

## Justice Denied

### Women and the Law

A series of high-profile rapes and molestations such as the 2012 Guwahati molestation, the heinous December 2012 Delhi gang rape and the Mumbai August 2013 gang rape has prompted much soul searching into India's treatment of its women. In the wake of these incidents, Indian citizens have realized that there is systemic discrimination and marginalization of women. They have insisted on an overhauling of India's legal system and called for increased gender sensitivity in its practice.

Yet legally, Indian women have robust rights protecting and supporting their equality. The Indian Constitution enshrines women's right to equality and non-discrimination as a justiciable fundamental right. Furthermore, it assigns primacy to law, empowering it to be the primary instrument for social change and revolution.

However Indian women for the most part, cannot be said to be treated equally. This is true across the board, but most especially true for those women who exist on the fringes of mainstream society because of their marginalized status or alternate family structures. These women often find that many of their legal rights are only on paper and that implementation of these is unlikely. This gap between the constitutional protection for women and the actual social reality is unacceptable.

**The Constitution of India guarantees to all Indian women**

- Article 14:** Equality before the law
- Article 15(1):** No discrimination by the State on the grounds only of religion, race, caste, sex, place of birth or any of these
- Article 15(3):** Special provisions to be made by the State in favour of women and children
- Article 16:** Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State
- Article 39(a):** State policy to be directed to securing for men and women equally, the right to an adequate means of livelihood
- Article 39(d):** Equal pay for equal work for both men and women
- Article 42:** Provisions to be made by the State for securing just and humane conditions of work and for maternity relief
- Article 51(A) (e):** To promote harmony and to renounce practices derogatory to the dignity of women

#### Status of women in India

India may have women doctors, lawyers, bureaucrats and even a woman prime minister and president, yet female feticide, child marriage, dowry, honor killings, trafficking and discrimination of girls in provision of health and education are rampant. Agriculture, the largest sector of the Indian economy, exemplifies the marginalized status of women. Despite the dominance of women in this sector - 84% of rural women are engaged in agricultural production - the female labor force still faces extreme disadvantages in terms of pay, land rights and representation in local farmers organizations. In no Indian state do women and men earn equal wages in agriculture.

The discrimination women face in the economic sphere extends to the home; girls are neither fed nor educated as well as their brothers. While the literacy rate among men is 82%, only 65% women are literate. Girls are at a higher risk of malnourishment; on average they consume only 1400 calories daily, 800 calories short of their required 2200 calories a day.

While the economic and social discrimination faced by women illustrates all too well the marginalized status of women within India, the recent rape cases demonstrate that women also face violence. This

discrimination starts before birth; a study in the Lancet (2011) estimates that 12 million girls have been aborted over the last three decades. Gender-based violence shows no abatement and is, in fact, getting worse. National Crime Record Bureau statistics show crimes against women have increased by over 7% nationwide since 2010. Strikingly, violence against women has a level of social acceptability within India: a government survey reveals that 51% of Indian men and 54% of women feel that wife beating is justified. Besides domestic violence, there has been a drastic increase in cases of kidnappings and abductions. Trafficking has risen by 122% since 2010 while kidnapping cases have increased by 19%.

These statistics show that inspite of the robust gender laws and the increased economic participation of women, discrimination against women continues. Unfortunately, women live in a society that can be in no way be called socially just to them.

## A Lived Reality

While India's Constitution enshrines its commitment to freedom, equality and social justice for all its citizens, the lived reality of women in India does not reflect this ideal. Part of the challenge to achieving social justice for women is that it is difficult to implement them if society does not aid in their enforcement. This lack of enforcement is due to the feudal mind-set of the both the law making (politicians), judicial system, and law enforcement agencies (police). The legal system is not free from the very socio-cultural assumptions that marginalize women and other disadvantaged citizens, which they are supposed to be combating.

The judiciary assumes that users have at the very least, a certain degree of awareness of their rights as citizens, a formal education, financial resources, time and mobility. Few citizens of India have all of these advantages. Poor and marginalized women, especially, are more likely to be unaware of their entitlements, be illiterate, come from rural and poor backgrounds, have little or no access to transportation and work within the informal sector as daily wagers. For them it is almost impossible to penetrate the system. The newly reformed inheritance law, for example, gives women legal

### Key Terms

**Social justice** is an often used but contested concept. Most activists envision a socially just society one in which people understand, value and recognise the dignity of every human being. The social justice movement calls for equality and equal opportunity regardless of an individual's characteristics. It upholds equitable treatment, supports human rights, and advocates for economic justice through the fair allocation of community resources

**Marginalization** means literally to be at the periphery. In most development literature, people who are in a minority social designation (for instance, in India being of low caste, non-Hindu, or non-heterosexual) or are materially disadvantaged (poor, uneducated and so on) are considered to be at the periphery of mainstream society. However, who is considered marginalized is subjective. In this paper, we use marginalization to refer to women who maybe either poor, rural, Dalit, live-in alternate family structures etc. We would like to specifically point out that when a woman fits into multiple categories of alternate and disadvantaged parameters, her marginalization is compounded.

equality in the inheritance of agricultural land. In reality, however, less than 10% of women own any kind of land.

