Act as such do not reflect any discrimination against women. However, sometimes in the interpretation of the Act, bias of the judges in favour of the traditional order is noticeable. This is mostly reflected in the decisions of the courts relating to the matrimonial remedy of restitution of conjugal rights\(^\text{13}\). A decree for restitution of conjugal rights will be granted if one of the spouses withdraws from the society of the other without reasonable excuse. In some cases, the refusal of the wife to live with the husband arose because the husband agreed before the marriage that she would be living with her parents or because she was unwilling to give up her job to join her husband\(^\text{14}\). To illustrate the point: the Andhra Pradesh High

\(^{12}\) Sec 10 of the Hindu Marriage Act 1955

\(^{13}\) AIR 1966; Bench consisting of S. Daua and S. Bhargava

Court held that it was the “bounden duty of the wife to live with her husband, wherever he may choose to reside.”

The decision reflects an apparent obliviousness to the constitutional guarantee of equality before the law and equal protection of laws and the equal status of women. Before the court, the question came up whether the wife could plead as a defence that her job necessitates her living separately from her husband. On this, the Madhya Pradesh, the Andhra Pradesh and the Punjab and Haryana High Courts took the view that it would not constitute a valid defence. Gaya Prasad v. Mrs. Bhagwati\textsuperscript{15} is an illustrative case on the point. There the husband was a cobbler having an annual income of Rs.800. The wife took up job as gram Sevika on a salary of Rs.113 per month. The job necessitated her living in another village. The husband filed a petition for restitution of conjugal rights. The Madhya Pradesh High Court held-

\begin{quote}
"In the Hindu Society, the wife's first duty to her husband is to submit obediently to his authority and to remain under his roof and protection. She is, therefore, non entitled to separate residence unless she proves that by reason of his misconduct or by his own place of residence or for other justifying cause she is compelled to live apart from him."\textsuperscript{16}
\end{quote}

According to the learned judge, the small income of the husband and the wives ability to augment it was not sufficient reason to deny the wives society to the husband for nothing in Hindu

\textsuperscript{15} Supra note 3, p.71.
\textsuperscript{16} Zoya Hasan; Ritu Menon, Unequal Citizens, A study of Muslim Women in India. First Published 2004, Oxford India Paper Books.
Law warrants the adoption of such course. A FRAUD ON THE FAIR SEX INDEED! Any law which would give the exclusive right to the husband to decide upon the place of matrimonial home without considering the merits of the claim of wife would be contrary to basic law of equality under the Constitution.

The Hindu Succession Act did not abrogate this right by birth, which exists in favour of a son, a paternal grandson and paternal great grandson. The availability of the right in favour of these male descendants is only a discrimination against daughters17.

The position of women under Muslim Law is far from satisfactory. In the postcolonial period, at least two misunderstanding have dominated academic discussions and debates on Muslim women. First, it is commonplace to view Muslims and Muslim woman as a monolithic category; writings in Muslims in general and Muslim women in particular, make broad generalizations about what is in reality, a highly differentiated and heterogeneous community. Such a reductive thesis is based on a complete misapprehension of Islamic history, culture and politics and totally.

Obscures or denies the rich and diverse traditions that make up Muslims and Muslims discourses. The analysis of Muslims has been concentrated on a few areas and has been largely defined attitudes prevailed in the larger social milieu18. With a few notable exceptions, the spotlight has always been on the role of religion in Muslim life and culture, largely producing sociologies of religion

18 Supra note 15. p. 2 Introduction.
(often distorted and in the abstract) rather than a sociology of Muslims. In this perspective, Muslims were typically seen as Islam that is all pervasive and primarily prescriptive, ignoring data on the heterogeneity of Muslim communities, their culture, and their social organization.

The second misinterpretation stems from the weight given to Muslim Personal Law in defining women's status, resulting in a disproportionate emphasis being placed on it; the gender bias of personal law and the appeasement of Muslims. Women’s low status is due to their ignorance, traditional beliefs, and the inequities of personal laws. The defining factors are popularly believed to be segregation, the male privilege of unilateral divorce, high fertility, the ubiquitous veil, and conformity to the strict condones of womanhood within a fundamental religious code. Any proposal to reform the Muslim law and to remove the discrimination against them under it evokes strong reaction and resentment. The government in India, irrespective of their political complexion, has categorically declared that no reforms would be brought about in Muslim law in the absence of a demand from the community.

