

Women and Equality: Issues of Pornography, Prostitution and
Rape in India

Dissertation Submitted to the Jawaharlal Nehru University in partial
fulfilment of the requirements for the award of the degree of

Master of Philosophy

Debjani Bassu

Centre For Political Studies,
School of Social Sciences,
Jawaharlal Nehru University
New Delhi – 110067.
India.
2002



CENTRE FOR POLITICAL STUDIES
SCHOOL OF SOCIAL SCIENCES

CERTIFICATE

July 22, 2002

This is to certify that the dissertation entitled **Women and Equality: Issues of Pornography, Prostitution and Rape in India** submitted by **Debjani Bassu** in partial fulfilment of the requirement for the award of the degree of **Master of Philosophy** is her original work and has not been submitted for the award of any other degree of this or of any other University.

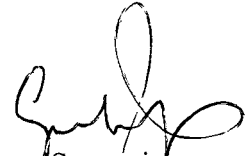
The dissertation may be placed before the examiners for evaluation.



Chairperson

(Prof. Rakesh Gupta)

CHAIRPERSON
Centre for Political Studies
School of Social Sciences
Jawaharlal Nehru University
New Delhi-110067



Supervisor

(Prof. Gurpreet Mahajan)

Table of Contents

	Page Number
Acknowledgments	i
Introduction	1
Chapter I Equality	4
Chapter II Pornography	26
Chapter III Prostitution	50
Chapter IV Rape	72
Conclusion	101
Bibliography	108

Acknowledgments

Working on this dissertation has indeed been a learning experience. Learning has been with respect to what I have come to know and more importantly, what I am yet to know.

My interactions with my supervisor, Prof. Gurpreet Mahajan has taught me a lot. The rigour of completing a M.Phil dissertation was truly brought home to me by her. This will be a guiding factor in my future work. I thank her for the patience she has shown towards me.

I thank the Centre For Women's Development Studies, for allowing me access to the various primary sources on the issues, besides a rich collection of secondary literature. It was also nice to come across Dr. Lotika Sarkar with whom a short meeting proved to be very inspiring. I thank the Nehru Memorial Museum and Library for their well maintained resources. I also thank the Indian Law Institute Library, JNU Library and the French Cultural Centre Library. I am also thankful to The National Library, Kolkata.

I would like to thank my parents for all their encouragement and support in this endeavour.

Friends have been an integral part of completing this dissertation, especially my soulmate without whom this dissertation would not have been completed.

INTRODUCTION

In discussing cases of sexual assault, the issue of violence against women (VAW) is central to the notion of equality. The implications of such assaults go much beyond the act itself. VAW denies to women their fundamental freedoms or their basic human rights, especially their right to self-determination, their right to agency or personhood and self-advancement. It also curtails their ability to make real choices in order to live a good life of dignity and integrity free from the absence of basic wants. The basic aim of VAW is to subdue the spirit of women so that they are kept in a subordinate position in terms of power in terms of resources and social status.

These acts of VAW are not isolated events; they are a part of a wider ideology and culture –patriarchy, which is the dominant norm in society. Hence, they are illustrative of the existant gender inequalities. And are to be treated as units or indicators of societal culture.

Thus, a complete study of these issues inclusive of the sociological, legal, economic and cultural aspects is required, besides the political. It is also to be noted that the politics of power is prevalent in all spheres of society. Moreover, rights as enshrined in the laws can only be exercised in reality if they are substantiated by the conditions that allow for the capacity to exercise these rights.

The issue of sexuality, however, in India, has not been analysed and debated upon much. As a result, there is not much theoretical literature on the issue. And whatever literature exists, the theoretical and empirical studies have been dichotomized. Besides, since the struggle for equality as regards sexuality and VAW has mainly been fought by legal feminists, the focus has mainly been on law and the role of the state. In this respect, the dissertation attempts to combine the two aspects of the study in terms of contextualizing the notion of equality to these three issues of sexual violence.

Basically there are two broad questions that this dissertation strives to address-

One, What is the nature of the prevalent inequalities with respect to the three issues and how they have been institutionalized, which again perpetuates further inequalities of different kinds? and

Two, which model of equality, would redress the prevalent inequalities with respect to these three issues?

This dissertation is divided into four chapters- Equality, Pornography, Prostitution and Rape. Except for the first chapter, the other chapters are divided into two sections. The first section deals with the analysis of the various factors which problematise the issue. The second section deals with the role of the state and the laws pertaining to the issue in the light of the factors already discussed in section one.

Both the views of the majoritarian patriarchal culture and those of women activists will be elaborated upon in both the sections of each of the chapters. And even though the emphasis is on the situation in India with respect to these issues, since the factors involved in them have been studied in great detail in other countries as well, these works have also been referred to in order to draw valuable insights from them as regards the three issues of sexual violence and equality. This is applicable to both the sections of all the chapters. A brief synoptic presentation of the main issues discussed in the chapters is presented below.

Chapter I discusses the notion of equality with respect to these three issues. Specifically, the requirements of the notion of equality with regard to these three issues are discussed. Further, the Constitutional provisions with respect to equality and the various International Covenants that the Government of India (GOI) has been a signatory to, has been noted in order to showcase the gap that exists between commitment and implementation. The approaches to equality as practiced by the state will also be discussed. This chapter thus sets the pace in which the general direction of the discussion of the dissertation proceeds.

Chapter II deals with the issue of pornography. It examines the issue, whether pornography secures and furthers the civil equality of women or does it violate them. As part of this civil equality, the question whether women actually exercise sexual freedom and freedom of speech and expression in pornography would also be examined. Further, the legal interpretation of the issues involved in the notion of civil equality is also noted.

Chapter III deals with the issue of prostitution. Here, the existence of the institution of prostitution itself is a result of prevalent inequalities in the society. This in turn gives rise to the various forms of inequalities, which are meted out to the prostitutes. This treatment is meted out to them by the dominant in society, as is evident in the social ostracizing of the prostitutes. State including the legal machinery, which is also a social construct, perpetuates this inequality. Keeping these issues in mind, again the various issues are discussed with respect to the legal matter.

Chapter IV deals with the issue of rape. An attempt is made in this chapter to understand the act of rape and how it is perceived. It is argued that this perception itself is a product of unequal legitimizing categories, which only perpetuates further infliction of inequality on women. The examination of these categories and the feminist response in the pursuit of deconstructing these categories is specifically noted. It is urged that this is essential to bring about some change in the pursuit of equality. Again, the legal aspects of this issue is discussed in the second section of this chapter.

Chapter-I

EQUALITY

Introduction

The notion of equality is an integral component of liberal, democratic states. In India, this liberal conception of equality is enshrined in the Indian Constitution. In the forthcoming discussion of the issues of violence against women, equality assumes prominence. The nature of inequalities prevalent and the kind of equality that is urged for forms the core of the discussion on equality.

In this respect, this chapter deals with two broad aspects. The first focusses on the notion of equality as equal human worth of all individuals. Treating equality as a human right, this section argues that equality of liberty requires the presence of those conditions, which are required for the exercise of basic human rights by all. Equality entails equality of wellbeing and equal opportunities for self-advancement and fair treatment for the purpose of a good life, namely, a life of integrity and dignity. Needless to say, formal equality is the minimum condition but it is by no means enough. What is needed also is substantive equality in the political, economic and social spheres of life. The second section deals with legal equality and the role of the state. The discussion centers on the assumed gender neutrality of law. The limitations of law are also discussed here. Further, the different approaches to equality as practiced by the Indian state have been examined.

The Notion of Equality

The notion of political equality embodies the principle of equal intrinsic worth of all individuals. (Anne Phillips 1999). As Martha C. Nussbaum said, a human being is seen “as having worth as an end as derived from the Kantian notion of the inviolability and dignity of the person.” (Martha C. Nussbaum 2000: 73). According to Elizabeth Cady

Stanton, as quoted by Zillah Eisenstein, 'Nothing adds such divinity to character as the recognition of one's self-sovereignty, the right to an equal place, everywhere conceded...'; the right of an individual to an independent and a self-fulfilling life. (Zillah Eisenstein 1987: 82). Wollstonecraft, amongst many others, talked of equality as a human right. According to her, women were not naturally inferior to men, but rather their low social status because of them being subjugated by men. (Juliet Mitchell 1987: 36).

Some feminists see equality not only as a basic right but also as a natural right. Zillah Eisenstein quotes Anthony Stanton saying that- 'the natural rights, like the right to self-determination and to govern one's own destiny is brought by every individual when he/she comes into this world and are not transferable. They are a component part of the individual ensuring his/her growth and development.' (Zillah Eisenstein 1987: 81).

Here, the principle of equality includes, on the one hand, the right to agency, and on the other, self- definition, bodily integrity and the social conditions of self-respect. (Nancy J. Hirschmann 1999: 33). Every individual should have the opportunity to exercise free, effective and meaningful choice¹ in realizing one's chosen ends in life and the roles one wants to perform. (C.A. Littleton 1997: 714). This right to agency has been denied to women as they have been defined not as independent and autonomous selves but as mothers and wives (Anne Phillips quoting Zillah Eisenstein and Elizabeth Cady Stanton 1987: 15-16) and always in relation to her sexual class. (Zillah Eisenstein 1987: 85). What women have demanded is the equality of respect and status. And with it, the right to bodily integrity, which includes the right to property in one's person. (Carole Pateman 1988).

Liberal democracy requires that freedom and equality apply to all persons equally. The very basis of individual rights is that everyone supposedly shares them alike. (Zillah Einstein 1987: 80). Therefore, a free society is one in which liberty is equally shared by all. (Richard Norman 1986: 294). However, the exercise of such rights, ensuring equality

¹ Richard Norman defined freedom as, 'Freedom...I take it to be the availability of, and capacity to exercise meaningful and effective choice.' (Richard Norman 1986: 285).

of respect and status for all individuals, is only possible when the social conditions allowing an equal opportunity to live a worthwhile life to all, exists. This amounts to equality of liberty. (Ibid. 292).

Hence, for the rights to be exercised by each individual- a) they must be recognized by society and b) the individual should be capable of exercising self-definition, self-determination and self-criticism. Talking of the first point, it is as Ronald Dworkin noted in his two principles of ethical individualism, - once a life is born, it should flourish and not founder and living well would require both personal commitment and a social environment in which that commitment would be respected. (Ronald Dworkin 1996: 42-43). The second point is opposed to paternalism. It suggests that women should make their choices free from the imposition of the male standard. Since the majority of women have yet to choose their roles freely, the question of demanding the same as men does not arise. Further, as regards the issue of the male sexual urge being natural and uncontrollable, it is very much a social construct; an element of the patriarchal ideology and the fact remains that there is no biological difference between the sexes in this regard. In this sense, then equality can be perceived as identical treatment, as asked for by women in this context.

As regards the issue of self-criticism and self-realization, it is as Simone De Beauvoir pointed out, there exists the need for women to, 'realize their own self, their potential' along with the 'social opportunities or the outlets or facilities which they can adventure into in order to excel. What has stopped women is the way women have been taught to define their own selves, how they view themselves and their goals in life.' (Simone De Beauvoir 1987: 29). As Charles Taylor observed, 'you are not free if you are motivated, through fear, inauthentically internalized standards, or false consciousness, to thwart your self-realization' (Charles Taylor 1986: 103). He further adds, '...freedom can't be simply interpreted as the absence of external obstacles.' (Ibid.: 107). Acting out of the motivation of shame and fear, spite or too great a need for comfort is irrational and could

lead to a negation of freedom. (Ibid. 107-108). It is then, the exercise of positive liberty² that is integral to the self-definition and the self-determination of women. Therefore, it is for women and not only men to deconstruct the binary oppositions which uphold gendered role expectations (as will be discussed later on in the chapter), which are another important element of patriarchal thought and practice. Women themselves must realize the male surveyor within themselves, thereby bringing an end to their sexual objectification. (Amartya Sen 2001: 10). In this context of freely choosing one's role in life, it is possible that women may choose to uphold those attributes which have been designated as feminine. Therefore, equality does not necessarily mean the end of gendered roles. What it does mean is the end of enforced gendered roles.

The exercise of these freedoms would require the equality of wellbeing in the sense of moving from the equality of resources to equality of welfare. Women must be ensured sufficient resources instead of identical amounts of wealth and income as enjoyed by men. (Anne Phillips stating the views of Amartya Sen 1999). What is necessary then, is equality as equal opportunities for self-advancement, the basis of which is the provision of adequate amounts of the basic amenities of life. J.S. Mill, as quoted by Anne Phillips, talked of the equality of opportunity to, “develop their faculties”, irrespective of the place where they are born to’ (in Anne Phillips 1987: 6). It is not enough that all should have the best possible chance of salvation. (Thomas Nagel 1991: 158) but also of a good life of dignity and integrity. A woman's dignity marks her individuality as Zillah Eisenstein has pointed out. (Zillah Eisenstein 1987: 83). Therefore, it is the equality of well being, sufficiency³ and opportunities for self-advancement, which is of utmost importance. Equality, then, should be seen as fair or just treatment.

² Isaiah Berlin defined positive liberty as, ‘I wish to be a subject, not an object; to be moved by reason, by conscious purposes which are my own, not by causes which affect me, as it were, from outside...I wish, above all, to be conscious of myself as a thinking, willing, active being, bearing responsibility for his choices and able to explain them by reference to his own ideas and purposes...’ (Isaiah Berlin 1986: 96).

³ Anne Phillips talking of the sufficiency of resources stated – what matters is not that everyone should have the same but that each should have enough sufficient resources, enough to satisfy any reasonable person and enable her to pursue her basic aims. Sufficiency is not logically distinct from equality. (Anne Phillips 1999).

