CHAPTER - III

VIOLATION OF WOMEN'S HUMAN RIGHTS:
ROLE OF RELIGION, CUSTOM AND LAW

Subordination of women is a globally accepted social practice. Norms and social practices which define women as inferior to men are present in religions, customs and laws. These are the three main pillars of a patriarchal system and may be considered as the main driving forces which lead and influence the day-to-day lives of people. Due to the existence of this well-knit and deep rooted system, patriarchy seems to be natural and indispensable. In this chapter, an attempt has been made to examine the role of religion, custom and law in determining and re-shaping the position of women in society.

In this world, a significant number of women are subjected to torture, starvation, terrorism, humiliation and even murder, simply because they are female. Crimes, such as these, committed against any group, other than women, would be recognised as a gross violation of the victims' humanity. But subordination of female runs so deep that it is viewed as inevitable or natural rather than seen as a politically constructed reality maintained by patriarchal interests. Society has two standards of morality by which it judges the behaviour of its male and female members. It ascribes impossible virtues to woman and she has to face the wrath of society even for a little bit of deviation from such virtues.

The denial of natural and legal rights to women have often been defended in the name of culture and religion. Though violation of women's rights vary in different cultural milieus, all women share a common degradation, indignity and oppression because of the prevalent gender discrimination in society. Discrimination on the basis of
gender is so deeply rooted in the history of humanity that often it is not perceived as discrimination.²

Most of the religions are patriarchal in nature, where male authority is considered to be supreme. Even rights and duties of men and women are specified separately and these factors have influenced state policy and they continue to be major forces in most of the societies.

ROLE OF RELIGION

Religion plays a very significant role in the lives of people. At one time, the scriptures acted as law. Even now, one of the important sources of various personal laws are scriptures³, e.g., the Shrutis, the Smritis and the Digest are the important sources of Hindu law. Similarly, Quran is an important primary source of Muslim law. These laws are considered to be of divine origin and violation is deemed as sin. Till now, people think that the validity of the religious codes cannot be challenged because they have the sanction of the Supreme power. That is why, the religious codes, which contain many discriminatory provisions against women, have much more influence upon people than what the codified laws can exercise.

In the international sphere also attempts have been made to eliminate discriminatory practices against women. The World Conference on Human Rights, held in Vienna, in 1993, made a significant call regarding the elimination of the gender bias, that can arise between the rights of women and, inter alia, religious extremism.⁴ However, it does not seem that the states have considered it to be an important call. Discrimination based on religious codes still exist in most of the states.
The Convention on the Elimination of All Forms of Discrimination Against Women, 1979 has taken up certain measures to combat gender-based discrimination. The Convention requires the state parties to recognise the important economic and social contribution of women to the family and society. It also emphasises the need for change in attitudes, through education of both women and men to accept equality of rights and to overcome prejudices and practices based on stereotype roles. Thus, the convention sets a standard to be followed by the ratifying states, which would certainly improve the existing situation.

Till November, 1998, the Convention had been ratified by as many as 162 states, but many of them ratified with reservations. Frequently, they concern potential conflicts between the convention and the customary or religious laws. Government of India ratified the Convention in 1993 but effectively reserved on the articles relating to the elimination of discrimination based on religious and customary practices [Art. 5(a)], and to equality in marriage and family practices [Art. 16 (1)]. The ratification of the convention by so many states, itself is a proof that gender-based violation of rights persists all over the world and that, these discriminatory provisions should be removed. But the reservations indicate that in the name of religion, institutional inequality is retained. Women are conditioned mentally and physically, to believe that they are inferior to men and in this way they have to accept the hierarchical gender relationship in the family as well as in society.

At present, there is a uniform criminal code and also a civil code, for all the citizens of India. But for the matters relating to marriage, divorce and inheritance etc., there are personal laws based on religious codes, for each religious community. So far,
only the Hindu personal law has been codified with some modifications. The four major enactments of codified Hindu law are, viz., Hindu Marriage Act, 1955, Hindu Succession Act, 1956, Hindu Adoption and Maintenance Act, 1956 and Hindu Minority and Guardianship Act, 1956. By these enactments of codified Hindu Law, some fundamental changes have been introduced, though a total break from the past has not been made. The other personal laws are purely religious in nature.

The religious codes of almost all the religions prescribe inferior status to women. Some problems of women are absolutely common whereas others are specific to every religious group. A Sikh woman, at times has to marry the brother of her deceased husband to prevent agricultural property from being divided. A Christian woman has to face a lot of humiliation while trying to obtain divorce from her husband, as she has to face the charge of adultery. A Muslim woman has to face either arbitrary divorce or has to live with a co-wife whether she likes it or not. Hindu women too have to face specific problems like bride-burning and child marriage. Thus, cutting across national boundary, women of all over the world face discrimination on account of their sex, and the pristine religious norms strengthen and justify the existence of the discriminatory provisions.

The role of various religions in the violation of women's human rights are discussed below.

**Hinduism and Women**: The disadvantageous position of most of the women of India may be traced back to the teachings of the texts of Hindu religion. These texts contain many provisions, which are unreasonable and injurious, and they have tremendously influenced the position of women in society. The incidents of female foeticide, female infanticide, sati, strict restrictions on the lifestyle of widows, the social ban on widow
remarriage, the inferior position of women in the family, etc., may be pointed out as the direct result of the teachings of the religious codes. Such provisions have relegated women to a subordinate position to men.

The scriptural writings of the Hindus are divided, mainly into two classes, viz., the Shruti or the Vedas and the Smriti. All the laws, civil and religious, which govern and regulate the life and conduct of the Hindus pass under the sacred appellation of the Shruti or the Vedas. It has already been mentioned in the second chapter that during the Vedic period the position of women in society was relatively high. But even in the Vedic times, there was an undercurrent of opinion which was hostile to women.

A Smriti consists of three sections, viz., Achara, Vyavahara and Prayachitta. Among these, Vyavahara, i.e., civil laws relate to the protection of life and property, with all their rules and practices. Of all the Smritis, Manu Smriti is regarded by the Hindus as next in sanctity to the Vedas. It is the oldest of all the laws and its authorship is attributed to Manu, the son of Brahma. He is considered as the most ancient and the greatest of all lawgivers. Manu's laws reflect a conflict between his valuation of woman as a spiritual entity on the one side, and as the lowest unit in society on the other. Manu opined that where women are worshipped, gods also rejoice there. At the same time, he assigned a definite place for women in family and society, which is inferior in every aspect of life, to her male counterpart. Manu's code has the most negative effects, forging unbreakable shackles upon Indian women, for countless succeeding generations. Even today, it is his laws, which keep millions helpless in the prison of Hindu orthodoxy.