Even after independence, women largely constitute a neglected section of the society. A large majority of women of India have not benefited from development. It points out the following trends in this context —

19 Zoya Hasan (Ed) Forging Identities: Gender, Communities and the state, kali for women, New Delhi, 1994.
21 Supra Note 3, p.76.
a) Excessive mortality among women and female children
b) Glaring disparity between men and women (among the poorer sections of population) inaccess to medical services.
c) Persistent decline in sex ratio.
d) Increasing gap between men and women in literacy, education and training for employment
e) And accelerated decline in women’s employment since 1951.

There is declining representation of women in the decision-making bodies from the local to the national level, i.e., the virtual failure, in the enforcement of existing laws to protect women’s rights, which indicate an erosion of the national, will to improve the status and conditions of women.

As rightly pointed out by the committee on the status of women in their report, even though women constitute nearly half the population, they have all the characteristics of a minority viz. ‘inequality of class (economic situation), status (social position) and political power.’ Their position would not have drawn even the meagre attention now being given, but for the international concern for the status of women.

See 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961 and 18(4) of the Indian Foreign Service (Recruitment, Security and Promotion) Rules, 1961 require that a women member of the service should resign if her family and domestic commitments were in conflict with the performance of her duties. However, there is no such rule in the case of male affairs. Thus, Muthamma faced
discrimination owing to long standing practice of hostile
discrimination. Women seem to be a sad reflection on the distance
between the constitution in the book and law in action.

In Air India v. Nargeesh Meerza\textsuperscript{22}, the service regulation
pertaining to the retirement of air hostesses of Air India and Indian
Airlines was challenged as being violative of the Right to Equality
under the Indian constitution. Under the regulation, an Air Hostess
retired from service on her attaining the age of 35 year or on
marriage if it took place within four years of the service and on first
pregnancy. None of these conditions applied to the Assistant Flight
Pursers (AFPs), i.e., male stewards.

Women are subjugated in political and other decision-making
structures at all levels. The example is the Women Reservation Bill,
which could not be even tabled in Parliament let alone be discussed.

When policies are designed in the context of respect for and
promotion and protection of human rights, the inequality of women
in the economic and social sphere oblige the government to design
the policies in a way that would reduce inequalities\textsuperscript{23}.

Despite many positive developments in securing women's
human rights, patriarchy continues to be embedded in the social
system in India denying the majority of women the choice to decide
as to how they should live. The over-riding importance of
'community' in a patriarchal sense ensures that women rarely have
an independent say in community issues.

\textsuperscript{22} AIR 1981 SCJ 48 at http://www.commonliji.org/in/cases/NSC/1981/152.html
\textsuperscript{23} Ramification of Human Rights in India, Anoop Kumar Singh
Crime against women are on the rise whether it be female feticide, female infanticide, dowry death, sexual abuse, molestation, rape, sexual exploitation in work place, disparity in rights and duties of men and women employees etc. The less said is better to describe the present day scenario. Even the woman IAS officers are not spared of gender disparity according to National Commission for Women.

Crimes against women that are occurring across the length and breath of this country is the manifestation of the loss of sensitivity towards one another, irrespective of whether it is a metro, smaller town or a village. Women are being ill treated in streets and in side their house, In their in-laws' house and at their own parents' place miserable old widows, as newly married daughters, in laws and even as unborn female foetuses. What worries one most is that the collective conscience of the people of this Nation seems going dead. Indian society is fast getting dehumanised. Money corruption, "speed" money, extra money for just doing one's own job and money for protection against creating nuisance affects all. All are chasing quick bucks. Means are appearing to be unimportant in this pursuit potentially all are competitors. Almost none can be friend. Indians are isolating themselves. It is self destructing. India as an economy may grow for a while, but Indian society is crumbling. We are trying to build an economy sans the society. It is utterly counter productive, thereby affecting all sections of the society particularly the weaker sections²⁴.