In order to achieve such equality in practice, it is not enough to give just political rights to women, which is included in formal equality or equality before the law but what is also required is substantive equality⁴ in every sphere of life – political, economic and social. As Anne Phillips says, political equality is incompatible with ‘any ‘ kind of gap. How can it be that people are equal and yet unequal- (Anne Phillips 1999), thus questioning the gap between formal and substantive equality.

Political equality would entail a re-examination of the notions of democracy, citizenship, and power. Anne Phillips talks of participatory democracy where democracy matters not only, as far as the state is concerned but also in the other spheres of life, including the private sphere. Mutual respect and consensual decisions should be the premise of such democracy. Democracy would no longer be thought of in terms of a (rather feeble) mechanism for controlling the government but as popular control in everyday life. Stating the views of Sheila Rowbotham, she states – feminism shifts attention towards the sphere of everyday life and widens the meaning of democracy, ‘to include domestic inequality, identity, control over sexuality, challenge to cultural representations, community control over state welfare and more equal access to public resources.’ (Anne Phillips 1991).

The concept of citizenship is linked to the public/private distinction. Within the private sphere where women have been denied fundamental rights and to which they have been confined to, leading to the ‘denial of the significance of care and services upon which the public sphere and citizenship depends’, has violated the full citizenship rights of women. (Susan Baker 1999: 9). She further adds, ‘...the theoretical and practical exclusion of women from the category of “universal citizen” can no longer be seen as a mere accident...citizenship has come to be associated with actual men who monopolized the institutions of public power.’ Giving the views of the Radical feminists like Carole Pateman, she observes that there is, ‘an inbuilt contradiction between the ideals of individual freedom and equality, in the public sphere, and the assumption that women are

⁴ Substantive equality focusing on disadvantage not only questions any rule or practice contributing to the subordination of the already disadvantaged group, it also creates the conditions, institutional – social or economic or otherwise, for the full achievement of the goal of formal equality. (Ratna Kapur and Brenda Cossman 1993: 4).

naturally subject to men, in the private sphere. This contradiction goes to the heart of democratic theory and practice, including in the welfare state...the integration of women into full citizenship⁵ requires a rethinking of both our conceptualizations of citizenship and of the individual; in other words, a rethinking of the ideology upon which the public-private distinction is constructed.' (Ibid. 12). Women therefore need greater representation in order to exercise their full citizenship rights and promote equality. In other words, what is required is the empowerment of women. The empowerment approach to equality focuses on the issue of male domination and female subordination as the real issue of difference. (C.A. Littleton 1997: 718-719).

According to Kate Millet, as noted by Carole Pateman, who argues that 'all power is political...because men exercise power over women in a multitude of ways in personal life, it makes sense to talk of "sexual politics" and "sexual dominion...provides [the] most fundamental concept of power". The personal becomes the political. This approach illuminates many unpalatable aspects of sexual and domestic life, in particular, its violence...' (Carole Pateman 1987: 119). The feminist theory of power, according to Nancy C.M. Hartsock, is the understanding of power as energy or competence or ability or capacity rather than dominance. (Nancy C.M. Hartsock 1983). Jacqueline Goodnow referred to the ability to control the way one's own body and sexuality is used as the content of power (Jacqueline Goodnow 1985: 20). The dominance approach to equality questions the notion of power as gender dominance achieved by force. (Catharine MacKinnon 1987). (This shall be discussed in greater detail later on, in the discussion on sexuality).

As Anne Phillips observes, economic equality⁶ is deeply interlinked with political equality as acquisition of resources leads to access to power and status and recognition as equals. In other words, whereas political equality presumes individuals to be of equal

⁵ Desmond King and Jeremy Waldron as quoted by Anne Phillips defined a citizen as a person who can hold her/his head high and participate fully and with dignity in the life of her/his society. (Anne Phillips 1999).

⁶ Anne Phillips defined economic equality primarily in terms of the distribution of income, wealth and life chances, including access to socially provided resources such as education and health. (Anne Phillips 1999).

worth, it is the economic conditions that undermine or sustain equality of respect. (Anne Phillips 1999).

In the wider social context, the issues of: deconstructing the binary oppositions, rethinking the concept of morality, analyzing sexuality as a social construct and the issue of equality and difference will be dealt with. All these concepts of morality, sexuality, binary opposition and difference have been used as grounds for denying equality to women under the patriarchal ideology.⁷

The binary oppositions of the public/private which includes the state/society distinction,⁸ masculine/feminine are the most important ones. The public/private dichotomy – 1) Confines women to the domestic sphere and such confinement is enforced by the threat or actual use of force, as is evident in the acts of sexual violence,⁹ through psychological manipulation where the woman unknowingly imbibes the male surveyor within herself,¹⁰ and, by cornering all the resources force women to perform the role -expectations that they have of them. 2) If any woman transcends the boundary of the private sphere, then violence against her is legitimized on the ground that she deserved it for not conforming to the male standard. 3) This dichotomy further legitimizes the oppression of women in

⁷ Gerda Lerner defined patriarchy as, 'the manifestation and institutionalization of male dominance over women and children: in the family and the extension of male dominance over women in general. It implies that men hold power in all the important institutions of society and that women are deprived of access to such power. It does not imply that women are either totally powerless or totally deprived of rights, influence and resources.' (Sarah Blaffer Hrdy 2000: 148). Zillah R. Eisenstein also talked of patriarchy as connoting the social, historical and economic relations of power in society that create and reflect gendered inequalities. (Zillah Eisenstein 1988).

⁸ According to Carole Pateman, the liberal theorists contrast the political sphere (the state), which is the sphere of power, force and violence with the society (the private realm) which is regarded as the sphere of voluntarism, freedom and spontaneous regulation. (Carole Pateman 1987: 113).

⁹ Liz Kelly, as quoted by Mary Maynard, defined sexual violence as, 'any physical, visual or sexual act that is experienced by the woman or the girl at the time or later, as a threat, invasion or assault, that has the effect of hurting her or degrading her and/or takes away her ability to control intimate contact.' (Mary Maynard 1993: 106).

¹⁰ John Archer and Barbara Lloyd like Frigga Haug talked of the 'subtle exercise of power based upon the control of consciousness' by men over women. (John Archer and Barbara Lloyd 1985: 158). They further stated, '....that inequality is independent of whether or not a disadvantaged group perceives that inequality.' (Ibid. 228). A similar view was expressed by Foucault. As quoted by Susan Bordo, he talked of "modern power" in terms of an, 'an inspecting gaze. A gaze which each individual under its weight will end by interiorizing to the point that he is his own overseer, each individual thus exercising this surveillance over and against himself.' (Susan Bordo 1999: 253).

the private sphere, which is often treated as irrational and thus beyond public redress.¹¹ (Anne Phillips 1987: 13). 4) The private sphere has been regarded as inferior to the public sphere. According to Hannah Arendt, as quoted by Nancy C.M.Hartsock , it is by no means true that only the necessary, the futile and the shameful have their proper place in the private realm. (Nancy C.M. Hartsock 1983). The private sphere has been regarded as the realm of needs and desires only.

The masculine has been defined as the active subject who has the right to dominate the passive object, which is the woman, who is to be mastered and controlled. It is in this context that Carole Pateman questioned the civil freedom of men, which, includes the right of sexual access to women and more broadly the enjoyment of mastery of a sex. (Carole Pateman 1988). She further elaborates the male/female dichotomy by stating the attributes, which have been given to each category. The female has been defined as – nature, personal, emotional, particular, subjection, morality, ascription and the male has been defined in terms of culture, political, reason, justice, public, philosophy, power, achievement, universal and freedom. (Carole Pateman 1987: 109). Moreover, as the feminists have pointed out, the social construct of masculinity eroticizes power as violence, domination and death.

However, as already mentioned, since these dichotomies are all social constructs, feminists have deconstructed them (this will be discussed in greater detail in the subsequent chapters). It is as Jacques Derrida, quoted by Joan W. Scott, pointed out that, in the case of dichotomies, the antithesis itself hides the interdependence of the two terms (the second term being generative of the definition of the first term). (Joan W. Scott 1997: 761). For example, as Sherry Ortner observes in the context of the woman/nature and men/culture dichotomy, ‘woman is not, “in reality” any closer to (or further from) nature than man- both have consciousness, both are mortal. But there are certainly reasons why she appears that way.’ (in Carole Pateman 1987: 111).

¹¹ The Government of India stated that, ‘introduction of Constitutional law in the home is like introducing a bull in a china shop...in the privacy of the home and married life, neither Article 21 nor Article 14 of the Constitution have a place...introduction of the cold principles of constitutional law will have the effect of

Further, it has also been pointed out by the feminists that it is not only women but also men who have got trapped in their own dichotomies. (See the views of Germaine Greer stated in the fourth chapter). Therefore, equality for women would actually lead to the liberation of men as well.

Therefore, as stated earlier, it is important that in deconstructing these binary oppositions, women define their own roles, which should be accepted by others in society. The notion of equality as accepting diverse viewpoints or equality as pluralism is required for the recognition and acceptance of women as equally exercising the right to self-definition and self-determination.

On the issue of sexuality, Nandita Haksar, like many others has observed that, 'the relationship between the sexes were not biologically determined but were in fact power-structured relationships.' Stating the view of Kate Millet on sexual politics, she further adds that, 'sexual relationships were in fact of relationships of dominance and subordination.' (Nandita Haksar 1994: 31). The same view is reiterated by Catharine MacKinnon, according to whom, 'Sexuality...is a form of power' and 'Gender, as socially constructed embodies it.' (Catharine MacKinnon 1996: 185). She further states, '...personal is political means that gender as a division of power is discoverable and verifiable through women's intimate experience of sexual objectification...' (Ibid. 186). In other words, sexuality as a gendered construct, linked to the hierarchized dichotomies, as mentioned above, results in and legitimizes violence against women.¹² It may be said then, that, 'The struggle against perpetuation of gender inequality is the struggle against male violence.' (Elizabeth A. Stanko 1985: 166). According to the Radical feminists, 'sexuality in patriarchal institutions and forms – institutionalized heterosexuality, pornography, prostitution and sexual objectification of women...' is to be condemned. Women have been denied their sexual freedom and they have to go beyond these

weakening the marriage bond.' (Alternative NGO Report on CEDAW, coordinated by the National Alliance of Women, January 2000: 23).

¹² The United Nations in 1994, defined violence against women (VAW) as any act of gender-based violence that results in or is likely to result in physical, sexual, psychological harm or suffering to women,

institutions, 'in order to discover their true sexuality.' (Susan Vishwanath 1997: 319). Further, creating a hierarchy of sexual practices from the legitimate to the illegitimate ones, has led to the denial of sexual equality of women. (Ibid.). Men have used the notion of shame in victimizing the recipient of sexual violence. (Ibid. 323). Control of the female body as pointed out by Kalpana Vishwanath among many others is the power by which the patriarchs have repressed and kept women in a subordinate position over the years. Male sexuality has been defined as active and uncontrollable, thereby legitimizing VAW, whereas female sexuality has been referred to as passive and vulnerable. (Ibid. 325).

According to feminists like Joan C. Tronto, even the issue of morality is linked to the relationships of power in society. According to her, 'To make simple applications of moral precepts to another's situation, as if none of the constraints of power within which people's lives should affect our moral judgments, results in moral thought that is ultimately unresponsive to the genuine lives and moral concerns of "others" (Joan C. Tronto 1993: 13-14). Stating the views of Carol Gilligan, she states, 'morality is tied to concrete circumstances rather than being formal and abstract...this morality is best expressed not as a set of principles but as an activity, "activity of care."' (Ibid. 78-79). According to her, a morally admirable society is one, which adequately provides care to its members. (Ibid. 126). The notion that one should be, 'attentive to viewing "others" circumstances in a whole context.' (Ibid. 14) has also been expressed in Karren J. Warren's, 'loving eye' (Karren J. Warren 2000) and Sarah Ruddick's, 'attentive love' (in Carole Pateman 1992: 104). To put it simply, the care perspective is very important in achieving equality as far as morality is concerned, since morality is always of interdependent relationships.

As far as sexuality is concerned in the context of the three issues being discussed, there is no biological difference between the sexes. The so-called biological and uncontrollable sexual urge is an excuse, which is often used as a ground for legitimizing incidents of VAW. As Sherry Ortner aptly stated that, 'biological difference only becomes

including threat of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. (Catharine MacKinnon 1991).

problematic when it is overlaid by “culturally defined value systems.” (in Mary Mellor 1997). Herein, equality may be equated with same treatment, which is not contradictory to fair or just treatment, as mentioned earlier. The real issues of difference as pointed out by A.C. Scales are those of domination, disadvantage and disempowerment which should be focused upon. (Nancy J. Hirschmann 1991: 48). Thus, in order to achieve equality, what needs to be deconstructed are these man-made differences. It is as the United Nations Commission on the Status of Women stated- The crux of the issue is whether a woman has the right and the means to control what happens to her own body. The status of men should not be the reference point for judging the status of women. (Hilkka Pietila and Jeanne Vickers 1996: 122).

From all the issues mentioned above, feminists thus have emphasized upon the dominance approach to equality which focuses on the abuses of women as gender dominance achieved by force. In this approach, sex discrimination stops being a question of morality and starts being a question of politics. Catharine A. MacKinnon talked of equality as ‘non-subordination’. (Catharine MacKinnon 1987). Christine A. Littleton has also reconceptualized equality as anti-domination. (C.A. Littleton 1997: 719).

Equality: The Indian Constitution and the Practices of the State

In India the struggle for equality, regarding these three issues of rape, prostitution and pornography has mainly taken place on the legal terrain. Women have approached the state for the redressal of their grievances as regards these issues of sexual violence.