When women do manage to enter the system, they encounter hurdles in form of procedural delays, insistence on evidence that may be difficult to produce but is stated to be vital to their case, gender bias, non-recognition of many gender specific wrongs and rights that exist within the system. These inordinate delays mean more expenses. Women also have to deal with invasive and humiliating questioning as well as insensitivity from law enforcement agencies.

Yet law has the power to establish normative standards, particularly through the Constitution, for all citizens regardless of their social, economic and cultural positioning. A just legal system alongside a democratic polity can set the tone for social justice. It is, therefore, imperative that the legal system is reformed from within and be supported from outside to overcome the current challenges faced by women.

### Transforming legal justice to social justice

Social realities are thus often varied, particularly so for those living at the fringes of society, and require an approach by law that is grounded in the guarantee of

## A Case Study on Lived Marginalization: Witch Hunting

Witch hunting is a form of gender based violence that violates women's rights and undermines their dignity. The National Crime Records Bureau data records 'witch' motivated murders occurring in 17 states. Witch hunting ranges from murder to acts including stripping and parading of women and tonsuring of women labelled as witches. New trends in the practice of witch hunting show that women from families going through economic success that disturbs caste and community equations, assertive married women and women assuming leadership roles are also being targeted by 'witch hunters'.

Although there are special laws addressing witch hunting, the implementation of law related to it remains a challenge. It is not so much the absence of law, but rather the lack of will to implement it and undertake a vigorous investigation that can secure conviction. Unwillingness by the police to register a case of atrocities against a woman considered to be a 'witch' by the community, weak and partisan investigations and a failure to provide compensation to the victim are examples of the barriers that victims face. Furthermore, the law does not recognize that women targeted as witches are stigmatized, depressed and broken, lacking social support or the strength to pursue legal processes on their own. In fact the special law leads to greater injustices rather than addressing them. For acts of public humiliation, the law calls for punishment of no more than three to five years of imprisonment which is grossly inadequate.

human rights. The current mode of functioning of law is set in normative social, caste, class and sexual hierarchies. These are incapable of providing justice; instead they promote omission, dominance and discrimination of those living on the fringes of the society. Such laws recognize and propagate a certain type of 'womanhood' and anyone who falls out of it is not only neglected by the legal system but is also, by default, labeled as deviant. Society must change its behavior to women, and one of the preliminary steps that needs to be taken is that laws be changed to account for the lived reality of *all* women, including the marginalized.

The legal establishment must be pushed to ensure social justice for women. More work needs to be done to understand and combat the points of weaknesses in the legal delivery chain of justice. Legal education should encourage students to critically examine shortcomings of the law and give them the freedom to come up with innovative ways to target these issues. Similarly the legal establishment should be more flexible and respond proactively to critique rather than being on the defensive.

There also exist multiple civil society organizations which work on women's issues, playing roles that range from information gatherer, to translator of experiences into policy advice, into activism, or into advocacy. These organizations are a powerful resource as they have a firm understanding of women's issues within the Indian context. The legal establishment, thus needs to pro-actively leverage in

its quest to bring social justice to women. It is also imperative that such organizations network with the legal establishment so that there is greater sharing of knowledge between these groups. For this to be successful, both sides must be willing to meet and exchange ideas. Both sides must also realize that neither is a monolith and that there will be differences of opinion within these systems, and not allow this to curtail efforts to communicate with each other and work determinedly towards social justice for women.

The legal sector is not the only institution in India which needs to adjust if real social justice for women is to be achieved. All organizations in the social sector should adopt strategies that take cognizance of women related issues while designing and implementing programs. Similarly sectors like education, health and livelihoods need to be more sensitive to the woman and her constraints in their policy making.

### What can we do?

Years of determined advocacy, campaigning and action for change by women has significantly expanded the role women play in Indian society. No longer are they seen as only being care givers and managers of households. Factors such as better education, globalization and a rise in income levels have expanded the opportunities for women. Coupled with affirmative policies and programs run by the government, some Indian women have been able to wrest greater social acknowledgment.