Most of the Hindu scriptures depict women as the source of all troubles, sorrow and misery and thus it created a very bad image of women in people's mind and it led to
the inferior position of women in family and society. In the Vedas, the hymns like, "the mind of women brooks are not disciplined, her intellect hath little weight"; "with women there can be no lasting friendship", etc., are found. In one of the hymns of the Atharva Veda, a husband proclaims that his wife has been given to him by God to serve him and to secure progeny. He further calls her, his poshya or dependent. In the Mahabharata, it has been revealed that there is nothing that is more sinful than woman. Verily women are the roots of all evils. In the Narada Smriti, Narada rejects a woman as witness because she would make false statements from want of veracity. Manu also rejects woman as a witness. He opines, "one man alone can be a witness, if free from covetousness; but not even several women, although they may be pure, on account of the lack of reliableness of woman's mind." In this way, the scriptures depicted the image of a woman as fickle minded, liar, and of dull intellect. The attitude of people towards women as inferior creature may be traced back to such idealistic and subjective opinions.

In India, most of the people do not expect for the birth of the girl child in the family. The preference for a male child in the Indian society may be called as the legacy of the past. In the Rig Veda, no desire for the birth of daughters is ever expressed, their birth is deprecated in the Atharva Veda and the Yajur Veda speaks of girls being exposed when born. Some of the hymns in the Atharva Veda indicate that the birth of a daughter was not very much welcome in the family, e.g., "the birth of a girl, grant it elsewhere, here grant a boy"; "the male children, be followed by male offspring only and never followed by female progeny." Aitareya Brahman lays down that daughters are the cause of misery. Manu justifies the preference for a son and the superiority of a son, by saying that, the son saves his father from the hell called 'put'. Therefore, it becomes essential to
to have a son, if one does not want to go to hell after death. During Puranic age also the
birth of a daughter was not a matter of joy. The Skanda Purana describes that a daughter
is the source of troubles to her father. Among the Hindus, the incidents of son-
preference, female infanticide and in the modern scientific age, the incidents of female
foeticide are the result of such religious teachings.

The prevailing patriarchal system in the present society is generally unfavourable
to the recognition of the rights of women to inheritance. The ancient writers of Hindu law
also did not recognise women as capable of inheriting property, rather, they considered
women as chattels. In the Vedic age girls were given away as gifts. Women were thought
to be inherently incapable of holding property. Tenth aphorism of Jaimini states, "Men
alone have right to perform sacrifices as they have capacity to possess wealth as is
evidenced by the sale and purchase of things by them, but women have not the capacity
to own wealth as they themselves are treated as chattels." Bodhayana and Basistha
mention no females in their list of heirs in the Smritis and the former expressly states on
the authority of a text in the Veda that women have no right to inherit. Bodhayana
declares the incompetency of women for inheritance on the ground of their deficiency of
strength. The Smritikaras like Manu, Yajnavalkya and Narada prescribe in their
respective Smritis, that after the death of the father the sons would inherit his wealth as
well as debt. In case of inheritance, till now most of the Hindus are led by the teachings
of the Smritikaras rather than the Hindu Succession Act of 1956, under which, daughters,
mother and wife get equal share with the son of the deceased. Thus, it is evident that, in
the society, there is prevalence of two sets of laws, i.e., laws in paper and laws in action,
in certain aspects like inheritance.
The scriptures prescribe a life of complete dependence and inferiority for women and women are not considered as self sufficient entity. Both Manu and Yajnavalkya opines that a father should protect a woman when she is a maiden, a husband after she is married, and a son in her old age; in the absence of a legitimate guardian, the kinsmen should protect her; independence is not for womankind. In the fifth chapter of the Manu Samhita; Manu pronounces the duties for women. He opines that no act is to be done by a young girl, a young woman or even by an old woman, according to their own will, though in their own houses, she must be always cheerful and clever in household business, with the furniture well cleaned and with not a free hand in expenditure. Thus, a woman is conferred with all the household responsibilities, but she did not have to play any part in the decision making or the expenditure of the family.

In the field of religion also, women are considered inferior to men. The Smritis do not permit a woman to discharge the duties of a priestess. Manu prescribes that no sacramental rite is to be performed by women, with sacred texts (IX-18). He explicitly forbids a girl and a married woman to offer an Agnihotra; for by offering burnt oblations, they sink into hell. To perform the household duties and to serve the husband is considered as the highest form of worship for women. Manu opines that though of bad conduct or debauched or even devoid of good qualities, a husband should always be worshipped like a god by a good wife. In the Mahabharata also, it has been stated that, the only duty of women is to serve and worship their husbands with respect and obedience. Through the transaction of that duty only they succeed in conquering heaven. Yajnavalkya opines that a wife should carry into practice her husband's words – for this is the highest duty of a wife. He again prescribes that, a woman whose husband is absent
from home, should renounce sports, personal decorations, the witnessing of social festivities, laughing and visiting other people's houses. Thus, the personal independence of a woman was completely controlled.

The scriptures created a definite place for women, i.e., within the four walls of home and the life of a woman was centred round the husband. Without the husband, the life of a woman was not worth-living. The Smritikaras prescribed strict norms to be followed by the widows. Even the child widow had to spend her remaining life by following the strict norms. Though polygamy was a well-accepted norm of society, the Smritikaras strictly prohibited widow remarriage. Manu clearly states, 'nowhere in the scriptures, a second husband declared for virtuous women' and 'a maiden can be given only once', etc. However, rather than the prohibition on the widow-remarriage, the strict restrictions prescribed for a widow dehumanised her life. The Bodhayana Smriti prescribes that the widow of the departed should give up for one year - honey, meat, wine and salt, and should sleep on the ground. Katyayana provides that a widow engrossed in religious observances and fasts, abiding by the vow of celibacy, always bent on restraining her senses and making gifts, would go to heaven. Vriddha Harita, in his Smriti prescribes that a widow should give up adorning her hair, chewing betel nuts, wearing perfumes, ornaments and dyed clothes, taking two meals a day. She should wear a white garment, should curb her senses and anger, should be free from laziness, and should sleep on the ground.31 Manu also opines that a widow may emaciate her body by living on pure flowers, fruits and roots. She may not, however, mention even the name of another person. But for a man he prescribes, "having used the fires for the last rites to his wife dying before him, he may marry again".32 At present also, the life of a Hindu widow
is led by such prescriptions, to a great extent. She is looked upon as inauspicious and cannot take part in any festivities. Thus the society is nothing but a torture chamber for the widows.

The inferiority of a woman is visible in all matters of the family. The practice, which is widely prevalent among Hindu families, that the men folk and the women folk of the family should eat apart, has been the explicit result of a prohibition which stands in the laws of Manu and which was revealed twice in the Satapatha Brahmana.  

Manu even justifies the use of force to discipline wives – when a wife commits faults she should be beaten with a cord or a bamboo cane. The effect of such teachings is very deep rooted. A National Family Health Survey was carried out in September 2000, to assess women's attitudes towards wife-beating. In the survey, it was interrogated, whether a husband was justified in beating his wife in any of the following cases: If he suspects her of being unfaithful, if her parents does not give expected money, if she shows disrespect for her in-laws, if she goes out without telling her husband, if she neglects her house or children or if she does not cook the food properly. The survey showed that 56 per cent of women accepted at least one case as a justification for wife-beating. It proves that till now women are socialised in norms that give husbands the right to use force to discipline wives, who are perceived to be violating traditional gender-norms. In this way, the unreasonable social norms which justify the subordinate position of women as natural, survive till now, with unabated force.