According to Ratna Kapur and Brenda Cossman, “... law is an important site of politics, if politics is similarly understood as a struggle over meaning: a place where we struggle for temporally bound and fully contestable visions of who we are and how we ought to live.” (Ratna Kapur and Brenda Cossman 1996:42)” law remains an important site of struggle. Law has been and can continue to be, a site of discursive struggle with a subversive potential. It is a terrain on which the women’s movement has challenged dominant constructions of gender, sexuality and family. It is a terrain of contested meanings, where the women’s movement has won important victories, particularly in

condemning violence against women. Campaigns for law reform have provided opportunities for women to raise public awareness about issues that were previously unrecognized and/or simply accepted as natural, unspoken part of life.” (Ibid: 290). This is very true of the issue of sexuality, which has not been much discussed and debated upon in this country. Further, law has an educative function. (Ibid: 316). “Law reform can be conceptualized as a process of creating a social consensus that certain forms of behaviour are unacceptable and not simply about the creation of individual rights, purportedly universally accessible to redress individual violations.” (Ibid.).

The constitutional provisions regarding the notion of equality as found in the Fundamental Rights, Directive Principles of State Policy and the Fundamental Duties in India (See Sangeeta Ahuja 1997 Vol. 2: 834-849) are as follows:

Part III of the Indian Constitution (henceforth stated as IC) deals with the Fundamental Rights guaranteed to every Indian citizen. They are as follows:

Art.14 of the IC upholds the principles of ‘equality before the law’ (the notion of formal equality) and ‘equal protection of the laws’.

Art.15 prohibits any discrimination on grounds of sex, and clause (3) of this article allows the state to make special provisions for women and children keeping in mind the fact that they have been socially and historically disadvantaged for so long. This is the “exception approach” to equality, which is not contradictory to the “holistic approach” to equality. In the latter approach, equality could mean treating individuals differently. (National Law School Journal 1993:9-10) Special treatment, also known as affirmative action, is seen as a fundamental part of equality. Of course, in these three issues of sexual violence, identical treatment is demanded in the sense that there is no biological difference, but those that have been socially constructed. This article therefore promotes equality of well being, respect and status for women.

However, “A discrimination based on one or more of these grounds and also on other grounds is not hit by the Article.” (Ibid: 11) E.g. in the case of prostitutes where discrimination is made not only on grounds of sex but also on grounds of public morality.

Art.16 guarantees equality of opportunity in matters of public employment for all citizens irrespective of sex.

Art. 19 guarantees these six fundamental freedoms to her but subject to reasonable restrictions.

Art. 21 protects and safeguards the life and personal liberties of all individuals. The rights to livelihood and shelter as also the right to privacy have been read into the article by the Supreme Court. However, these are all subject to reasonable restrictions. (S.K. Verma and Thomas Paul 1997-1998: 181, 182, 187).

The two articles 19 and 21 does guarantee equality of liberty.

Art. 23 prohibits traffic in human beings and forced labour.

Art. 24 prohibits child labour, especially hazardous employment below 14 years.

The IC, in its chapter on Fundamental Rights guarantees to every Indian citizen formal equality. Indeed, it seeks to ensure for them substantive equality. Articles, 15, 16, 19, 21, 23, 24 all aim to promote substantive equality by promising right to a life of dignity and integrity by securing the fundamental freedoms, opportunities for adequate livelihood and shelter, the right to life free from the imposition of force or coercion and in the recognition of the right to development, it assumes that formal equality is conditional upon the actualization of substantive equality.

The Directive Principles of State Policy, as mentioned in Part IV of the IC which are to be fundamental in the governance of the country makes it the duty of the State to apply these principles in lawmaking. (Art. 37).

Art. 38(1) promotes welfare of people by securing, “a social order in which justice, social, economic and political, shall inform the institutions of national life.”

Art 38(2) – “The State shall strive to minimize the inequalities in income....to eliminate inequalities in status, facilities and opportunities, not only among individuals, but also amongst groups of people residing in different areas engaged in different vocations.”

Art. 39 talks of “right to an adequate means of livelihood”, “equal pay for equal work”, protecting “the health and strength of workers” especially children, and that “children are

given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity..." (This is especially relevant to the children of the prostitutes).

Art. 39A talks of equal justice and free legal aid.

Art. 41 secures the right to work, education, public assistance in case of unemployment, old age, sickness and disablement. (It addresses all the vulnerable categories who either fall prey to or even perpetuate sexual violence against women).

Art. 42 – "Provision for just and humane conditions of work and maternity relief..." (This is true of prostitution and pornography).

Art. 43A- "Participation of workers in management of industries..." (This is relevant to prostitution).

Art. 44 talks of "Universal Civil Code for the citizens" (Keeping in mind the personal laws which reinstate the unequal status of women both in terms of resources and respect. This Constitutional provision needs to be given special attention. Any culture, which legitimizes inequality for women, needs to be questioned and reformed).

Art. 45- "Provision for free and compulsory education for children" (Children are another vulnerable category).

Art. 46 – "Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections" (The tribals especially the dalits are another vulnerable category needing special attention. The factor of poverty along with caste worsens their condition).

Art. 47- "The State shall regard...raising...the standard of living of the people and the improvement of public health." (The latter is particularly true of the prostitute who needs free medical attention without any harassment).

The Fundamental Duties of every citizen of India are enshrined in Part IVA of the IC. Some of the provisions of this part are as follows:

Art. 51(a) asks the citizens "to abide by the Constitution and to respect its ideals..."

Art. 51(e)- "...to renounce practices derogatory to the dignity of women" and,

Art. 51A (h) "to develop the scientific temper, humanism and the spirit of inquiry and reform."

Hence, there is no doubt that the framers of the IC had the honorable intention of promoting equality between the sexes and did not want women to suffer more than they already had. The right to the social conditions or bases of self-respect as mentioned by John Rawls, (John Rawls 1986: 190) was guaranteed under the provisions already mentioned. However, the Constitutional makers did not question the dominant social constructs as prevalent in society. Thus, the fact remains that none of these laws have been adhered to and effectively implemented in practice. Moreover, they have been misinterpreted. Even the issue-specific laws (which have been elaborated upon in the consequent chapters) have not adhered to these Constitutional provisions, as a result of which, the causes of these issues have not been addressed. The laws have only dealt with the consequences of these acts of sexual violence but have nothing to say about its prevention.

This brings into question the assumed gender neutrality of the existing social institutions, including the legal institution. (C.A. Littleton 1991: 43). Nandita Haksar, as quoted by Ratna Kapur and Brenda Cossman, “not only pointed out that the laws continue to discriminate against women, but further connected these laws, and the judicial interpretations of the laws, to patriarchal social relations in which women have been oppressed.” (Ratna Kapur and Brenda Cossman 1996: 27-28). Stating the views of Lina Gonsálves, they state further, “Law enforcers ...discriminate between women and men and unconsciously tend to reflect traditional and rigid attitudes towards women.” “The police, public prosecutors and the judges who are products of patriarchal society, are by and large biased against women and...help to perpetuate and preserve the oppression of women”. (Ibid: 28). The Radical feminists are all of the same view. “As Boyd and Sheehy describe, ‘[l]aws governing reproduction, sexual assault and pornography are viewed as extensions of patriarchal control over female sexuality, with violence against women reinforcing this control.’” (Ibid: 29). Instances of such patriarchal thinking underlying the laws are as follows:

1. The terms 'reasonable restrictions', as mentioned in Article 19 of the Constitution in law which curtail the basic human rights of some women branding them as morally corrupt and legitimizing the denial of their fundamental rights on the grounds of preservation and protection of public morality and the institution of family, as seen in the case of prostitution. It is as Catharine MacKinnon points out, "Seeing sex equality questions as matters of reasonable or unreasonable classification is part of the male dominance expressed in law..... Here, sex discrimination stops being question of morality and starts being a question of politics." She refers to the dominance approach to equality, which has already been talked of. (Catharine MacKinnon 1987). Thus, even formal equality has been denied to women. (Ratna Kapur and Brenda Cossman stating the views of Archana Parashar 1996: 314).
2. Related to this is the provision in the Art. 15 of the IC where no discrimination is to be allowed on the basis of sex. However, 'Even discrimination on the basis of sex, coupled with discrimination on non-enumerated grounds would not constitute a violation.' (National Law School Journal 1993 vol. 11-12). The same example of public morality, as seen in the case of prostitutes, can be given here which is not enumerated in the article as a ground of discrimination. This again denies formal equality.
3. The binary oppositions are also upheld in law. Especially, masculine/feminine, public/private dichotomies. This has resulted in the reinstatement of the gendered stereotypical images of men and women, which legitimize violence against women if women decide to step out of the traditional roles. Further, the legal concept of privacy shields the oppression of women. (Catharine MacKinnon 1987), thereby denying women the right to agency. (Nancy Hirschmann 1999: 33). Political interference is not allowed in the area in which women are most subordinate and controlled-the family. (Carole Pateman 1987: 106). Equality in public and no recognition of it in private is the defining feature of the patriarchal order, as aptly stated by Zillah Eisenstein quoted by Anne Phillips (Anne Phillips 1987: 13). As Carole Pateman observes, feminists have shown ' how through legislation concerning marriage and sexuality and the policies of the welfare state, the subordinate status of women is presupposed and maintained by the power of the state.' (National Law School Journal

1993 Vol. 1: 76). It states further, 'legal, religious customary definitions of the institution of marriage acknowledge for the conceptual acknowledgment and legal admissibility of particular acts within marriage.' (Ibid.).

4. The uncontrollable male sexual urge is considered natural thereby justifying the various acts of violence against women. It fails to recognize the real issues of difference, which are not biological but social constructs ['contextualizing equality' (in respect of these three issues) as mentioned by Ratna Kapur and Brenda Cossman 1996: 287]. The real issues of difference, as mentioned by A.C. Scales quoted by Nancy J. Hirschmann, are, domination, disadvantage and disempowerment. (Nancy J. Hirschmann 1991: 48).
5. The legal process has clearly shown that women are not treated as individuals in their own right, i.e. as having an independent and autonomous self, choosing their roles freely. (C.A. Littleton 1997: 714, Zillah Eisenstein quoted by Anne Phillips 1987: 15) but always defined as mothers and wives. (Elizabeth Cady Stanton quoted by Anne Phillips 1987: 16). This point has been discussed in detail in the chapter on Rape.
6. The existence of some of the provisions in the personal laws legitimizing inequality of women remains untouched due to the GOI's policy of non-interference in religious affairs of the communities.

All the above mentioned instances of law being gendered clearly brings out the limitations in law. Changes or reforms are required not only in law but in other spheres of society as well in order to convert the ideal of equality into practice. It is as Jawaharlal Nehru, quoted by Lotika Sarkar said, 'Legislation cannot by itself normally solve deep-rooted problems. One has to approach them in other ways too, but legislation is necessary and essential so that it may give that push and have that educative factor as well as the legal sanctions behind it.' (Lotika Sarkar 1995). The rights as embodied in law can only be exercised if the conditions necessary for their realization exist. What is then to be pursued by feminists is not only formal equality or equality before the law but also the 'substantive vision of equality – that is- one which is concerned with promoting the social, economic and political equality of women.' (National Law School Journal 1993 Vol.1: 12). Substantive equality focusing on disadvantage not only questions any rule or


practice contributing to the subordination of the already disadvantaged group, it also creates the conditions, institutional-social and economic or otherwise, for the full achievement of the goal of formal equality. (Ratna Kapur and Brenda Cossman 1993: 4).

Such being the case, women have demanded that the state fulfill its two roles – positive and negative.

TH-10583
The positive role of the state – The State alongside, or, in cooperation with NGOs should provide and procure to all individuals certain basic amenities, thereby promoting a minimum or a threshold level of human capabilities, adequate enough to meet any choice of a way of life possible and a life which treats individuals as fully human to be valued in themselves. (Martha C. Nussbaum 2000: 74-75). The State should ensure to all individuals freedom from basic wants. (Sudhir K. Kulshreshtha 1995: 147) so that they are not exploited. Amongst women, the most vulnerable categories of the lower caste like the tribals and the untouchables, the girl child or the minor, the refugees especially migrant labour, the battered and sexually molested women who have fled their homes or have been abandoned should be secured their basic freedoms by the state. In giving them the basic necessities, including information, legal aid, and adequate employment opportunities it should not, however, override their right to agency and self-determination. The state should guarantee to each individual not just the right to survival but also the right to a good life of integrity and dignity.¹³ In this respect, the Constitutional provisions as already mentioned must be adhered to.

The negative role of the state – the state should not moralize using the male standard as the only point of reference. As mentioned above, the state has only the right and to suggest to women their future course of action after they have faced sexual violence but has no right to impose anything on them. The ‘negative liberty’ of all individuals is to be curbed by the state at all times including themselves who constitute the state machinery.

¹³ The right to life as stated in Art. 21 of the IC should be read as the right to development, the right to life free from torture and inhuman degrading treatment, as stated in the Sri Lankan law. (Savitri Goonesekere 1994: 79). She further states that this interpretation of the right to life made it not only, ‘ a negative duty of

DISS
DISS
364.1530954
B295 Wo

TH10583



(Isaiah Berlin 1986: 92). Berlin defined negative liberty as freedom from external coercion or ‘...deliberate interference of other human beings within the area in which I could otherwise act.’ With respect to these three issues of sexual violence, the freedom from unwanted infringement of one’s bodily integrity and personhood of the individual is of utmost importance.