Today, however, times have changed. Many women have got educated, they insist on being treated with respect, and as equals,

and they are justified in doing so. A woman is not the private property of her husband. The feudal concept that a woman loses her legal identity on marriage, and it merges in the identity of her husband is no longer acceptable today. The main goal of our nation is modernization and scientific thinking. Unless women are treated with respect and as equal, our society will remain backward. Women are the backbone of the family, and if women are well-treated it means that 50% of the society is released from feudal bondage. The child of a well-treated woman sees respect for the weak and justice to the oppressed, since his very birth. This puts a lasting influence in his mind, and makes him brave and courageous and a fighter against injustice. On the other hand, when his father or his father's relations oppress his mother, he tends to develop a mentality of oppressing others or acquiescing in oppression. In a society where a large number of women are ill-treated a large section of the new generation is bound to be develop an unhealthy attitude towards others.

Wife beating is an offence under section 323 IPC, punishable by imprisonment up to 3 years. When a husband beats his wife no action is usually taken against the husband, and many people regard it as a prerogative of the husband. The males regard it as a commendable matter, while the females accept it as their destiny. This makes the members of society oppressors or cowards, for one who cannot fight against injustice at home, he cannot fight injustice outside.

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26 Id.
27 Ibid 246
28 Id.
Mothers-in-law mistreat their daughters-in-law because they earlier had been mistreated as daughters-in-law, and they get some sort of satisfaction in it for their past mistreatment in this manner. Women should have a firm mind and a sense of self-determination. It will be worthwhile to cite the example of Draupadi who was dishonoured by the Kauravas by dragging her by the hair and trying to publicly trip her. She refused to put up with this insult and insisted on revenge. She said she would tie her hair only after washing it with Dushansan’s blood. Similarly, Kunti conveyed a message to her sons that she did not mind loss of their kingdom or their forest exile, but she could not ever overlook the insult to her daughter-in-law Draupadi. Today’s society need women like Kunti and Draupadi who refuse to put up with insults or misbehaviour by men.

The feudal concept that a woman loses legal identity on marriage and it merges in the identity of her husband is no longer acceptable. It has been found that whenever women get the opportunity they perform as well as men\textsuperscript{29}. For example, Madam Curie was the first person in the world to win two Nobel Prizes (in Physics and in Chemistry). Elizabeth-I of England and Catherine the Great of Russia were great rulers. The Bronte Sisters were great novelists. The Rani of Jhansi won immortal fame by putting up a heroic, though unequal, fight against the British. Mira was a great social rebel and poet like (Kabir). Begum Akhtar was the greatest Ghazal singer ever. Sappho’s love poetry has few equals. Similarly,

\textsuperscript{29} Supra note 24 p 245
women can give many other examples of great achievements. It is only because women were earlier not given education and suitable opportunities that they could not display their talents, but there is nothing inherently inferior to men. In fact I.Q. tests have revealed that the intelligence of women (on the average) is the same as that of men. In modern times women have become doctors, teachers, Scientists, politicians, artists, lawyers, judges, etc. They can no longer be treated as subordinates, and men must change their attitude towards them. The law must give a helping hand to the modernization of the country and favour social progress.

It is a violation of Women’s Human Rights when -

- Female foetus is denied the right to be born because she is a girl.
- Married women are mutilated because she refuses to concede to an undesirable and in decedent proposals within the family.
- Girls are denied formal education for want of money and time or security.
- Women are deserted by husband on his second marriage.
- Babies are denied food or drowned or suffocated or their spines broken, simply because they are born girl.
- Women and girls are sold into the slavery of prostitution.
- Women are burnt to death or physically tortured for dowry.
- Individual women are raped by their own communities.
- Women are denied the right to plan their own families and that includes of being forced to have abortions or being
sterilized against their will and going for multiple pregnancies for want of a son.

- An unwed pregnant girl is murdered publicly or privately in the name of saving the honour of the family.

In many countries sexual assaults by a husband on his wife is not considered a crime, wife is expected to submit. It is thus very difficult in practice for women to prove that sexual assault has occurred unless she can demonstrate serious injury.