Islam and Women: In Islam, women's rights have been systematically violated in the name of Quran. Ramala M. Baxamusa opines, "Most women in India are doubly exploited: the majority of them are poor, living under sub-human conditions, their lives
circumscribed by patriarchal norms. But Muslim women in India are further oppressed, exploited as they are by their religious laws."³⁶

In the Quran, God has clearly defined and guaranteed the rights of women. Qamaruddin Khan opines that God has conferred upon women, the highest dignity and honour and granted them equal rights with men in every respect. But Muslims have changed the teachings of God and His Prophet by misinterpreting the verses of Quran in which injunctions about women are given. Since the Quran, the Hadith and History were interpreted only by males, they diverted every divine law to their own advantage, and snatched from women all those rights which had been granted to them by God. The Quran has mentioned woman in the highest terms of excellence and purity. But in commentaries on the Quran, in Hadith literature and Fiqh books, women are most often mentioned with the greatest contempt and degradation.³⁷

Polygamy is allowed for Muslim males. It becomes unlawful only when a Mohammedan has more than four wives. According to the text of the holy Quran, "Marry such women as seem good to you, two, three or four, but if you fear that you cannot do justice, then marry only one, this is better so that you may not deviate from the right path."³⁸ In India till now, polygamy is in vogue and no reform has been made so far in this regard. But a Muslim woman cannot marry more than one husband. If a Muslim woman marries a second husband, she is liable for bigamy under section 494 of Indian Penal Code and the issues of such a marriage are illegitimate.

Generally, both the parties to the marriage contract have an option for divorce, but the husband's right in this regard is much greater than that of the wife. The husband can dissolve the marriage tie at his will. A divorce can also take place by mutual agreement.
But the wife cannot divorce herself from her husband without his consent. The husband can give talaq by mere words without any talalqnama or deed of divorce and no particular form of word is necessary. If the words are express and well understood as implying divorce, no proof of the intention is required.\(^{39}\)

Under Muslim law, a divorced wife is entitled to be maintained by her former husband during the period of iddat, that is three months after the divorce. Shah Bano, a 73 year old Muslim woman who was divorced by her husband of 40 years, brought a petition for maintenance from her husband under section 125 of the Criminal Procedure Code, 1973. In April, 1985, the Supreme Court held that she was entitled to maintenance.\(^{40}\) The patriarchal sections of the Muslim community vehemently opposed the judgement and an independent member of parliament introduced a bill to save Muslim personal law. The women's movement along with progressive Muslim organisations campaigned against the bill. Though the government at first supported the Supreme Court's decision, reversed its position and enacted the Muslim Women's (Protection of Rights on Divorce) Act, in May 1986, which abrogated the right of the Muslim woman divorcee to maintenance under Sec. 125 of the Criminal Procedure Code of 1973.\(^{41}\) Thus, the process of gender justice became a hostage to community identity. Asghar Ali Engineer opines, "Shah Bano Movement was a great mistake. Such an aggressive attitude towards a reformatory measure was not called for. It only hardened the majority communalism and caused greater harm to Muslims."\(^{42}\)

In case of inheritance also, women do not enjoy equal rights with their male counterparts. The Quran directs that the share of a son is equal to the share of two daughters. That is why, the share of son is double than that of the daughter.\(^{43}\)
Though a mother bears and rears a child, in Muslim Personal law she is not considered as the natural guardian of the child. In Sunni law, a mother is entitled to the custody of the male child until he has completed the age of seven years and of her female child until she has attained puberty. In Shia law, she is entitled to the custody of her male child till the age of two years and to the custody of her female child till the age of seven years. After crossing this specified age limit, the father is entitled to the custody of the children. Thus, under the Mahammedan law, mother is entitled to the custody of her minor children up to a certain age according to the sex of the child. But she is not the natural guardian of their property. The father alone or if he is dead, his executor is the legal guardian. There is no difference between the mother and any outsider or non-relative, in case of dealing with the property of the child. When the mother is the father's executrix or is a certified guardian, she has all the powers of a de jure guardian; otherwise any deed made by her on the minor's behalf will be void ab initio.

The Quran prescribes that the females should cover their faces with clothes. Till now a section of Muslim fundamentalists make it obligatory for women to observe purdah system, otherwise they have to face the harassment caused by the outfit. In 1996, after ousting the Government of Afghanistan, the Taliban dictates imposed their strict codes of conduct. They banned women from the work place, closed schools for girls and made it compulsory to wear the traditional burqa. In Kabul, the women, not wearing burqa were caught and were publicly beaten by the Taliban soldiers. In India also the Muslim women in Kashmir had to face acid attacks for not observing 'purdah'. In July 2001, Lashkar-e-Jabbar, a militant outfit of Kashmir issued a criminal demand that all Muslim women of Kashmir observe purdah or risk being shot in the legs. They said that...
it was not allowed in Islam to have women without 'purdah'. In 1990 also, Dukhtar-e-Millat – a Muslim outfit launched a campaign to force women in Srinagar to wear the veil and threw paint on those who failed to comply. Thus, till now women are harassed and deprived of a dignified life just in the name of religion.

In Islam, women are considered to be subordinate to men. The Quran states, "Men are overseers over women because of what Allah has bestowed of his bounty on one more than the other." Like the Hindu scriptures, Quran also allows a man to use force upon his wife to discipline her. If a man fears disobedience from his wife then he should advise her, separate her from bed and use force upon her. Perhaps following this teaching, the Supreme Court of Dubai, in March 2002, declared in the verdict of a divorce case that the husband may beat his wife to keep her in discipline.

In Islam, there was no provision of education on religion for women. That is why, in the entire course of Islamic history, there did not happen to be a single woman scholar of the Quran or the Hadith or Fiqah. In India and Pakistan women are not allowed to enter inside the mosques to offer their prayers. In 1997, the Imam of the Palayam mosque in Thiruvananthapuram of Kerala decided to allow women to offer prayers inside the shrine during the Ramzan. It caused great debate among the members of the community. Thus, in the name of following the norms of the scriptures, discriminatory practices are allowed to go on.

In India, so far no amendment has been made in the Muslim personal law, on the discriminatory provisions relating to women. Justice V. Khalid of the Kerala High Court, referring to the Muslim husband's unbridled power to divorce his wife raises the question, "Should Muslim wives suffer this tyranny for all times? Should their personal law remain
so cruel towards these unfortunate wives? Can it not be amended suitably to alleviate their sufferings? My judicial conscience is disturbed at this monstrosity. The question is whether the conscience of the leaders of public opinion of the community will also be disturbed? In Shahulameedu vs. Subaida Beevi, Justice Krishna Iyar also observes that while the Shariat law of marriage is very liberal and equitable, it has been misread and misinterpreted. He refers to the Muslim scholarly opinion to show that the Quran enjoined monogamy upon Muslims and departure therefrom only as an exception. That is why, a number of Muslim countries have prohibited polygamy.