Unfortunately, the role played by the Government of India (henceforth stated as GOI) has been far from the role expected by the women. The GOI has followed the protectionist and paternalistic approach according to which if women do not conform to the male standard, they are treated as ‘different’. Hence, “undeserving of equal treatment.’ This is implied in the ‘assimilationist approach’ to equality. (C.A. Littleton 1997: 716). (These approaches have been described in greater detail in the subsequent chapters.) . The protectionist approach is further, not gender neutral as it declines to change or redress causes or factors behind sexual violence. (Catharine A. MacKinnon 1987) The GOI also practices the ‘acceptance approach’ to equality which aims at eliminating the unequal consequences of gender difference without seeking to eliminate gender. (C.A. Littleton 1997: 714). An example of this, as already mentioned, is the reluctance of the State to deal with the causes of these acts of sexual violence in order to prevent them from happening but instead it only deals with the consequences of such acts of gender inequality.

The GOI has ratified several international covenants as regards equality. They are as follows:

The Universal Declaration of Human Rights of 1948 states, ‘All human beings are born free and equal in rights...’ (Mary Robinson 1999: 20). The women’s rights to enjoyment of human rights and fundamental freedoms in political, economic, social, cultural or any other field and their right to full and equal participation in all walks of life, is guaranteed.

the state to prevent infringement, but a positive duty to ensure an environment conducive to the sustenance of life and human dignity.’ (Ibid.)

(Ibid.). It also recognizes violence against women as one of the crucial social mechanisms by which women are forced into a subordinate position. In other words, what the Universal Declaration of Human Rights implies, is – the equal intrinsic worth of all individuals, substantive equality including the deconstruction of the binary oppositions like the public/private distinction.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979 asking for the elimination of all prejudices and customary practices based on and perpetuating the stereotyped roles for men and women as to who is superior and who is inferior in society, states clearly that – ‘...the State Parties to the International Covenants on Human Rights have the obligation to ensure the equal rights of men and women to enjoy all economic, social, cultural, civil and political rights.’ (Ibid.: 23). This implies the following: to ‘develop a scientific temper’ as mentioned in the Constitutional provision of Fundamental Duties for every citizen of India, recognition of the real issues of difference which are socially constructed, deconstruction of the hierarchized dichotomies and equality of both resources and status. It also makes it mandatory for the countries ratifying this covenant to effectively implement it, thereby ensuring equality in practice.

The Beijing platform of the Fourth United Nations World Conference on Women recommended the implementation of legislation to end violence against women, to implement the International Agreements to adopt new laws for punishing members of security forces and police and any other State agents for acts of violence against women, legal aid and other services for girls and women at risk and to step up national and international cooperation to dismantle networks engaged in trafficking of women.

Thus, there is a need for the implementation of the existing domestic laws as also the enactment of new domestic laws and the implementation of the International Agreements. The state needs to fulfill its positive role as also its negative role (as discussed earlier). In addition to the provision of Art. 21, which safeguards the life and liberty of the Indian citizen as against the arbitrary use of power by state authorities, the Supreme Court, in

the case of Vishaka Vs. State of Rajasthan in response to a petition filed by certain social activists and NGOs, 'pointed out that the "primary responsibility" for ensuring the safety and dignity of women through legislation and the creation of a mechanism for its enforcement is of the legislature and the executive. However, whenever any instance of violation of fundamental right is brought before the court, then an effective redress under article 32 of the Constitution requires that some guidelines be laid down for the protection of these rights to fill the legislative vacuum.' (S.K. Verma and Thomas Paul 1997-1998: 161). Chief Justice Verma on the issue of guarantee of gender equality, speaking for the Supreme Court rightly observed, 'any international convention not inconsistent with fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof to promote the object of the constitutional guarantee.' Referring to the CEDAW, he further observed, 'it is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.'" (Ibid: 152).

The Vienna Declaration and Programme of Action, 1993 states: 'The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights.' (-Art. 18) (Mary Robinson 1999: 21).

The Right to Development Convention adopted by the United Nations in Art. 3(1) of its declaration states that it is the 'State's primary responsibility to create conditions favorable to the realization of the right to development...' (S.K. Verma and Thomas Paul 1997-1998: 188-189). The final document of the Nairobi Conference adopting the Forward Looking Strategies for the Advancement of Women defined development as physical, moral, intellectual and cultural growth of human beings.

However, the Women's Action Research and Legal Action For Women (WARLAW) petitioned the Union of India and the Chairman of the National Women Rights Commission to show cause as to why the International Covenants like the Universal Declaration of Human Rights, 1948, the CEDAW, 1979, The Vienna Declaration, 1993,

the Protection of Human Rights Act, 1994, The National Commission For Woman Act, 1990 and the provisions of the Fundamental Rights, Directive Principle of State Policy and Fundamental Duties of the Indian Constitution have not been adhered to. (Rani Jethmalani 1995: 107-128). The Right to Development Convention has also not been implemented by the GOI, as discussed in the chapters of prostitution and rape.

Hence, it is as Juliet Mitchell said, 'Equality as a principle – never as a practice has been an essential part of the political ideology of all democratic....societies since their inception.' (Juliet Mitchell 1987: 27). This is inspite of the fact, 'our Constitution envisages the establishment of a socialistic welfare state. The basic framework of socialism is to provide a decent standard of life and security from "cradle to grave"' (S.K. Verma and Thomas Paul 1997-1998: 178).

Conclusion

Thus, it may be noted that striving for equality has to be negotiated at various levels. Importantly, equality for women should not be defined in terms of a standard defined by men as it has been imposed by the latter on the former and not freely chosen by the former.

It is essential to empower women in terms of representation, legal literacy and more importantly, their participation in decision-making in all spheres of life. Substantive equality is a necessary condition for the realization of the ideal of equality for all. However, as we will see in the next few chapters, in India, let alone substantive equality, even formal equality has not been significantly realized. And it is this that is in need of urgent attention.

Equality for women could actually lead to the liberation of men, not just women.

Chapter-II

PORNOGRAPHY

Introduction

It is in the context of pornography that, “‘Sexuality’, as Susanne Kappeler quoting Stephen Heath says, “[is] the construction of something called ‘sexuality’ through a set of representations- images, discourses, ways of picturing and describing”. (Susanne Kappeler 1986: 198) As a social construct, it signifies the unequal relationships of power and status as it exists in society. Thus, to make this social practice egalitarian in thought and action, both men and women should determine its discourse, not just men.

Sexual freedom or the liberation or transformation of sexuality which holds equally true for both men and women, entails the right to pleasure, agency and self-definition in the domain of sexuality. (Carole Vance 1997: 327). Both the sexes must equally exercise the right to choose; to be an active sexual subject acting on one’s own behalf in determining one’s relationship to one’s own body and to another body.

In other words, for sexuality to be redefined and made egalitarian, each and every individual irrespective of one’s sex should exercise in reality certain basic freedoms - freedom of self-expression and self-definition; freedom of self-determination – to decide one’s own destiny free from the imposition of, or, imbibing uncritically any x-determined role being free from society’s oppressive restrictions; (Bell Hooks 2000: 25); freedom from coercion domination, and from exploitation.

These freedoms then are inclusive of the civil liberties of the freedoms of speech and expression and the right to life and personal liberty as the freedom from injury or threat to life, good health and the right to agency or intellectual (expression of thought and belief) and practical freedoms (play of will and the exercise of choice in the field of contractual action and relations with other persons). (Sudhir K. Kulshreshtha 1995: 170).

For women to exercise these civil liberties effectively, all individuals in society need to recognize and accept women as equally human and accordingly should procure to them all the basic amenities which are necessary for a secure life of dignity and integrity. The basic human wants of food, clothing and shelter involving an adequate livelihood and the security of person should be guaranteed to women also, who unlike men do not enjoy such freedoms by birth right.

The underlying fundamental thought on which all individuals believing in equality have reached a consensus, is that, women should be recognized as individuals in their own right having agency and individuality of their own who are capable of defining themselves and are not to be defined by and for men.

The central concern of this chapter then would be to examine whether pornography as a discourse on sexuality allows for such recognition of women as equally human possessing and exercising the freedom to make real effective choice in expressing themselves, without being exploited, dehumanized or depersonalized. And in doing so, to also take note of – whether pornography reinstates the dictates of the majoritarian culture in society or is it able to give equal recognition to the less privileged forms of sexuality thereby deconstructing such majoritarian rule and thus making the discourse on sexuality egalitarian and liberated.

The chapter would be divided into two sections. The first section will deal with the question, whether pornography furthers or is antagonistic to the goal of civil equality for women. The debates in pornography regarding the civil liberties of freedom of speech and expression, freedom from threat or injury to life and the right to agency or intellectual and practical freedoms will be discussed.

The concerns of both the groups of women, i.e. those who enter the pornography industry due to sheer poverty and without a home and/or through use of coercion by those already in this industry and, those who enter this industry not because they are starving, shelterless

and one coerced into it but because they feel that they can truly express themselves and exercise their sexual freedom in this field which they regard as a domain of pleasure, agency and self-definition, will be taken into consideration. Pornography as an attempt to make the discourse on sexuality egalitarian will be questioned with regard to the concerns of both these groups of women in this chapter.

In this discussion of pornography and civil equality, the observations of anthropologists and sociologists as regards the prevalent culture in society using the social and cultural practice of pornography as an eye-opener will also be taken into account.

The second section of this chapter will deal with legal aspects of the issue of pornography within the Indian context. Law as an instrument of social progress and betterment of the individual and society having an educative value and thus furthering the ideal of equality, will be debated upon with reference to discussion in the first section.

Section - I

Defenders of pornography justify and legitimize it on the grounds that it redefines sexuality as a domain of exploration, pleasure and agency (Carole Vance 1997: 327) recognizing women as sexual subjects acting on their own behalf resisting male depredation in a patriarchal culture and also giving due recognition to the less privileged forms of sexuality; it is just reflective of what already exists in society and is not the cause of violence against women (VAW). Thus according to them, pornography is not at all antagonistic to civil equality. But there is a very strong anti-pornography stand among women who refute all these above mentioned claims of those, including women, who find nothing wrong with pornography and even if there are some discrepancies, women by entering into the decision-making boards of the management and publication of such pornographic material, can redress those problems.

Before going into the specifics of this debate on pornography, its portrayal or representation and treatment of women and civil equality, it is to be noted that firstly, there is not much literature on this issue of pornography in India. Secondly, whatever little literature exists, it is mainly on the legal aspects of this issue. However, there exists a strong anti-pornography stand saying that pornography depicts VAW, is itself VAW and perpetuates VAW. It sexualizes violence and sexism defining women as subordinate to men, violating their right to dignity as a person and their right to freedom from coercion. (Ved Kumari 1999: 141, Nandita Haksar 1999: 78).

Civil equality consists in the exercise of certain fundamental freedoms like the freedom of speech and expression, freedom from injury or threat to the life including the freedom of good health and movement of the body and the right to agency or the intellectual and practical freedoms, as mentioned earlier.

In any discussion on pornography, it is essential to understand whose freedom of speech and expression is being upheld and portrayed and whose is violated. The form of such communication is also to be taken into consideration. What are the limits to such freedom of speech and expression and can the words and actions, the medium of such communication may vary, be in total abstraction of what already exists in society – the power relations, the inequalities? Does not speech and expression have a purpose and can't it be translated into action in real life? Does not one own up to any responsibility for one's own actions? Feminists have raised all these valid questions, all of which will be discussed one at a time.

Their basic contention is that the liberal position taken by all the democratic nations of the world today which gives only a statement of the basic freedoms of all individuals by virtue of being born human, without the necessary steps to be taken in order for the realization of these rights on the ground or in reality in society, is faulty. This approach needs to be reviewed and the violations of human rights of almost one half of society needs to be redressed because such an attitude does no good for those who think they are privileged by their birthright also. Recognition of all individuals having equal human worth is essential

and for that, these abstract rights or freedoms should be viewed from the perspective of how they are actually practised in society also. Only then does equality become real and not just remain a respected but nevertheless only an ideal principle yet not achieved in society. Reluctance to implement the ideal of equality by taking the necessary concrete steps on the ground questions the very belief in such an ideal.

Anyway, there is a broad consensus as far as the limits to the exercise of the freedom of speech and expression are concerned. The exercise of such freedom is not to disadvantage and/or exploit any individual and also should not disrespect the sexual practices of anyone if it is not disadvantaging or exploiting another. Security of reputation and interacting with others on one's own grounds without causing any harm to them – physically or/and psychologically, or both, should be equally exercised by all. The human and not the male and majoritarian standard should be the point of reference as to what is the legitimate exercise of freedom of speech and expression and what is unacceptable as it violates the fundamental human rights of another.

The act of communication in pornography will be discussed as under – who speaks, what is being spoken and to whom and to what purpose.

Who speaks – it is the male pornographer who speaks in the act of perceiving the world as conforming to his desires and his notions of what the world should be. It is a kind of self-representation.

The subject has certain role expectations from the object of representation and he projects those qualities on the object believing and desiring it to be the natural qualities of the object. Her desirability is fetishized (Catharine A. MacKinnon 1982: 187). Thus, such self-representation on the part of the pornographer leads to the sexual objectification of the woman who is neither consulted nor contributes to the value system being communicated. (Susanne Kappeler 1986: 24).¹

¹ See also Rae Langton's definition of: 1. Objectification involves the processes of viewing and treating it as an object of satisfaction of one's desires, desiring and believing it to have some properties by nature and forcing it to have that property. 2. Projection thus involves desire, beliefs and perception working together.

Further, as Catharine MacKinnon quoted by Rae Langton has pointed out, such projection 'becomes embodied because it is enforced.' (Rae Langton 2000: 138-140). Such enforcement is done in two ways – through psychological manipulation – where the woman imbibes the male surveyor (Susanne Kappeler 1986: 145) within herself, and, where she is forced to accept the highly individualistic and profit-oriented male culture in competing for resources in the male dominated society. Secondly, through the use of brute force as shown in gynothanatica pornography.² This is often the case for women entering the pornography industry due to absence of their freedom from minimum basic wants required for survival and are thus in no position to exercise their civil liberties effectively.