The state is indeed the organized power of the community, equipped with a steadily increasing armoury of instruments of action, and as such, it is opposed to the unorganized public opinion. The power of those who control the machinery of the state has multiplied manifold, absolutely and relatively, by the development of the modern legislative and administrative machinery as well as by the growing concentration of physical and technical power and means of communication. However, it is still the people, groups and individuals, who control the machinery. They are themselves, to a greater or lesser extent, the representatives of the social forces, who in turn, seek the public opinion to mould and control through the instrumentalities of the state.

Civil societies particularly the defenders of human rights (jurists, judges, lawyers, law teachers and law makers, the NGOs (International, National, Local) have a big role to play in advancing the cause of gender justice. NGOs are to be the watchdogs.
Mahatma Gandhi preached on seven social sins\textsuperscript{30} and gender now Justice offers a fresh perspective.

\textbf{Role of civil societies:}

The terms "voluntary organization" and Non Government Organisations (NGOs) are more in common use in India than the term "civil society organization." The 19\textsuperscript{th} century Indian witnessed the emergence of many organizations like the Brahma Samaj, Prarthana Samaj, the Arya Samaj, the Indian Social Reform Movement and in the early 20\textsuperscript{th} century, the Servants of Indian Society, the Ramakrishna Mission, and Harijan Sevak Sangh, the Adim Jati Sevak Sangh to mention some of the leading ones functioning all over India. They took up many social issues such as abolition of sati, widow remarriage, temperance, spread of education, eradication of untouchability and so on. Besides these, a large number of local organizations engaged in community service were in existence\textsuperscript{31}.

Community development programmes initiated in the first Five Year Plan gave fresh impetus to voluntarism in rural India. Voluntary contributions formed part of the finance required for rural work. Women's club, young farmers club and community recreation centres were formed in villages.

\textsuperscript{30} Seven Sins-
1. Politics without principles
2. Commerce without morality
3. Wealth without work
4. Knowledge without character
5. Science without humanity
6. Pleasure without conscience.
7. Worship without sacrifice.

\textsuperscript{31} S. Saraswathi, Indian Youth in the New Millennium, p. 349 published by Rajiv Gandhi National Institute of youth Development (An Autonomous Organisation of the Ministry of Youth Affairs and Sports), GOI, Sriperumbudur-602105 Tamil Nadu \url{www.rgandhi.gov.in}
The expertise of civil society is required and is being utilized in many areas among which mention may be made of the following:

1. Poverty alleviation
2. Population Stabilization
3. Literacy and elementary education
4. Skill Promotion
5. Entrepreneurship development
6. Empowerment of women
7. Adult education
8. Community health
9. Child care
10. Water management
11. Combating HIV/AIDS
12. Care of physically and mentally challenged
13. Rehabilitation of children relieved from child labour
14. Dissemination of information and so on.

Successive commissions had noted in their reports the unequal status of women obtaining in every sphere of life and had suggested the setting up of an agency to fulfil the surveillance function as well as to facilitate redressal of grievances of women. Several women activists and voluntary action groups had also been making persistent demands for setting up of a commission for women. The country cannot progress as long as the inequality persists with reference to half of its population. Having realized the importance of the issue, the government has set up a commission for women, called the National Commission for Women, consisting of chairperson and six members.
Strategic collaboration between the government and the voluntary sector has to be there to plan appropriate intervention and to carry out programmes in the manner acceptable to the people.

Life must win, a campaign must begin, Law must run close to life and so, a jurisprudence of cosmic order supportive of personhood must be ushered in. No revolution can move without the locomotive of an inspiring ideology. No new world jural order can in carnage without a clear manifesto of promise and fulfilment.

It is here judiciary must take suo-moto cognizance to do all the precedents to bring women's empowerment by qualitative and quantitative changes particularly in the field of education, health, employment etc. Women empowerment will be real and effective only when women are endowed income and property so that they may stand on their own feet and make an identity with dignity in the society. Economic independence is the fundamental premise behind empowerment while women's participation in the development process provides them employment opportunities and the opportunities to get out of the clutches of poverty, malnutrition, illiteracy and other social evils. The judiciary has the onerous responsibility as imposed by the 3rd schedule to give shape to the spirit of the constitution and thereby, the different dimensions of women's empowerment, i.e., individual empowerment, social empowerment, economic empowerment, physical empowerment, psychological empowerment, political empowerment, and legal rights empowerment must be tried to achieve through its judicial activism.