Though in India, the discriminatory practices in Muslim personal law have been preserved, some Islamic countries like Turkey, Tunisia and Algeria have abolished polygamy legally and officially. The most dramatic reforms was embodied in the Tunisian Law of personal status of 1956, promulgated by President Habib Bourguiba. The code, which was presented as an Islamic law, undertook bold reforms improving women's status, such as, abolishing polygamy and establishing equal rights for men and women in divorce.

Christianity and Women: In Christianity also, subordinate position has been attributed to women. Genesis - the first book of the Old Testament symbolises the inferiority of women by depicting Eve as a being, made from the supernumerary bone of Adam. The New Testament has been traditionally read as the foundation for the theology of subordination by patriarchal Christianity. Eve, the mother of mankind in Christian belief, was the archetypical woman- the seductress, who tempted Adam to fall from grace. When she drove 'sin' out of Eden, God cursed her, "In sorrow and travail shall thou bring forth thy young." The Christian fathers fulminated against her for bringing sin
into the world. It followed that the calumny heaped upon this mythical woman was transmitted to her daughters.\textsuperscript{57}

In Christianity, the males and the females are not considered as equals. An inferior status has been attributed to the females. The New Testament prescribes, "Woman should learn in silence and all humility, I do not allow women to teach or to have authority over men."\textsuperscript{58} Saint Paul declared that women should be seen, and not heard, they must be obedient to their husbands, for man was not made for woman but woman was made for man. They must sit separately in the congregation and cover their heads.\textsuperscript{59} Again, in the Bible, it is stated, "Wives, submit yourselves to your husbands, as to the lord; for husband has authority over his wife in the same way that Christ has authority over the church... Wives, be obedient to your husbands, for that is what you should do as Christians."\textsuperscript{60} It is evident that like Hinduism and Islam, in Christianity also, the authority of the husband, upon his wife has been imposed.

The hierarchy in Protestantism remained Christ, man, woman. Simultaneous male domination in the home as well as in the Church, naturally led to a strong subordination of women. Ruether opined, "the Reformation as a whole cannot be said to have had a liberating influence on women. Lutheranism, Calvinism and Anglicanism inherited trends of both ecclesiastical and socio-political subordination of women.\textsuperscript{61}

**Buddhism and Women:** Buddhism started as a reform on the evils of Brahmanism. It also rejected the sanctity of the Vedas. The status of women was heightened to certain extent, during this period. Buddhism declared that womanhood was no bar to salvation. Marriage was not necessary for women, rather, women were urged to become nuns without entering into matrimony.\textsuperscript{62} However, this is only a one sided picture.
The Jatakas or the birth stories of Gautama are designed to point the moral of feminine iniquity. In general, Jatakas are full of stories, illustrating the snares of women and their untrustworthy character and warning men against their evil influence.63

Buddha considered women as incapable of any higher achievement. In one of his pronouncements, he opined,64 "unfathomably deep like a fish's course in the water is the character of women. They are like robbers with many artifices, with whom truth is hard to find, to whom lie is like the truth, a truth is like a lie. No heed should be paid either to their likes or their dislikes."

In Buddhism, at first women were not allowed to join the order. Buddha justified his decision, as to why women should not be entrusted with responsibility, by giving some reasons to his favourite disciple Ananda. He argued, "Women are soon angered, women are full of passion, women are envious, women are stupid. That is the cause, Ananda, why women have no place in public assemblies, do not carry on business and do not earn their living by any profession".65 Though at last owing to the pressing entreaties of his foster mother Mahaprajapati and also due to the arguments of Ananda with great reluctance, Buddha allowed the order of nuns. But he said, "If Ananda, women had not received permission to enter the order, the pure religion would have lasted long".66 Though Buddhism supported for greater freedom of women, than the Brahmanical age, Buddha was also not free from the age-old notions regarding women. His arguments reflect this fact. His words regarding the longevity of the religion, however did not come into effect.

Though Buddha allowed Bhikhuni Sangha, it was always subordinate to the Bhikhu Sangha. A nun could never preach before the congregation of monks, but some
selected monks could preach before a congregation of nuns.67 Buddha laid down eight special regulations which a woman had to accept before entering ascetic life. The first one was, "An almswoman, even if of a hundred years' standing, shall make salutations to, shall rise up in the presence of, shall bow down before and shall perform all proper duties towards an almsman, if only just initiated".68 Thus, in Buddhism it was considered that females are inherently subordinate to males. Though they are allowed to perform certain activities like males they can never be equal with their male counterparts. Even in one of the Jataka stories, the Bodhisatta said,69 "Infamous is the land which owns a woman's sway and rule, and infamous are the men who yield themselves to women's domination."

In this way, though the male domination over female was considered as natural, dominance of a female, even as a ruler was never tolerated.

**Jainism and Women**: Jainism has much in common with Buddhism. It rejects the sanctity of the Vedas, the superiority of the Brahmans and the sacramental notions of marriage. In all important juristic acts, a Jain woman is the necessary co-actor with her husband, e.g., in the matter of adoption, her powers are co-extensive with those of the husband alive or dead. She has her stridhana. Moreover, a Jain widow has a claim of priority over the son, in case of the property of her deceased husband.70 But in Jainism also women do not enjoy the dignity, which they deserve.

In the Uttaradhyana Sutra, Mahavira has declared that woman is one of the twenty two troubles which a monk should learn and know, bear and conquer, in order not to be vanquished by them. He again compared women to female demons, whose company should always be avoided.71 A few texts have prescribed that a Jain woman should prostrate herself daily at her husband's feet and worship him.
The general trend of Jain literature is that woman by nature is bad. In the Tandulaveyaliya, etymologies of various synonym of woman has been given – she is called Nari (Na-ari) because there was no worse enemy for man than she; she is Mahila because she charms by her wiles and graces; she is called Padma because she accelerates a man's passion; she is Rama because she delights in coquetry....72 Thus, the nature of women have been very badly portrayed, which naturally creates an adverse impression of people towards women.

In Jainism, both the Digambara and the Swetambara Jains maintain that in monastic life, the nun is inferior to the monk. The nuns are prohibited to study chapters of Mahaparipuja, Arunopapata and Drishtivada. Moreover, there is a rule, which lays down that a monk of three years' standing can become a teacher of a nun of thirty years' standing. In the fifth chapter of Kalpa Sutta, in the matter of religion, predominance is vested in man. It has been stated that man is always senior to woman. Therefore, a man should never bow down before a woman – for woman kind is a mean and low creation. The Jain Tirthankara Rishabha Deva, taught 72 arts to men and 64 to women, for they have only to be skilled in domestic and not in literary and industrial crafts. The Digambara Jains even went to the extent of declaring that, there is no Nirvana for women.73

Thus, it is evident that all these religions have given inferior status to women. To justify the discriminatory code of behaviour, women have been described as inferior human beings who were created by God for men's service and entertainment. Some Hindu scriptures consider women as the gate to hell. Christianity brands her as the temptress who caused Adam to sin by desiring to eat the forbidden fruit. Islam considers
her as the earth in which man sows his seed, hence she is the property of man and she needs protection but not freedom.