Any deviant practice that does not conform to his notion of the sexes and what he desires is shown by the pornographer with the purpose of ridiculing and abusing it. E.g. as in the case of the very negative portrayals of homosexuals.

This self-representation further extends to the reader of pornography, the majority of them are men, resulting in the conflation of the pornographer and his reader in one single-subject. (Susanne Kappeler 1986: 24).

What is being spoken, is then to be understood as this self-imaging or self-representation of the dominant and powerful in society. As Susanne Kappeler says- 'power is not inherent in the male- it is a socially, physically and culturally constructed position of power'. (Susanne Kappeler 1986: 162)

Hence, it is as Irene Diamond quoting sociologist Amitai Etzioni says that, "Pornography may in fact have the staying power not because of the 'naturalness' of sexuality but rather because of the resiliency of the political and economic institutions which structure and

² Rosemary Tong defines gynothanatica pornography as that which represents, "...sexual exchanges devoid or nearly devoid of mutual self-respect; they display sexual exchanges which are degrading in the sense and to the degree that the desires and experiences of at least one participant are not regarded by the other participant(s) as having a validity and a subjective importance equal to his/her/their own." She points out that the word gynothanatica has been derived from the Greek words for 'woman' and 'death' or a destructive principle.

shape sexual expression.” (Irene Diamond 1980: 129). However, going beyond this liberal attitude she further adds, that pornography is ‘a medium for expressing norms about male power and domination which functions as a social control mechanism for keeping women in a subordinate status...’ (Ibid.).

Thus, power as a social construct, need not always be founded upon high economic status or having natural talents possessed by the individual. Just being a male is enough to legitimize the acquisition, exercise and perpetuation of power, which is used in order to portray and actually keep the women as subordinate to themselves.

Who is spoken to and to what purpose is the third question- To men, pornography defines pleasure and the intersubjectivity of meaning as to what women are; - a self-representation to themselves as to what they consider as ‘woman’.

To women it communicates in no uncertain terms what they are, can and should be. It tells women what is the role expected of them and also what is good for them, the threat of actual physical force underlying this communication.

Further, the pornographer in using the woman to communicate to the reader or audience, his own views of what women are and want, aims at bringing in other women to join his audience thereby increasing the legitimacy of the act and also profiting from the increased sales of such pornographic material.

Communication in pornography, therefore, is interaction-proof and “in the present dominant representation of sexuality, sex is as monologic as speech, particular roles being assigned and fixed...” (Susanne Kappeler 1986: 199). Women are the ‘speech objects’ (Ibid. 194) of men, not the speaking subject contributing to the discourse on sexuality in society. This point shall also be discussed in detail, under the heading of the right to agency or intellectual and practical freedoms- another element of civil equality, to be talked of later in the chapter.

The exercise of freedom of speech and expression in the development of erotica by men proclaiming it to be a part of art and aesthetics has been questioned. Erotica, which is also an expression or portrayal of culture, can hardly be called art and hence this kind of the exercise of one's freedom of speech and expression is unacceptable and illegitimate.

Erotica as art and aesthetics as opposed to pornographic material has been questioned as well- (1) If violence against women (VAW) and their image of women as far from the existing reality is eroticized, does it become art and is to be no longer regarded as pornography, and (2) As Ruby Rich, quoted by Rosemary Tong points out, if there is no way to decide whether a photographer's intentions or a viewer's perceptions determine the message of the photo, then how to decide whether the photo is 'erotic' or essentially pornographic. (Rosemary Tong 1984: 20).

Besides, art and literature, even religious material is a part of the commercial profit-making enterprise which will only cater to what the consumers want, irrespective of the quality of the work, its purpose, and more importantly ignoring what women, who are the subject-turned-object (H.T. Wilson 1989: 156-157) matter of such representation, actually want or feel.

Heightened individualism and commercialism in the prevalent culture has led to the exploitation and objectification of individuals, especially those who have historically and socially disadvantaged – women. They are considered to be only of instrumental value – a devaluation of human life that is worth something only when it can be used to the advantage of oneself.

If non-recognition and unacceptability by society of certain individuals and their actions is disturbing them, their pain can and is often exploited by the pornographer, just as exploiting a destitute poverty-stricken individual making him/her do things which that individual given a real effective choice would not have done.

The pornographer accepts no responsibility for the consequences of his/her actions. Exploiting people's suffering to one's advantage seems to be the ruling norm in the existing culture.

As regards objectification, as H.T. Wilson says, it is the total and direct control of sexuality that men desire, without any efforts being put into a relationship. Therefore, there is no question of understanding the other person with whom one is supposed to enter into a relationship. There is always this fear, on the part of men, that a relationship may not produce results in conformation with their desires and expectations. Of course, the legitimacy of his own desires and expectations are not to be questioned at all.

It is a kind of a 'disembodied disciplined observation' in pornography (Wilson 1989: 156) where the viewer is able and willing to step out of the scenes, enjoying sex in masturbating as the purpose is to find a safety-outlet for one's sexual desires without entering into any commitment with anyone else.

The theory of safety-outlet has been questioned also but that will be discussed later.

In concluding the discussion on the freedom of speech and expression here, it can be rightly said that it is the pornographer who through this self-representation, defines the authorized version of the dominant reality which determines what is pleasing and what is not, what is art and what is not. (Susanne Kappeler 1986: 62) Women themselves have so little control over their own lives and bodies that they can hardly communicate their own thoughts and feelings at all.

Coming now to the question as to whether pornography allows for the actual freedom from threat or injury to life as a part of the right to life and personal liberty and security – another element of civil equality, as far as women are concerned.

One can say without doubt, that there is definitely a link between pornography and actual VAW, either physical and/or psychological, or both, direct or indirect.

Women are forced to view it, to enact it out, to subtly be imbued with the prescribed roles portrayed in it via the socialization process, and/or also have to bear the consequences of the effect that it has on the reader as in the case of being raped, or being embarrassed due to uncalled- for comments, all of which harm women, not allowing them to develop and express their individuality and restricting their equal participation in the constitution of society and culture.

Doubts have been raised over the accepted line of division or the rigid distinction between fact and fiction. As Catharine MacKinnon, quoted by Zillah R. Eisenstein said, “pornography is not an idea... pornography is more act-like than thought like...” which, “furthers the idea of inferiority of women...” (Zillah R. Eisenstein 1988: 172). The intersection of pornography as both image and reality was found, for instance, in the works of Marquis de Sade who actually practiced VAW of which he wrote about. (Andrea Dworkin 1993: 137). Writing for him, and for maybe many others, was a surrogate sexual pleasure because one is writing about what he enjoys sexually and that is sexually assaulting the sex object.

Such kind of thinking in the sense of self-representation spills over to the viewer-hero of the representation as already mentioned earlier. The fantasy of pornography is completed by the active viewing subject as transformed into the doing subject. As the saying goes, “pornography is the theory, rape is the practice.” (Irene Diamond 1980: 132). Observation of pornography no longer remains disciplined and disembodied with the viewer wanting to enact out what he sees with someone else. He, not finding someone else in consonance with this image that he has of her, leads to violence. Thus, VAW emerges out of a conflict of role expectation by men and the actual role formulation and its performance by women, the latter deconstructing the gendered stereotyped images or representations of themselves. This is fallout of the patriarchy theory with its belief in the male-sex right by birth, which very much exists in society. (Ram Ahuja 1998: 228, 212).

Further, to be in and maintain that position of power and status, one needs to gain access to and monopolize resources by imposing rules on the less privileged, as stated by the conflict and control theories (Ibid. 213-214) in the sociological explanations of the motivations in life. The imposition of male-constructed hierarchized dichotomies (to be discussed in detail later on) by themselves is taken to be the accepted norm. Any deviation from this norm is severely penalized as in the case of rape. Sexual objectification of women is the accepted norm by the majority of men in society.

The patriarchal culture always links sex with harm or hurt of women showing women as wanting to be hurt, dominated and taken against their will. Depersonalizing- physically or psychologically another human being is considered a pleasurable and enjoyable experience and that of kind thinking is very destructive for the person who thinks it also, not just the other person who bears the consequences of such sadism.

Gynothanatica pornography, the complete imitation of which leads to murder on the 'copycat' model (Deborah Cameron and Elizabeth Frazer 1992: 322) is the best example of the link between pornography and VAW; pornography as both creating and reflecting VAW.

This completely demolishes the claim of the pornographers as of others in defending pornography, saying that it is a 'safety-outlet' (Irene Diamond 1980: 140) for the 'normal' feelings of aggression and hatred towards women. In fact, reports of laboratory experiments also, as studied by Irene Diamond, show that sexually explicit material especially those depicting violence against, domination and power over women, sexually arouse men more than the non-violent sexual material. This establishes the causal link between pornography and VAW.

Moreover, Danish studies show that in the 1960s, when all legal restriction on pornography was lifted in consonance with the safety-outlet theory, incidents of sex crimes, especially that of rape instead of decreasing actually rose. Hence, pornography does not only reflect but also recreates and perpetuates the violent culture that exists in society distancing itself

from the problem it portrays. It also raises the question of – Does such a violent culture need to be reflected or portrayed considering the very negative effect/impact that it has in society.

It is evident then from the discussion till now that the claim of pornography redefining sexuality as a domain of exploration, pleasure and agency where women are sexual subjects acting on their own behalf or having the right to agency and less privileged forms of sexuality is given recognition and equal respect, thus making sexuality egalitarian, is highly questionable and has been contested on the following three grounds: Do those women who join the pornographic industry not due to the basic needs for survival but thinking it to be genuinely a domain of pleasure and agency, actually end up defining themselves as sexual subjects without any constraints or are they still caught up in the patriarchal culture?

The three grounds of contestation of pornography as giving due respect to women as active and free sexual subjects without any constraints are as follows -

1. It is to be kept in mind that pornography as a social practice reflecting the existant patriarchal culture in society, is enmeshed in dichotomous thinking which is a social construct of the males in the society. The point here is, if women choose in between these hierarchized binary oppositions, are they effectively exercising their freedom of choice? Is pornography in this sense liberating for them where they can explore their sexual freedom as sexual subjects?

Choosing from in between these hierarchized dichotomies is very problematic for it is seen that women in trying to deconstruct these binary oppositions which disadvantage and restrict their lives, actually end up reinforcing and reconstructing the same. This proposition will be further illustrated with examples of such hierarchized dichotomies, which maintain and perpetuate inequality: -

- a) Masculinity/femininity- The woman in attempting to come out of the 'pure', 'married', 'motherhood' and a 'passive recipient image, showing that sex is not only for procreation but also for pleasure as in casual sex, participating in and enjoying it as an active sexual agent, falls unwittingly into the category of the whore- the willing collaborator; the libertine (Susanne Kappeler 1986: 152) with whom anyone can take liberties with and that she actually enjoys that. Just by portraying sexually explicit images of oneself, one does not do away with the socially accepted values which femininity implies. In fighting against cultural domination and for recognition as equally human, she subjugates herself as the whore to be taken (against her resistance) or to be had (she yields) which humiliates, and depersonalizes and dehumanizes her. Single women-unmarried or divorced or widowed women having sexual urges do have a problem in expressing themselves in this regard and pornography does not really solve their problems in any way.

This dichotomy may be transcended by choosing on one's own which values, implied or not, by these two terms- masculinity and femininity, does one want to uphold.

- b) Subject/object and Aggressor/victim – In trying to portray herself as the sexual subject, in pornography, she becomes the sexualized object. In order to become the aggressor, she reinstates her status of victimhood; hence reinstating the division. Women, in response to male masochism, sometimes go to the extreme by playing the role of the sadist in men-degrading pornography. But such behaviour leads nowhere but just perpetuates more violence. It is destructive of and denigrating to humanity.
- c) Public/private- Since private consumption of pornography affects the status of women, both in public and in private, in bringing sexuality out in the public sphere by publishing sexually explicit photographs and other such pornographic material, women actually end up in reinforcing this hierarchized dichotomy.

In order to move beyond this dichotomy, Iris Marion Young, as quoted by Nichola Lacey, redefined the public as openness to political debate and dialogue and the private

as that area of life from which people have the right to exclude others. (Nichola Lacey 1993: 110) The public sphere is usually regarded as the site of regulation as also moralizing on the part of the state. And women have argued for more privacy in certain areas as regards sexual practices to be free from any moralizing and regulation by the state authority and the majority will in society.

- d) Powerful/powerless or the oppressor/oppressed- The less powerful or powerless woman in trying to gain power appearing to be in complete self-control, remains powerless or becomes even more disempowered in pornography confirming the powerful status of men. Unwittingly, she ends up doing what men desire her to do.

In order to deconstruct this dichotomy, women need to realize that men are actually powerless, as, they always define themselves in negation to women (as psychoanalysts like Nancy Chodorow have shown) and what the term 'woman' connotes, and needs to dominate them in order to feel and exercise their power. Domination takes place through self-representation, enjoyment or pleasure, and through economic advantage.

It is interesting to note that through pornography some men rise from obscurity to fame, which raises their low self-esteem. This low self-esteem is a product of they not being able to live up to their own role expectations. Thus, it may be said that men have got trapped in the same power image that they themselves have created.

- e) Self/other- in constantly defining herself as a response to the present circumstances and attitudes of the other that she faces in society, her own self gets lost in the 'other's' expectations of her. In pornography, she is always what they force or make her to be. It is not an exercise of free will or choice in defining who she is.

The model for the interrelationship between equal persons which deconstructs this dichotomy would be "the mutual and reciprocal giving and receiving sexual pleasure, such that the others' desire and pleasure are constitutive of our own..." as stated by Eva Feder Kittay; (Eva Feder Kittay 2000: 141) and,

- e) Heterosexuality/homosexuality- Have most homosexual couples been able to come out of the gendered stereotyped images; - why do they still dress and behave like heterosexual couples? ³ If pornography has given them equal recognition and acceptance in society, then why the need to behave or act in this manner. The point is that pornography has not done away with heterosexuality as a privileged form of sexuality, and, homosexuality is still considered illegitimate. Being an expression of the majoritarian culture by the dominant in society, it won't legitimize any behaviour, which deviates from the male standard.