The blind adherence to the unquestioned authority of sacred scriptures have caused never-ending misery to the women of all the religions. Though the Hindu laws have been codified, till now the lives of Hindu women are led by the teachings of Manu. Muslim Ulama refuses to change the Sharia provisions in respect of polygamy and divorce etc. The Catholic church refuses to permit abortion and to use contraception. The root cause behind such attitudes may be attributed to patriarchy. The patriarchal values were incorporated in the religious scriptures, as these were written by males. The attitudes of people towards women are conditioned by the patriarchal values.

The scriptures portray women as liars, sinners, stupid etc. It has created a very inferior image of women in society. In the present day society also, if a man does not come forward to do a work of bravery, he is asked to wear bangles. Thus, cowardice has been equated with the nature of women.

The impact of religious teachings is very much evident in family and society. The scriptures have drawn certain limitations upon the activities of women. Dependence of women upon the male members of the family, their confinement in the household activities, no share in the family property, exclusion of women from the decision making process, authority of husband upon his wife etc., may be directly attributed to the religious teachings. The inferiority, imposed upon women has adversely affected them. The norms of the scriptures, i.e., the divine laws, influence people more than the provisions of the constitution and the statutes. The divine laws, which are considered as revelation of God, naturally get precedence over man-made laws.
Therefore, it is necessary that the existing discriminatory provisions of the personal laws should be amended. No religious group should maintain any system, at the expense of basic human rights. In the words of Dr. Sarvapalli Radhakrishnan it may be said, "Religion is not magic or witchcraft, quackery or superstition. It is not to be confused with outdated dogmas, incredible superstitions, which are hindrances and barriers, which spoil the simplicity of spiritual life. Intellectual authority should be treated with respect and not merely inherited authority."

**Position of Women in the Customary Law of Tribes**: Custom may be defined as any particular conduct, practised by a group of people for a long time. In the early stages of the society the customs were the most important and sole source of law. Customs of particular communities are capable of being recognised as laws. Their acceptance by the courts is hedged by a number of conditions which have been evolved by the judiciary. There are various major ethnic groups in Assam, who have been enlisted as scheduled tribes. The day to day lives of these tribal people are guided by their customary laws. The position of women in the customary laws of tribes may be discussed as follows.

There are various tribes inhabiting in the hills and plains of Assam. The major hill tribes are the Dimasas and the Mikirs. Among the plain tribes the Bodos, the Lalungs (Tiwas), and the Mishings (Miris) can be regarded as major tribes. Here, the customary laws (relating to women) of the Bodos, the Mishings, the Dimasas and the Lalungs have been taken up for discussion.

**The Bodos**: The Bodo social structure is primarily patriarchal. They have their own social laws and customs. The position of women in society is almost equal to that of men. In the Bodo society the dowry system is completely absent, rather at the time of marriage,
there is the social custom of paying bride price to the parents of the bride from the bridegroom's family. Moreover, the bridegroom's family also have to pay rice, betel nut and betal-leaf, a gamocha and two silver coins. Due to the absence of dowry system and the evil consequences thereof, the Bodo women remain free from many problems faced by women of some other parts of India.

Sometimes, when a family does not have a male child, they keep the son-in-law in their own house. In such cases the would be bridegroom has to work for a year in the household and field of the prospective bride, without any payment. If, after the completion of one year, the bride's family is satisfied with the character and the activities of the groom, then only the marriage takes place, otherwise the boy is allowed to leave. The existence of such provisions indicates that in Bodo families such situation does not arise for which girls are considered to be burdens of family.

As a rule, the Bodos are strictly monogamous tribe. However, where a first wife proves childless, their custom sanctions for a second wife, mainly with a view to handing down the father's name to posterity. But polyandry is strictly prohibited. Widow remarriage among the Bodos is freely permitted, but the limitation is that she must marry the younger brother of her deceased husband and not the elder. Divorce also takes place with mutual consent.

Generally, the Bodo women do not have property rights. The married daughters can claim nothing. Even the unmarried daughters do not get any share from the family earnings, they are only maintained by the family. When a man dies without sons, the property usually passes to his eldest surviving brother who generally makes some provisions for the deceased man's widow and daughters. If a woman becomes widow just
after marriage, then she is sent back to her parents' place. She cannot inherit her deceased husband's property even if she has minor children. She can get the property only by remarrying either the younger brother of her deceased husband or any other person by 'Dhoka' system. When a person marries a widow by 'Dhoka' system, then he has to come to the widow's house by renouncing the property and all other relations of his own family. In such a case the widow is not deprived of the property of her deceased husband.79

Thus, the Bodo society is free from some evils like dowry, purdah, sati etc. Moreover, widow remarriage also is prevalent, although with some limitations. But in one aspect, the Bodo women's are deprived of their rights, i.e., in case of property rights. Though the Bodo women do not enjoy equal rights with their male counterparts, their position in society is relatively high.

The Mishings: The Mishings are an Indo-Mongoloid tribe settled in the plains of Assam. The Mishing women are comparatively more hard working than their male counterparts. From dawn to midnight, they are engaged in the household and agricultural activities.80

The Mishings are monogamous. If a person marries more than one wife, then any of the wives may desert him. Among the Mishing social customs there is no prohibition for widow remarriage. After the death of the husband the widow may marry either the younger brother of the deceased husband or any other person. If the widow goes back to her parents' place or marries any other person who is not related to her deceased husband's family then she does not have any right on the male child of her former husband.81
The dowry system is completely absent among the Mishings. The family of the bride has to pay nothing to the family of the groom. But the groom's family has to bring betel nut, betel leaf, jaggery or sugar, tea, apong, fish, coins etc. Moreover, the system of bride price is also in vogue among the Mishings. 

Mishing women do not enjoy the right to inheritance. A daughter does not inherit the property of the father. The mother may give away her dresses and ornaments among her daughters if she desires, but the daughters cannot demand for it. The widow does not get any share of her husband's property. But if the person dies without any issue, then the widow inherits his property.

There is no doubt that the Mishing society is free from many evil systems prevalent in the so called modern society. Mishing women perform their duties both outside and inside home. Though they are burdened with heavy responsibility, their rights are not equal to their male counterparts. Women do not get membership in the 'Kebang', i.e., the village panchayat, where the quarrels and various other issues of the villagers are tried. Even women's presence is not desired in the 'Kebang' as the males do not think that women's opinion may have any importance. Moreover, in the Mishing festival 'Pohrag', a committee is formed to conduct the activities of women. The chief conductor of the committee is called as 'Borani'. But a person designated as 'Tiri Bora' is appointed to supervise the activities of the said committee. Therefore, the Mishing women, though their contribution to family and society is enormous, are never independent enough to act according to their own choice.
The Dimasa Kacharis: The Dimasa Kacharis are one of the major tribal communities of Assam and they constitute an important ethnic group in North-East India. The Dimasa Kacharis are a Scheduled Tribe in the Autonomous Hill Districts of Assam.

The Dimasa family is generally nuclear family. It consists of the head of the family, his wife, their unmarried sons and daughters and the unmarried brothers and sisters of the head of the family. The females occupy respectable position among the Dimasa Kacharis.

Certain systems derogatory to the status of women, such as, child marriage, dowry, seti, purdah etc. are completely absent among the Dimasas. Monogamy is the prevailing practice among the Dimasas. Though marriage by negotiation is the prevailing practice, the consent of the boy and girl is taken into consideration. The absence of polygamy can be ascribed to the fact that under no circumstances two females belonging to two female clans can share even the same clothes, jewelleries and cosmetics, and not to speak of the same bed. That is why the practice of monogamy is strictly followed among them.

The Dimasas consider the girls as economic asset. That is why, in stead of dowry, the system of bride price is prevalent among them. The bride's parents or guardian demand 'Kalti' (bride price) at an exorbitant rate. However, the bride price varies depending on the economic condition of the bridegroom.

Divorce is allowed in the Dimasa society but the incident is not of greater significance. Divorce can be obtained if the aggrieved person appeals to the 'Khunang' - the traditional village headman and the village elders for the dissolution of the marriage. As a general rule, when a divorce takes place, the bride price is forfeited also. The
Khunang and the village elders decide whether the bride price is to be refunded or not. A guilty husband cannot demand the repayment of the bride price. If the divorce takes place by mutual consent, the question of repayment of bride price is also mutually settled. When a divorce is granted, the male issues, are allowed to be taken by the father, while the female issues are allowed to be taken by the mother. The remarriage of widows and divorcees are allowed among the Dimasas.

The Dimasas have a patriarchal society. They have three types of property, viz., paternal property, maternal property and common property. The paternal property or the father's property consists of real estates, weapons, cash money, and the cattle. The maternal property or the mother's property consists of jewellery, clothes and the looms with their accessories used by the mother. The common property consists of the cooking utensils, brass-metal dishes, and bowls and the other household equipment. According to the customary law of inheritance of the Dimasas, while the paternal property is inherited by the sons, the maternal property is inherited by the daughters, and the common property is shared by the sons and daughters equally. The sons can never inherit maternal property, while the daughters cannot inherit paternal property. If there is no son in a family, then the paternal property will be inherited by the nearest male relative of the deceased. In the same way, if there is no female issue in the family then the maternal property is inherited by the nearest female relative of the deceased.

It has been seen that in Dimasa society also women do not enjoy complete equality with their male counterparts. However, it is also true that they need not have to pass their lives under male subordination. They enjoy freedom in various aspects such as marriage, divorce, widow remarriage etc.
The Lalungs: The Lalungs are a plains tribe of Assam. Lalung concentrations are mainly found in the district of Nagaon of central Assam. There are a few Lalung villages in Dhemaji area, Titabar and Sonapur (Kamrup District).

The Lalung women are very industrious. From morning till night, they are busy with their household duties. They utilise their leisure time by weaving clothes. Sometimes they engage themselves in dehusking paddies and collecting firewood, roots and creepers from the forest. During harvesting season both men and women go to fields and work equally.

The children are socialised at home, where the girls follow their mothers, sisters and female relatives and boys their fathers, brothers and other male relatives. But in spite of this natural arrangements of training, no watertight compartment is made between the two sexes. In economic, religious and other ceremonial activities both males and females of all ages take part without any discriminatory feeling between the sexes.

Monogamy is the socially and legally recognised practice among the Lalungs. Boys usually marry between the ages of 20 to 25 years and girls between 16 to 22 years. In Lalung marriages also there is the provision for bride price. As the family of the bride loses a valuable labourer, they want economic relief by means of bride price.

The Lalung women do not enjoy property rights. After the death of the father or even before his death the land is equally divided among the sons. The daughters do not inherit any property.85

Thus, it may be said that, though the kinship system and social institutions of the tribals differ from each other, the existence of the customary laws makes the position of women relatively high. Due to absence of dowry, sati, child marriage, purdah etc., and
also for the prevalence of widow remarriage the tribal women have been able to lead a respectable life in the family and society. The provision of bride price has helped to avoid the dowry system and the evils related to it. However, the dependence and inferiority of tribal women upon men still exist. The absence of property rights of women is one of the main reasons of inferior status of women. Though the tribal women work equally outside and inside home and sometimes they work more than the males of the family, yet they do not inherit property or do not have any share in the earnings of the family. They also cannot take part in the decision making process of the family. Therefore, it may be said that, the tribal society is also not free from the evils of the patriarchal system, which deprive women of some of their basic human rights.

**ROLE OF LAW**

Law is a powerful means for social change. In India, though the constitution occupies commanding heights, law in action is what moulds the rule of life, shapes social justice and makes people feel that courts and prisons are no paper tigers. Gender justice is a comparatively recent concern of the law. From Mathura (1978) to Vishaka (1997), the Supreme Court has travelled from an extreme black letter law position to a liberal and gender sensitive legal position.

There was a lot of legal activity after the publication of the report on the status of women and the celebration of the International Decade for Women (1975-1985) on a global scale. Far reaching amendments were made both in substantive and procedural laws to arrest the spiralling graph of crimes against women. A new crime, dowry death was created by inserting Sec. 304-B, in the Indian Penal Code, 1860 and Sections 113-A and 113-B in the Evidence Act, 1869. It made proof of bride-burning easier by shifting
the burden of proof on the offender as he had to prove his innocence. A legal presumption was added in the Evidence Act, enabling the Court to presume absent of consent in cases of custodial rape. Section 498-A was inserted in the Indian Penal Code to protect women from torture and cruelty. With these and many other seemingly positive changes, women should have been at a comfortable situation. But the gross ignorance of the legal provisions, and the shortcomings and the loopholes of the laws have made the situation worse. Legally, all Indians, irrespective of their sex, enjoy equal rights. Actually, an Indian woman enjoys secondary position in family and society. Thus, she faces two types of realities – social and legal.

The patriarchal values, which is prevalent in Indian society, influence the law making and adjudicating machineries. A close scrutiny of the legislation proves that even now there are many legal provisions which deny proper justice to women and for which women cannot enjoy their basic human rights properly. Upendra Baxi opines, "The legal profession has always been a bastion of male dominance. The legal language marginalised woman by saying that 'he' includes 'she'. Of course, this marginalisation of woman in legal language was a mere reflection of her marginalisation in the real life."

Even the government of India has admitted that despite various policies and schemes to bring about gender equality, discrimination continues against women and the girl child. The documents submitted by the Women and Child Department to the Planning Commission revealed – "numerous laws still exist, which are not fair to women, and require urgent updating. Cited among these are the inheritance laws under which women have an unequal position, rape laws and Immoral Traffic Prevention Act, which need urgent amendment."
Though the codified Hindu personal law provides for equal rights for both males and females, it is also not free from discriminatory provisions. Section 23 of the Hindu Succession Act, 1956, debars a woman from claiming rights or share in a house if it is in the possession of male heirs. Even, the right to residence is only for daughters, who are widows, unmarried or deserted by or separated from their husbands. For the daughters, whose marriage is subsisting but who is the victim of domestic violence, there is no right even to seek shelter in the dwelling house. That is why, in most of the cases generally a woman does not come out of her matrimonial home though she has to face unbearable torture, as she knows that the moment she leaves the matrimonial home, she becomes shelterless.