The woman, then, must think as to whether participating directly or indirectly in pornography has allowed her to move beyond these dichotomized positions or not, and whether it has contributed to her sexual freedom or not. She must understand or critically analyze whether she has acquired respect as an individual in her own right, in and through pornography, for all the evidence shows that she has not got any. Sexuality and sex as conceived of in pornography does not allow defining one's self-identity as it is enmeshed in dichotomous thinking and hence is neither egalitarian nor liberating.

2. Then again, actual sexual freedom comes not just by breaking restrictions but also with new social psychological and economic and cultural conditions alongside, which make these sexual practices acceptable which at present does not exist in the Indian society. It is as Bell Hooks quoting Ellen Willis, asserts, '... sexual liberation involves not only the abolition of restrictions but also the positive presence of social and psychological conditions that foster satisfying sexual relations. And from that standpoint, this culture is still deeply repressive....' (Bell Hooks 2000: 150). Bell Hooks further adds that the socialization process produces adults with negative attitudes towards sex. Self-definition and recognition especially in bringing the issue for others to see and

³ Judith Halberstram in her study of the transsexual lesbian talked about the phenomenon called gender phobia- A clone movement in the non-heterosexual community to make everybody look like heterosexuals who sleep with each other indicating trouble in the mainstream lesbian community. (Judith Halberstram 1999: 127)

debate about cannot be in exclusion of its social acceptability and respect. Without the latter, the former is incomplete and inhibits the equality of the individual.

3. Further, to define one's self-identity only in terms of one's sexual practices delimits the equality and freedom of the individual. In doing so, a part of the individual is portrayed, not the whole individual having a distinct individuality and personhood of one's own. The distinctive individual gets lost in equating the purity of her mind with that of her body or her sexual behaviour which always results in her being placed in either of the pair of hierarchized dichotomies. For a single unmarried woman, the question asked is always-Is she a virgin or a whore? If she is sexually active, she must be a whore. This kind of thinking which pornography reflects and perpetuates is neither liberating nor egalitarian but instead gives a very negative representation of the personhood of women.

It follows then that pornography does not treat women as individuals in their own right having agency of their own. Women do not define themselves but are defined for as sex objects for the pleasure of men in pornography. Certain qualities are projected upon her and if she does not willingly agree to such projection, she is coerced into it. Her own self-expression is monitored and influenced by others in her milieu, she imbibing the male surveyor and the male values within herself.

Putting oneself within the boundaries of the picture frame or within the pages of a book., she is no longer the active subject but becomes a passive object which the reader can fantasize about and take liberties with. It is this process of dehumanization that pornography achieves in completion and with success. The public audience and reinterpretations as to 'who and what am I' lose the real 'me' of the woman somewhere open to several interpretations. Placing oneself within the already determined boundaries, all freedom of expression is lost; what started as 'me' and 'mine' for her becomes someone else's no longer 'mine'.

To sum up the discussion on pornography as redefining sexuality, it may be said that- Demystifying the body means, no longer being fearful, ashamed and ignorant of it. Redefining sexuality as a social construct, by exercising actual sexual freedom and self-definition, entails not portrayals of sexual scenarios as in pornography, but of realizing and developing one's own individuality; to exercise the freedom of choice in what one wants and how one wants to relate to others in society.

It is true that each individual is limited to a certain extent and has certain limited choices, but the right to choose among those limited alternatives is inviolable and it is to be rightfully exercised by all in society.

Section - II

This section deals with the legal aspects of the civil liberties of freedom of speech and expression, freedom from the threat or injury to life and the right to agency, as already mentioned. It will also assess the role of state in curbing the existant inequalities – Has the state taken the necessary initiative or steps to prevent VAW and women from entering the pornography industry by addressing its causes (the two are interlinked) or has the state merely dealt with the consequences or effects of pornography?

The issue specific law as regards pornography is the Indecent Representation of Woman (Prohibition) Act of 1986 or (PAIRWA – prohibition against indecent representation of woman act).

It will be shown in the discussion on the legalities of pornography that this law does not give full effect to the constitutional provisions. Further, it also does not address all types of pornography. Most importantly, it does not question the majoritarian male standard but rather accepts it as a norm.

To begin with, the constitutional provisions as regards the reasonable restrictions to the freedom of speech and expression are as follows – defamation, incitement to offence, and,

‘decency or morality’. The first two promote the notion of equality of the sexes, the third restriction clubbing decency with morality is highly problematic and unacceptable, as the point of reference in judging what is moral and immoral is always the male standard. A detailed study of these reasonable restrictions is as follows:

(a) Defamation seen as a crime does protect the interests of women by penalizing any harm to their reputation, which often lies in making libelous claims against women. E.g. portraying rape as enjoyed by women, or saying that a woman enjoys being hurt. Such false claims and negative portrayals of the personhood of women definitely do not promote equality for women. The problem with such claims, which in extreme forms can be labeled as ‘hate’ literature against women portraying violence against them, degrading and humiliating them, is that, if it is a part of mass popular culture, it is very difficult to prove the libelous statement false by the woman.

(b) Incitement to offence is a positive step towards equality for women, and law in India also penalizes those who have unsuccessfully solicited or incited others to commit the crime, even where a crime is not committed. Makers, publishers and distributors of pornography can be held to be answerable to this law; and

(c) The reasonable restriction of ‘decency or morality’ (Art. 19(2)) is highly problematic- The term ‘indecent’ is regarded as something derogatory or denigrating to women and thus addresses the cause of women’s equality. Whereas public morality is something that the majority opinion decides as right or wrong, which may or may not be in consonance with what the woman wants as an individual in her own right having agency of her own. What is to be regarded as injurious to public morality and that which depraves and corrupts the mind of the reader of such pornographic material is what the majority in society will decide. They will allow the portrayal of that which they regard as right and acceptable; a kind of its own self-representation which may restrict the effective choices of the woman as an individual subject acting on her own behalf. E.g. Homosexuality is banned under Section 377 of the Indian Penal Code which goes against the harmless effective choices of both

men and women and does not promote their equal status vis-à-vis those whose sexual practices are held as more privileged and socially acceptable.

Pornography does portray homosexuality but only to ridicule and abuse verbally the homosexuals. And it adheres to the male notions of masculinity and femininity, which violate the civil equality of women.

Further, certain categories like art (painting, photographs, and films), literature and material kept for religious purposes are exempted from Section 4 of the PAIRWA. (Paras Diwan and Peeyushi Diwan 1994: 5). Questioning the grounds of such exemption has already been discussed in Section – 1 under the discussion on freedom of speech and expression.

The only point to be added here is that law should address sexism which reinforces the role expected of women, by men, as mass culture portrayed in all the popular television serials. Portrayal of nudity and sexual intercourse is per se not the problem. The issue is that of – what is the message communicated? Does it allow everyone to freely speak and define themselves and not be defined for.

In order to exercise one's civil liberties including the freedom of speech and expression, women should also enjoy the basic 'freedom from want'. (Sudhir K. Kulshreshtha 1995: 147). Freedom from want would mean acquisition of the basic amenities necessary for living a good life of integrity and dignity. To put it in legal terms, it would mean for the individual, the enjoyment of the right to life and personal liberty and security. (Article 21 of the Constitution) which includes the right to livelihood, shelter, good health, and freedom from forced labour, the freedom to develop. And it is the state's responsibility to create the necessary conditions favorable to the realization of such rights. There are cases of battered and sexually molested women who ran away from their homes or were abandoned. They need to be provided with shelters, an adequate livelihood and health-care facilities and other support structures. The police and the NGOs could help the government in this. These liberties inherently belong to each and every individual as a human being. In

the formulation of this right to life and personal liberty, human dignity finds recognition. (Ibid. 168) Preservation of human life and giving everyone the best possible chance of a good life is of utmost importance. The Indian Constitution in its Part IV A on Fundamental Duties further prohibits practices derogatory to the dignity of women [Art. 51A(e)] and further [Art. 51A(h)] talks of the development of humanism, the spirit of inquiry and reform. Other provisions of Part IV of the Indian Constitution which are in consonance with these statutes, further promotes equality for all individuals. (Sangeeta Ahuja 1997: vol.2. 844-849).

However, there is a huge gap between the statement of these rights and their actual implementation. And since these rights have not been emphasized upon in the law prohibiting pornographic material (i.e. Prohibition Against the Indecent Representation of Women Act of 1986), the causes behind pornography still remain unaddressed for the most part. The issue, as it fails to see, is not sexually explicit material per se but the power equations in society that it represents, recreates and reinstates.

This brings up the issue of VAW and the freedom from threat or injury to life in pornography. It has often been the case where the woman in the pornographic scenario was coerced into performing such acts as her relatives were kidnapped and held to ransom. She suffered grave injuries while enacting out her role in the pornographic scene and there are many others like her. Women forced to view pornography and those, who get raped and/or murdered because of it, are all instances of VAW. All of these need to be addressed in PAIRWA of 1986. The provisions of the Indian Penal Code (IPC) on rape, attempt to rape, indecent assault and outraging a woman's modesty and domestic violence should be made applicable in cases of sexual assault or offences under PAIRWA.⁴

The law must take into account that there is no rigid dichotomy between fact and fiction. The Convention on the Elimination of Discrimination Against Women (CEDAW), the

⁴ The gradation of offences from the most possible crime to a lesser one that has been talked about in the chapter on Rape is of use in dealing with crimes committed under the PAIRWA of 1986 also. Under the PAIRWA, currently such an offence of VAW is bailable with a maximum punishment of five years and a

Convention of the Rights of the Child and other such conventions which have been ratified by the Government of India (GOI) should be strictly implemented and adhered to.

Two of the four principles given by Rosemary Tong in the search for an appropriate legal response to gynothanatica pornography, which is the worst case of VAW in pornography, needs to be mentioned here. These principles restrict a man's liberty on legitimate grounds ensuring that the exercise of such liberty does not impair the equality of the less dominant and the less resourceful individuals in society. The two principles are – '1. The harm principle- A person's liberty may be restricted to prevent physical or psychic injury to other specific individuals... and 2. The offense principle- where offense is interpreted as behavior that causes feelings of embarrassment, shame, outrage, or disgust in those against whom it is directed....' It causes men to engage in harmful behaviour towards women also defaming them. (Rosemary Tong 1984: 13-15). This kind of pornography gives license to what is morally impermissible and illegitimate, on the ground of harming another equal human being.

Almost no case of VAW under the PAIRWA is brought to court. Unlike in the case of rape and prostitution where Indian literature exists on actual court cases regarding these issues, there is no mention at all of any court case as regards pornography in the existant literature on the issue. Feminist writers abroad have talked of such court cases regarding libelous claims made against women and when the makers of pornography were sued because of the grave consequences –murders on the copycat model, of the publication and viewing of such violent pornography. In the former case, majoritarian views could hardly be refuted. In the latter, it could not be proved that the intention of the pornography was to perpetuate VAW. The failed attempt at amending the 1983 Civil Rights Ordinance of Minneapolis sought to be brought about by Andrea Dworkin and Catharine MacKinnon is another instance of where the feminists abroad tried to make it easier and more legitimate for women to approach a court of law for the redressal of their grievances.

one-lakh rupees fine. (Paras Diwan and Peeyushi Diwan 1994: 9-10) The amount of fine causes no grave effect upon the highly profitable pornography industry.

However, such offences of VAW should be made a criminal offence in the sense that it should come under the criminal law in India as rape, domestic violence and other such offences do. The punishments awarded should be equally condemning such acts. Civil law tends to make the punishments lesser and does not recognize the gravity of such crimes of violations of the basic human rights of some individuals.

In conclusion, it may be said that - The Indian State then has failed in the performance of both its positive and negative roles, as has been pointed about by many. The state has failed to provide or secure to its citizens, two basic freedoms, which are essential for the achievement of equality-

1. Freedom to choose one's ends in life, i.e., the right to self-definition and self-determination in deciding how to live, the state's role here being negative or the absence of its regulation of the individual's life, as long as he or she does not disadvantage the exercise of the same right of anybody else- e.g. Section 377 of the IPC that declares homosexuality a criminal offence should be deleted, and
2. Freedom from want - basic necessities of life like food, clothing, shelter, adequate income, freedom from coercion, domination, disrespect and non-recognition, freedom to be able to choose the form of one's relations with others and the freedom to express one's own thoughts.

Conclusion

The word pornography originated from the two Greek words –'porne' meaning the cheapest whores, including slaves and the word, 'graphos' which meant writing. In other words, it meant, as Andrea Dworkin put it, "the graphic depiction of women as vile whores."(Andrea Dworkin 1996: 297). The entire discussion on pornography as violating civil equality endorses this view.

The law on pornography and the role of the state regarding this issue as already discussed clearly shows how well entrenched patriarchy is in society. The inadequacies,

non-implementation and interpretations of all the laws related to this issue and VAW, are left unaddressed, as the dominant majoritarian view is deep-rooted in society.

There has been the suggestion of banning pornography but that hardly holds any ground since all that it portrays is already banned or prohibited by law.

Besides, the causes have to be addressed first, not just the consequences of pornography. To bring about a change in the majoritarian male psyche will take years and many factors like gendered role-expectations need to be critically examined and deconstructed during the socialization process itself.

Fear of actual violence and injury caused to them by men if they exercise or practice sexual freedom in their lives, is a reality, as such violence takes place as a backlash to their exercise of freedoms. But such fear has to be overcome, to a certain extent at least, since the majority of people running the state machinery are men believing in patriarchy and expecting them to do wonders for women's equality has its limitations.

Legal feminists do and will continue to struggle for women's equality. They have won some battles and lost some. But that by itself cannot change the majoritarian male patriarchal psyche in society.

A social movement as actual sexual freedom being exercised by each and every woman in society would be a definite step towards achieving the goal of equality. Of course, if the basics for survival are lacking then the state in cooperation with the NGOs have to help her much more.

Increasing the representation of women on censorship boards is not a valid suggestion at all because it assumes that pornography is a form of art and is here to stay. Pornography is antagonistic to equality and cannot be legitimized on any ground whatsoever.

However, increased representation of women at high decision-making levels could lead to a review of the existing laws and practices and that could bring about some changes promoting equality.

Chapter-III

PROSTITUTION

Introduction

Prostitution has existed for several centuries now but its legitimacy is still being questioned taking into account its patriarchal underpinnings, which leads to the denigration and exploitation of women in prostitution.

Section – I of this chapter will deal with these patriarchal forces at work. The factors of social justification of prostitution, sexual objectification of women in prostitution, exploitation of economic vulnerability of women by men, identification of the prostitute with the institution of prostitution by judging her moral worth only in terms of her sexual behaviour, and the socially constructed distinction between trafficking and prostitution per se in the sense that the former is forced prostitution and the latter is not, will be dealt with. The consequent denial of basic citizenship rights and civil equality will also be elaborated upon, with due emphasis given on VAW in prostitution.

The feminists have refuted the claims made by the patriarchal forces and that will be discussed both in Section I and in Section II that will deal with the legal translations of these views discussed in Section-I. Issues like- decriminalization of the prostitute, problems with the issue specific law on prostitution (The Immoral Traffic in Persons (Prevention) Act, 1986), violation of both constitutional provisions and international covenants ratified by the Government of India (GOI), the role of the state including the activities of the police machinery, will all be discussed. Whether there is even formal equality, let alone substantive equality and equal protection of the laws as regards this issue, will be duly analyzed.

The fact remains that prostitution is not considered a criminal offence in India (This will be elaborated later), only trafficking is. And it is a highly profitable trade like the international drug and arms trade. (Andrea Marie Bertone 2001: 6).

Section - I

There are several issues, which draw the legitimacy of the institution of prostitution into question. Certain fundamental aspects of prostitution clearly show that patriarchy is at work and hence inequality is institutionalized with women kept in a subordinate position. Each of these basic factors or aspects of prostitution will be elaborated below.

The first one is the social justification of prostitution. What motivates the male client; what is his need for the existence of the institution of prostitution? It is, as, Carole Pateman says, that prostitution is part of the exercise of the law of male sex-right, one of the ways in which men are ensured access to women's bodies. (Pateman 1988). As Kalpana Vishwanath and many others have pointed out- patriarchy rests on the foundation of the controlled female body and this right to sexual access to women, which is justified in the light of the male sexual urge being naturally uncontrollable, allows men the enjoyment of mastery of the other sex.

The threat and actual use of force perpetuate this male sex-right which the man enjoys simply by virtue of being born male. As Susan Brownmiller, quoted by Rajeshwari Sunder Rajan pointed out, "Perpetuation of the concept that the 'powerful male impulse' must be satisfied with immediacy by a cooperative class of women, set aside for the purpose, is part and parcel of the mass psychology of rape. (Rajeshwari Sunder Rajan 1996: 135). Thus, prostitution is legitimized on the ground that it provides a safety outlet to the uncontrollable and insatiable male sexual drive, which is considered to be natural. If such an institution were absent, the incidents of rape and domestic violence would increase leading to a disruption of family life and public order. Thus, the majority in

society even sanctions trafficking¹ of women and children, which erases her identity and makes her virtually a slave. (Andrea Marie Bertone 2001: 7).

This safety-outlet theory however holds no ground since it is a known fact that men, in forcing women to enter this trade, use actual physical coercion. As Jean D' Cunha and others have observed, "Kidnapping, abduction, drugging and rape were other means by which some of these individuals were forced into prostitution and also those who ran away from homes (due to cruelty, neglect or rejection) and got trapped by cunning powers." (Jean D' Cunha 1986: 33). The same finding was reported in the Alternative NGO Report on CEDAW as coordinated by the National Alliance of Women (NAWO) in January 2000. (Pg. 29). It stated that many are tricked into prostitution, many come from homes where they faced violence and tension. Of course, the root cause for increase in trafficking is the prevalence of poverty, which make women particularly vulnerable.

The second basic factor as regards prostitution is then the economic vulnerability of women, which is exploited fully by men to their economic and social advantage. Looking at the reasons why women enter this trade, the existing literature clearly shows that there exists an extreme condition of poverty, lack of job opportunities yielding adequate incomes. Economic dependency of most women on their relatives, especially their husbands worsens their condition when such relations do not exist and social stigma is also attached to them. E.g. as in the case of widowed women, or divorced or separated or abandoned women. (Sudha Kasturi and Rinki Bhattacharya 1998: 250). The same is true of even those who have run away from home due to domestic violence. Such is the case for the girl child also. (Shalini SCN and Lalitha S.A. 1998: 105). For them, it is a question of survival in an oppressive and exploitative patriarchal society. Absence of welfare benefits and social securities add to the problem.

¹ Andrea Marie Bertone quotes the 'International Organization for Migration (IOM)'s definition of trafficking given in March 1999. Trafficking occurs when "a migrant is illicitly engaged (recruited, kidnapped, sold, etc.) and/or moved, either within national or across international borders; [or when] intermediaries (traffickers) during any part of this process obtain economic or other profit by means of deception, coercion and/or other forms of exploitation under conditions that violate the fundamental human rights of migrants." She further quotes Sweden Qweb whose book was also published in 1999 saying that trafficking "also includes those cases where the woman is aware of the nature of the work at the point of

As Anne Phillips puts it, there is economic inequality in terms of unequal distribution of life-chances, income and wealth including socially provided resources like education and health. (Anne Phillips 1999).

Their poverty and powerlessness is exploited fully by the traffickers. (Elizabeth A. Palmer 2001: 3). She is powerless to the extent that eventhough she exchanges her own use value, given an alternative form of livelihood, she would not engage in this profession.

The third factor is that of sexual objectification of women in prostitution which denies them their right to agency and development. It is as Catharine MacKinnon quoted by Diane Richardson says, 'Specifically, "woman" is defined by what male desire requires for arousal and satisfaction and is socially tautologous with female sexuality and the "female sex."' (Diane Richardson 1993: 94). Men desire women to have certain qualities, which may be contrary to their individuality and personhood, thus denying them their right to agency. An example of this is Chilla Bulbeck's (Chilla Bulbeck 1998: 183) study of the international traffic in women in the field of sex-tourism. She observed that- men finding Anglo-Australian and Anglo-American women assertive, unfeminine and insubordinate to their authority, found the Asian prostitute girls much more attractive and obedient.

Men, as has been already mentioned also forcefully project such a notion of femininity upon women. A very concrete example of this would be the male client forcing the prostitute to engage in or be his partner in kinky sadomasochistic sex with him, which he would have read or seen in some pornographic material.

Even the girlchild is not spared of such projection. It is as Ms. Ann- Lis Svensson, Deputy Director, UNICEF stated at a workshop on the Human Rights Perspectives as

leaving but on arrival finds herself in a situation where her fundamental rights and freedoms are violated." (Pg.3)

regards prostitution, that “Child prostitution is child rape...Their lives are treated as commodities in the market. These are children who have been betrayed and stigmatized for life, children to whom the society and Government is deeply in debt for not having protected them.” (Madhu D. Joshi, 1996: 108-109).

Not only do paedophiles find an outlet to their socially and morally unacceptable behaviour in prostitution, there are some adult males who believe that having sexual intercourse with minors would cure their venereal disease. Further, that such sexual intercourse with a child would lead to immunity from sexual disease. Moreover, sexual intercourse with a child before she reaches puberty would ensure male children. (Jaya Sagade 1998: 93-95).

Further, “men lacking confidence facing no opposition from vulnerable children in prostitution” thereby prove their manliness in such a manner. (Ibid.)

Sexual objectification is also evident in the case of militarized prostitution where sex is seen merely as a form of relaxation devoid of any mental attachments to the sexual partner. Such behaviour of army men is considered manliness but the brutal fact as pointed out by feminists is that, this violates the prostitute’s right to agency and personhood.

The same is true of the prostitute who is kept and provided for by a single male client for quite some time.² Such prostitutes are known as hired wives (Chilla Bulbeck 1998: 182) in other countries like Thailand and Malaysia. These prostitutes are not physically abused at all but the fact remains that such treatment is subject to the whims of the male client. For him, a sexual companion is pleasurable and relaxing but there is no commitment. He may ask her to leave or leave himself at any point of time without a care as to how she is going to survive after that. Marriage may be regarded as legalized prostitution but at least the wife at separation gets alimony and more importantly a marital relation is socially

² Such a practice existed in case of the class of ‘hereditary prostitutes’ who had a heritage from the Mughal period in Indian history. See Dipangshu Chakraborty’s ‘Atrocities on Indian women’, (1999: 87).

recognized and accepted. The psychological damage that she undergoes does much more harm to her than those one- night stands. Law may not recognize such psychological damage or mental cruelty as it does not fall within the purview of marital relations but rather in the category of cohabitating couples. But that in no way takes away the pain and insecurity of the prostitute.

Sexual objectification is made complete by projecting the image of the woman in prostitution as morally corrupt, promiscuous, social deviants, fallen women polluting public morality. Upholding the institution of prostitution as legitimate and then penalizing the individual woman in it, reflects the double standards of male sexual morality. Branding her as socially different, they deny her protection against inequalities and violations of her basic human rights that are fundamental for a good life of dignity and integrity.

Society as the majoritarian view, conveniently identifies the prostitute with the institution of prostitution; her sexual activity becomes fused with her morality and personhood.

Feminists have deconstructed this kind of thinking. According to them, a woman's sexual practice only, cannot decide her moral worth as an individual when such sexual behaviour arises from the absence of the two basic freedoms – freedom from want (Sudhir K. Kulshreshtha 1995: 147) and the freedom to choose one's ends in life. Instead of demeaning her as morally corrupt, it is only, "A care perspective would have us recognize the achievement of equality as a political goal," in the words of Joan C. Tronto. (Joan C. Tronto 1993: 172).

It is a fact that the prostitute's distancing of her personhood from her bodily activity during the sex-act, which is undoubtedly an act of intimacy, does considerable damage to the prostitute's selfhood. Her own self-esteem and self-respect falls considerably and she takes to heavy drinking. It is as Carole Pateman, as quoted by Rajeshwari Sundar Rajan said as regards this, "prostitution is an abjection of the body and an outright alienation of the self (hence the analogy drawn with slavery). For Pateman, prostitution cannot be

regarded as wage labour primarily because ‘it violates the intimate relationship between personality and physical embodiment’” (Rajeshwari Sundar Rajan 1996: 136).

The next factor which is also clearly illustrative of patriarchy at work in prostitution, is the claim of the majority in society that, there is a difference between trafficking and prostitution per se in the sense that the former is forced prostitution and the latter is not.

Feminists have pointed out that other forms of prostitution is also forced, not just trafficking, in the sense that it is hardly a real choice and given an alternative, women would not have entered this profession.

Such patriarchal thinking denies prostitutes civil equality. Removed from all public places, their freedom of movement and residence are denied to them. Their wages and conditions of work are deplorable,³ especially the health risk that they undergo when the clients refuse to wear condoms increasing the possibility of them contracting AIDS. They also suffer from inflammatory pelvic diseases, which may be fatal.

They are denied the right to family life as well. Her relatives living off her income, be it an aged parent or a younger brother is considered criminal offenders under the Indian law. She is thus made more dependent emotionally on the pimp. Giving up on any chance of a good life, she takes to heavy drinking and drugs. For emotional and financial support in old age, she conceives children. But she can hardly spare any time for the child whose development is hampered due to the lack of basic amenities like proper nutritious food, a stable and secure environment at home, and education. The child soon becomes a liability, often given opium to put him/her to sleep while the mother engages in sex-work. (Vijaya Lavate 1998: 125). Soon the child, if a boy starts acting as a pimp and if a girl, is hired into the flesh trade by the brothel owner.

³ Activist Sheela Barse filed a petition under Art. 32 of the Constitution in 1984 seeking to ensure a minimum level of fundamental rights to prostitutes. The petition was based on the living conditions of prostitutes in four states: Maharashtra, Karnataka, Andhra Pradesh and Tamil Nadu. She severely criticized

Fear of losing her children who would be taken away to Juvenile Justice Homes, further, stands in the way of her reporting the abuses and exploitation faced by her at the hands of the pimp and the clients, to the police. Rehabilitation institutions for prostitutes do not keep children and treat the prostitutes as mentally ill.

Moreover, prostitutes are denied basic citizenship rights like rationing cards, traveling concessions for senior citizens, pension schemes, loans, housing facilities and possible income generating activities. (Shalini SCN and Lalitha S.A. 1988: 93).

It may be concluded then that VAW and a highly biased and partial notion of morality, even a false one, violates the prostitute's right to be equally human just as any other individual in society. It is as Gabriel Dietrich quoted by Susan Vishwanath said, 'sexual freedom cannot be the freedom of the consumer society, which makes sex a commodity and human beings, objects.'(Susan Vishwanath 1997:322)

The legalities of the views of the feminists and the States' response to the issues raised by them will be discussed in the following section – II.

Section – II

The suppression of Immoral Traffic in Women and Girls Act (SITA) was enacted in 1956 in pursuance of the International Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of others of 1949. It was amended in 1978 and then again in 1986 to rectify some of the inadequacies in the implementation of the Act. In 1986, SITA was renamed the Immoral Traffic in Persons Prevention Act (ITPPA/ITPA) and was passed by the Parliament.