Moreover, in the Hindu Succession Act of 1956, in spite of the recognition of the equality of the sexes, the preferential rights to sons, in the joint family property of Mitakshara coparcenary have been retained. Apart from it, the unrestricted freedom of testation which is used as a device to disinherit women heirs continues as a part of the Hindu Succession Act of 1956.91

The discriminatory attitude of the law makers, towards women is very much prominent in the Hindu Minority and Guardianship Act of 1956. Section 6 (b) of the Act refers to the natural guardians of a Hindu Minor. In the case of a boy or an unmarried daughter – the natural guardian is the father and after him the mother. However, in the case of an illegitimate boy or an illegitimate girl, the natural guardian is the mother and after her, the father. Such discriminatory provision still exists. In the presence of the father, the mother is not considered as the natural guardian of her legitimate children.
Christians are governed by the Indian Divorce Act of 1869. The only ground for dissolution of the marriage, recognised by the Act is adultery. In case of the husband, the only ground of adultery is sufficient. But the wife must prove an additional ground, such as, the incestuous adultery, bigamy with adultery, or cruelty with adultery, to divorce the husband. Thus, the law is not only outmoded in nature, but also, discriminatory towards women.

One major handicap in registering a case under Section 498-A is the requirement of Section 198-A of Criminal Procedure Code. Cognizance under Section 498-A is possible only on a police report or a complaint made by the aggrieved person or her father, mother, brother, sister or with the leave of the court any person related by blood, marriage or adoption. But this requirement is unrealistic and cumbersome. Such incidents generally take place in the night, at the presence of husband and the in laws. As the relatives of the victim may not live in the same place, in such incidents, the neighbours and the friends may be more helpful if they are allowed to lodge the complaint. But they do not have locus standi. Such provisions create hurdle in reporting the matter.

In the matter of maintenance also, the legal provisions are not satisfactory towards women. Section 125 of the Criminal Procedure Code of 1973 makes it clear, regarding the amount of maintenance of a mother or separated wife that, "... the Magistrate may order such person to make a monthly allowance for the maintenance of wife or minor child, father or mother, at such monthly rate not exceeding five hundred rupees in the whole." This amount was fixed in 1955 and retained in 1973 omnibus amendment Act of the Criminal Procedure Code. However, in September 2001, the President of India has given his assent to the Code of Criminal Procedure (Amendment) Bill, 2001 and it has
become Act No. 50, where it proposes to remove bar on ceiling of Rs. 500 a month to women in distress in the event of judicial separation or divorce. It will be a great relief to the women in distress.92

The Suppression of Immoral Traffic in Women and Girls Act, 1956 was amended in 1986 and was renamed as Immoral Traffic (Prevention) Act. This Act does not declare prostitution illegal per se, but Section 8 of the Act treats the prostitute as criminal.93 However, the client is not punished by the Act. Under this Act, any woman, who is out at night can be picked up by the police.94 In this way, according to the provisions of the Act, though the prostitutes are punished, the males who are the clients are allowed to have a free access to them without any prohibition.

In India, there is no provision of law to cover the crime of domestic violence in general and the specific crime of wife beating- which are all pervasive. The provisions of law reform and amendments are actually tuned to deal with the extraordinary and sensational issues like dowry deaths and bride burning, rather than the daily, ordinary and repetitive violence suffered by women in their homes which may finally culminate into dowry deaths. There is no effective law to curb the tragedy in its initial stage when it can be controlled. In India, at present, there is no concrete and effective prevention of domestic violence Act, like the one in the United Kingdom, which gives civil remedies like injunctions to restrain husbands from battering their wives.

The Bharatiya Janata Party led National Democratic Alliance Government, in a symbolic gesture on March 8, 2002, i.e., in the International Women's Day, introduced the bill on domestic violence, in the Lok Sabha. But some women's organisations, like the Lawyers' Collective Women's Rights Initiative, have demanded substantial amendments
to the bill. The All India Democratic Women's Association has rejected the bill stating that, as the main parts of the bill are defective, amending portions of it would not be sufficient. It has been pointed out that instead of serving the purpose for women, certain portions of the bill would harm women's interest. Section 4 (2) of the bill defines domestic violence as the conduct in which a woman is habitually assaulted or her life is made miserable by cruelty even if such conduct does not amount to physical ill-treatment, or as a result of which she is forced to lead an immoral life. However, the aggressor will be exempted from the charge of causing injury or harm to a woman, if his conduct is directed towards his own protection or for the protection of his or another's property. It means that a person can either injure or harm a woman related to him on grounds of self-protection and protection of not only his property but another's property. Thus, the Bill itself provides an escape route (on the ground of self-defence or protection of property) for the person who commits domestic violence. The bill also prohibits a woman from taking anything which belongs to her husband or otherwise she will have to face assault. In stead of solving the problem of domestic violence, such provisions will certainly complicate the problem. Half hearted attitudes of government in women's issues, cannot serve any purpose. Though India is a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women, in practice it has not done anything to implement the provisions of the Convention.

Therefore, it may be said that there is lack of sincerity and interest among the legislators to do something good for the destitute women. Another such example is the Muslim Women (Protection of Rights on Divorce) Act, 1986 which was passed in response to the judgement of the Shah Bano case. The question of maintenance is
insignificant before the more far reaching issues that this piece of legislation has brought forth. The question is not whether the Shariat does or does not lay down the specific provisions but whether in today's civilised world, Muslim women in India should be so blatantly discriminated against when even staunch Islamic nations like Iran, South Yemen, Turkey, Tunisia and Sudan have made sweeping changes in the personal law to let women live with dignity in society. Justice Krishna Iyer opines, "so long as the law is a closed male shop, so long as the whole bureaucracy keep the dice loaded against females, the fatal female destiny will not even be felt, let alone be reversed."

The role of the court is very significant in offering proper justice to women. But sometimes, the role played by the judges is not at all satisfactory. Even, "the Supreme Court, despite constitutional equality of the sexes, has let down, on occasions, the Indian women with crude arguments." The standard applied to judge a woman's behaviour are malecentric. At other times stereotypical role expectations and patriarchal values decide the issue.

In the case of Mathura, the court assumed that as Mathura (the victim) had a relation with her lover, she must be a woman of bad character and was a consenting party of the rape case. On that ground, the rapists were acquitted. But what may be the character of the persons, who committed rape, was not taken into consideration. In that case, a young girl named Mathura, around 16 years of age was called to the police station, detained there and raped by the persons in charge. The Sessions Judge was prejudiced by the doctor's report that Mathura was not virgin and had been used to sexual intercourse and therefore, came to the conclusion that she must have been a consenting party to the intercourse and acquitted the two policemen. After disagreeing with the
decision of the lower court, the High Court convicted the two policemen. The Supreme Court shared the prejudice of the Sessions Court against Mathura and allowed the appeal and acquitted the two policemen.

Four law teachers, Upendra Baxi, Raghunath Kelkar and Lotika Sarkar of Delhi University and Vasudha Dhagamvar of Poona, lodged their strong protest against the judgement by writing an Open Letter to the Chief Justice of India. They wrote, ".....one suspects that the court gathered an impression from Mathura's liaison with her lover that she was a person of easy virtue. Is the taboo against pre-marital sex so strong as to provide a licence to Indian police to rape young girls? Or to make them submit to their desire in police station?.......Must illiterate, labouring, politically mute Mathuras of India be continually condemned to their pre-constitutional Indian fate?"

Following such furore after the judgement, a new amendment had come into force which implicitly assumed that the moral character of the victim is not a relevant consideration in cases of rape. But it seems that the reform had very little effect upon courts. In 1989, ten years after the Mathura case, the Supreme Court reduced the mandatory minimum sentence of ten years imposed on two police officers, who were found guilty of raping a young woman – Suman Rani, to a maximum of five years. The judges held that, "the victim Suman Rani was a woman of questionable character and easy virtue." The judges gave less than the mandatory minimum punishment due to the victim's conduct in reporting the rape five days later.

In the Bhanwari Devi rape case also justice was denied to her. Bhanwari Devi, who was a Sathin tried to stop child-marriage in her village. It caused dissatisfaction among the upper-caste people of the village. As a result, she was gang-raped by the
upper-caste people of her own village. Justice was denied to her on the ground that, 'the middle aged men cannot rape'. The Sessions Judge acquitted the accused persons, because among other things, immediate report of her rape by the victim –Bhanwari Devi, straight to the police without first informing her in-laws was unnatural. Thus, the Sessions Judge in Bhanwari’s case expected her to take some time before reporting and the Supreme Court judges gave benefit to the accused when the victim delayed the reporting of the matter in Suman Rani’s case. Criminal law in India has to control the double standards and malecentered standard prevailing under the concept of 'reasonableness' – and what is reasonable or unreasonable depends upon the judges perception.

In India, though equality has been assured in all spheres, it is not easy for a woman to get the assured rights. Even the highly educated women and women in higher government services have to struggle much for establishing their rights. In this context, the case of Rupan Deol Bajaj is worth mentioning. On July 18, 1988, K.P.S. Gill, the Director General of the Police of the Punjab, misbehaved with an Indian Administrative Service Officer Rupan Deol Bajaj, in a dinner party. She filed a complaint with the Inspector General of Police of Chandigarh. It was treated as a First Information Report, to order an inquiry. The inquiry concluded that the evidence did not substantiate the allegation. Then she filed a criminal case in the court of the Chief Judicial Magistrate. Nothing fruitful came out of this court also. However, ultimately the Supreme Court restituted the legitimacy of Bajaj’s First Information Report. On October 12, 1995 the Supreme Court ordered the Chief Judicial Magistrate of Chandigarh to take cognizance of the police report on offences committed by the Punjab Director General of Police and to
try the case. Thus, it took seven years to get a positive response from the court to try the case. It occurred to the woman at the highest rank. The condition of women of the lower strata can be well-imagined.

The half-hearted attitude of the government in implementing the women related instrument also proves that women's issues are considered as less important. At the time of ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of India has made a declaration stating that it would follow a "policy of non-interference in the personal affairs of any community without its initiative and consent", when implementing these provisions. Thus, with its reservations on two articles, the Government of India appears to have adopted a strategy of passive inaction on discrimination in women's private lives, under the rubric of respect for the wishes of minority communities.

Therefore, it is evident that in India, on the one hand various legislations have been passed to protect the rights of women, and on the other hand, the law making and adjudicating authorities easily deny the rights and dignity of women. The ineffectiveness of the laws and increasing victimisation of women may be attributed to various factors.

1. The existing laws are not adequate to cover all types of offences such as domestic violence. That is why some new laws are required.

2. The inherent deficiencies and loopholes in the laws, deprive women of proper enjoyment of rights. Therefore, without removing the deficiencies, we cannot expect proper results from the laws.

3. In the socialisation process of Indian society, children are taught to undermine the capacity and character of a woman. Judges are also not free from such attitudes towards women. That is why, it has been seen that certain judgements are also not free from bias towards women.
4. On many occasions, the protectors of law become the perpetrators. The police men, by misusing their power are involved in the violation of people’s rights.

5. Lack of legal awareness among people also stand as an impediment. If people are ignorant about the existing laws, they cannot enjoy the fruits of law.

Substantive law is of no use, if it loses the remedial potency. The low esteem imposed on women by the scriptures influence the attitude of people towards women and its impact is very much evident in law making and law adjudicating processes also. Therefore, in the present times, it is the mindset of people which need to be changed.

NOTES AND REFERENCES


9. Rigveda VIII - 3-117.

11. Atharva Veda XIV-1-52.


17. Aitareya Brahmana, VIII-31-1.


23. Manu Smriti - V-148; and also in Yajnavalkya Samhita 1-85.

24. Manu Smriti - V- 147 & 150.

25. Supra Note 13, p. 329.


29. Manu Smriti, V-162.

30. Manu Smriti, IX-47.


34. Manu Smriti, VIII-299.


39. Ibid., pp. 62, 100, 102.


44. Supra, Note 38, p. 138.

45. Ibid., p. 143.

46. Supra, Note 43, Surah Ahjab 33 : Ruku 8 : 59, p. 211.


50. Surah Nisa 4 : 2/11.

51. Ibid.

52. Amar Asom, 6th April, 2002.

53. Supra Note 37, pp. 55, 15.


59. Supra, Note 57, p. 222.

60. Supra, Note 58, p. 490.

61. Supra, Note 56, p. 214.


64. Ibid.


68. Supra, Note 63, p. 221.

69. Supra, Note 65, p. 87.

70. Supra, Note 63, p. 265-266.

71. Ibid., p. 261.

72. Supra, Note 66, p. 165.

73. Supra, Note 63, pp. 258-262.


75. The requirements of a valid custom are – custom should be ancient, continuous, certain, reasonable, moral and should not be opposed to public policy and law.


77. Ibid., p. 88.


79. Supra, Note 76, pp. 37, 89, 90.


85. Sharma Thakur, Dr. G.C. (1985) : The Lalungs (Tiwas), Tribal Research Institute, Guwahati, pp. 12, 16, 17, 19, 42, 50.

87. In the case of Mathura (Tukaram vs. State of Maharashtra, AIR 1979 SC 185), a young girl, who has raped by two policemen, could not get justice from the court as the judge suspected the character of the victim. Consequently, the culprit was scot free and the victim did not get justice. But in the case of Vishaka vs. State of Rajasthan (6 SCC 241, 1997), the court decided that the Convention on the Elimination of All Forms of Discrimination Against Women, 1979 should be used to elaborate and give further meaning to constitutional guarantees which prohibited discrimination on the basis of sex, and guaranteed just and humane conditions of work, but it did not refer explicitly to sexual harassment. The Court drew up a set of guidelines and norms, including detailed requirements for processing sexual harassment complaints, that will bind private and public employers until the government passes suitable legislation.


89. As quoted in Supra Note 88. p. 117; 


92. The Hindu, October 2, 1999 (Delhi Edition).


97. Supra, Note 86, p. 99.

98. Tukaram vs. State of Maharastra, A 1979 SC 185

100. Supra, Note 93, p. 73.


105. Supra, Note 5, p. 41.