Before going into the specificities of ITPPA, it is to be noted that the 1949 Convention (in lieu of which SITA later renamed as ITPPA emerged) declared that prostitution and the

the police officers though not the senior ones for covering up for brothel keepers. (Sangeeta Ahuja 1997 Vol. I: 221-222).

traffic in persons to be “incompatible with the dignity and worth of the human person and [to] endanger the welfare of the individual, family and the community”, making no distinction between forced and voluntary prostitution. (Andrea Marie Bertone: 2001: 11).

The law in India espouses a tolerationist system (Jean D’ Cunha 1986: 13). It acknowledges the need for prostitution. The 64th Report of the Law Commission submitted in 1975, as analysed by Lotika Sarkar, “reiterates the view that prostitution though an evil is a necessary evil.” (Lotika Sarkar 1988: 47). As Jean D’ Cunha in reviewing the SITA of 1956 pointed out, sex was seen as a male right and prostitution was seen as a necessary social evil to appease man’s naturally aggressive sexuality, preserve the family system and curb sex offences.⁴ Accordingly, the aims and objectives of the SITA, 1956, as kept intact in ITPPA, 1986, stated clearly that, “It is not aimed at abolishing prostitutes or prostitution per se, nor does it seek to make prostitution per se a criminal offence...The purpose of the enactment is to inhibit or abolish commercialized vice, namely the traffic in women and girls for the purpose of prostitution as an organized means of living.” (Jean D’ Cunha 1986: 38).

However, as she points out, countries espousing toleration, carries other laws that penalize or criminalizes the individual woman in prostitution. (Ibid.: 13). The law then while decriminalizing the institution of prostitution in recognizing it as a ‘necessary evil’ (Lotika Sarkar 1988: 47) criminalizes the prostitute. This clearly shows the double standards of male sexual morality as Jean D’ Cunha and so many others espousing equality for women have pointed out.

Such being the case where the institution of prostitution is decriminalized but the individual woman in it is not, there is no formal equality let alone substantive equality.

⁴ See the grounds of debate against the legalization of prostitution in Jean D’ Cunha’s review of the SITA, 1986: 156-157). She elaborates upon them saying that “patriarchal society equate sex drive with male sexuality which is erroneously assumed to be naturally active and aggressive. Women, on the other hands, are attributed with sexual feelings of a diffuse, subtle and passive nature...male aggressiveness and sexuality is dictated by hormones possessed chiefly or solely by males...The urge is dependent on inner secretions and its aim is the relieving of physical tension...Thus the sex drive is put out of his control. At the same time it demands a fitting object, for release, and thus the female role is defined.” (158).

Several provisions of the ITPPA clearly violate the principle of equality before the law, as stated in Art. 14 of the Indian Constitution which recognizes the Right to Equality as a fundamental right of each and every Indian citizen. Instances of denial of even formal equality under the ITPPA are as follows –

Section 8(a) of the ITPPA makes soliciting in a public place for the purpose of prostitution a criminal offence. Section 8(b) also penalizes the prostitute for soliciting by nuisance. (Maithreyi Krishnaraj 1991: 128). Public nuisance is also penalized under Section 290 of the Indian Penal Code (IPC). (Carolyn Sleightholme and Indrani Sinha 1996: 57). The prostitute may be punished for a maximum period of one year with Rs. 500 fine. For the male client, for the same offence, it is a maximum of three months punishment with no fine. (Shalini SCN and Lalitha S.A. 1988: 70).

Section 7(2) of ITPPA penalizes ‘abatement of prostitution in public place’ with a maximum punishment of six months imprisonment and Rs. 200 as fine but such punishment is reduced by the judge using his discretionary powers. (Maithreyi Krishnaraj 1991: 128). Women activists have demanded the elimination of these discretionary powers of the magistrates for implementation of punishment/sentences to be made effective. (Madhu D. Joshi quoting Jean D’ Cunha 1996: 34).

Related to this, under Section 20(1) of the ITPPA, the magistrate can ask the prostitute to remove herself from inside or within 200 metres of a public place (Carolyn Sleightholme and Indrani Sinha 1996: 56). This curtails the prostitute’s freedom of movement and residence, which is a fundamental right of all citizens under Art. 19(1) of the Indian Constitution. However, Art. 19(5) does impose a reasonable restriction on this freedom of movement and residence in the interest of the general public. (Sudhir k. Kulshreshtha 1995: 113-114). The ‘offence principle’⁵ taking into account public morality and decency is the underlying justification of such reasonable restriction.

⁵ According to Rosemary Tong, “the offense principle is a legitimate liberty-limiting principle to the degree that public street solicitation is universally offensive and not reasonably avoidable, it may be restricted by criminal law.” (Rosemary Tong 1984: 46).

This so-called 'reasonable restriction' has been drawn into question.⁶ Such segregation leads to the isolation of the prostitute making her more dependent – both emotionally and materially on the pimp who exploits her. Besides, not allowing any public manifestation of such institutionalized inequality does obstruct public concern and eventual solution to the problem.

In this regard, it has also been pointed out that 'sex' alone is not always the basis of discrimination. (As stated in Art. 15 of the Indian Constitution). (Alternative NGO Report on CEDAW coordinated by NAWO 2000: 22). In prostitution, sex along with public morality becomes the ground for discrimination against women.

Further, Section 4 of the ITPPA makes living on the earnings of a prostitute a criminal offence if above 18 years of age punishable with a maximum imprisonment of 7 to 10 years. (Maithreyi Krishnaraj 1991: 128). The definition of pimping as stated in the text of ITPPA is living on the earnings of prostitution. (Jean D' Cunha 1986: 44). There is no such provision for the male client. His right to family life is not denied to him which is not the case as far as the prostitute is concerned. It is also presumed that possession of a female by a prostitute is always for the purpose of prostitution only. (Ved Kumari 1999: 146).

The male client is not considered an offender at all. He is absolved of all crime. The 64th Report of the Law Commission on the SITA submitted in March 1975 stated – “Although the service is illegitimate, the citizen cannot be held guilty, for it is inadvisable to punish a large portion of the populace for a crime that has no political significance...” (Nandita Haksar 1994: 38). This statement does not hold any ground keeping in mind the definition of political equality as a deeper claim about holding all citizens in equal regard, which is linked both to social and economic equality. (Anne Phillips 1999) and the

⁶ Rosemary Tong herself goes onto quote David A.J. Richards saying that prostitution always occurs in familiar locations and that the presence of prostitution should not be hidden and isolated. (Ibid. 47). Further, Catharine MacKinnon in her, “Feminism Unmodified: Discourses on Life and Law” aptly stated that, seeing sex equality questions as matters of reasonable or unreasonable classification is a part of the way male dominance is expressed by law. Here sex discrimination is no longer a question of morality but that of politics. Gender is indubitably a question of power – male supremacy and female subordination.

definition of power in terms of the ability to control the way one's own body and sexuality is used (Jacqueline Goodnow 1985: 20) as mentioned earlier.

Women activists like Jean D' Cunha, then, on the legal front, have asked for the deletion of these penal sanctions against individual women in prostitution, which clearly reflect the double standards of male sexual morality. (Madhu D Joshi 1996: 34). The Government of India (GOI) in response to such demand said that it is contemplating the decriminalization of the sex worker and to amend the ITPA in that respect (Statement by the Secretary of DWCD, HRD Ministry 2000: 9). But when will this actually happen still remains to be seen.

Another very important issue that women activists have pointed out and demanded is that there should be measures or adequate provisions like employment and income-generation programmes, better health services and counseling, using the media to provide information to people on the issue, to take speedy action on cases like that of kidnapping (Alternative NGO Report on CEDAW coordinated by NAWO 2000: 30) in order to prevent prostitution. The same provisions are necessary to improve the condition of the prostitute in this line of work and also in dealing with prostitutes who have just left this kind of work.

The Department of Women and Child Development (DWCD) drew up a "plan of Action to Combat Trafficking and commercial sexual exploitation of Women and Children," covering 11 action areas to mainstream and reintegrate women and child victims of commercial sexual exploitation in society in 1998. (Ibid.: 10). The 11 areas would include – prevention; economic empowerment; housing, shelter and civic amenities; health care services; legal reforms and law enforcement; education and child care; awareness generation and social mobilization; trafficking; rescue and rehabilitation and other. (Ibid: 12).

Non-implementation of both national and international laws ratified by the GOI has become a major problem. There has been no equal protection of the laws.

Fundamental rights of the citizens as enlisted in Part III of the Indian Constitution like equality of opportunity (Art. 16), protection of life and personal liberty (Art. 21) which includes the right to livelihood, shelter, improvement of public health and provision of adequate medical facilities (S.K. Verma 1997-98: 179-180), prohibition of traffic in human beings and other similar forms of forced labour (Art. 23(1)), prohibition of employment of children in factories or any other hazardous employment (Art. 24) have not been protected and/or upheld.

The provisions under the Directive Principles of State Policy in Part IV of the Indian Constitution have also not been upheld by the GOI which are to be held as fundamental in the governance of this country. These provisions are- promotion of a social order in which social, economic and political justice shall inform all the institutions, minimizing the inequalities in income, eliminating inequalities in status, facilities and opportunities not only among individuals but also amongst groups of people residing in different areas as engaged in different vocations (Art. 32), right to an adequate means of livelihood, health and strength of workers especially that of children should not be abused and the latter should be given opportunities and facilities to develop in a healthy manner (Art. 39), free legal aid (Art. 39A), securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement (Art. 41) and the improvement of public health. (Art. 47).⁷

That these provisions of the Indian Constitution have not been upheld is evident from the changes or measures demanded by women activists like – (1) provision of housing facilities and income generating schemes, social recognition and protection of women in this line of work which would mean decriminalizing the individual woman in prostitution, (2) to review labour legislation for possible loopholes that make young women enter this trade alongside the formulation of policies and programmes for the overall development and employment of young women and to introduce protective measures for women in prostitution as regards their nature of employment, working

⁷ Sangeeta Ahuja Vol. II 1997: 833-849

conditions and terms of remuneration i.e. to apply the labour laws to prostitution also,(3) to introduce income generating schemes for women above the age of 40, (4) enforcement of the Compulsory Education Act. (Shalini SCN and Lalitha S.A. 1988: 91, 93, 94, 97).

These necessary measures or steps would have to be taken by the Government in cooperation with the NGOs.

The GOI has ratified several international covenants like the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the 1989 Convention of the Rights of the Child and the Platform of Action adopted by the Fourth World Conference on women in 1995. But none of these have been adhered to as well.

Articles 11 and 15 of CEDAW deal with the right to social security, protection of health, equality before the law regarding – choice in contracts, administration of property [in person] and choice of residence (Report on CEDAW from the report on women's Equality Summit and Congressional Action Day 1999: 4).

The Beijing Platform of Action not only talked of setting up shelters and provision of legal aid, but more importantly of the provision of counseling and rehabilitation to perpetrators of VAW and the strengthening the role of the family in improving the status of the girlchild. (Beijing UN Fourth World Conference on Women 1998: 29, 33).

Women activists have all along pointed out that it is the most vulnerable categories like single women, female migrant labour especially the dalits and tribals, children who may have run away from home, who need the most protection and care, which must be duly recognized in law.

Single women like widows, deserted, separated and divorced women with no adequate source of livelihood being completely dependent on her relatives are often taken advantage of. Going to a shelter stigmatizes her (Sudha Kasturi and Rinki Bhattacharya 1998: 250) and hence she falls prey to rapists who may be her relative or some one well

known, forced into the flesh trade having nowhere else to go and nothing to eat. Runaway women and children who have fled home due to physical and mental assault perpetrated upon them also share the same fate. (Alternative NGO Report CEDAW 2000: 29).

Sometimes the husband sells off his newly married bride to a pimp. The marriage may not be registered also. (Jean D' Cunha 1998: 103).

The exploitation of female migrant workers, especially the tribal and dalit women needs to be curbed. When authorities get to know of the illegal status of these migrant labourers and refugees, they are usually treated as criminals and their personal security is violated. They receive neither any counseling nor rehabilitation.

Often trafficking occurs under the guise of procuring child labour and camel jockeys. India receives many women and girl children from Nepal and Bangladesh and sends its own women and girls to the Middle East. (Alternative NGO Report on CEDAW 2000: 29).

What is required then is the proper monitoring of emigration and immigration pattern for evidence of trafficking in persons. GOI in 1998 participated in the drafting of the SAARC Convention on Preventing and Trafficking in Women and Children for Prostitution to prevent cross-border trafficking through proper inter-governmental coordination. (Statement of DWCD, HRD Ministry 2000: 10).

It has been pointed out that trafficked persons not only required medical assistance and counseling and information, the NGOs recommended that they also be given full legal status and dignified treatment to victims of trafficking and illegal migration. (Alternative NGO Report on CEDAW 2000: 30). In this regard, the Indian law could be informed by the Crime Bill approved by the U.S. Senate in October 2000. The Senate reauthorizing the Violence Against Women Act and Criminalizing Trafficking in Persons made it easier for the battered immigrant women to call the police without fear of deportation. (Elizabeth A. Palmer 2001: 1).

Sex-tourism or tourism related prostitution, mail order bride systems, escorts service agencies, eros centers need to be brought under the purview of law. Often women are trafficked into the country for purposes of prostitution under the garb of being 'entertainers'. They are not asked to prove their profession (as the Canadian law passed in 1997 does). (Andrea Marie Bertone 2001: 7).

The use of trafficked children in pornography and/or by paedophiles should also be brought to an end by taking the appropriate measures. Art. 34 of the Convention of the Rights of the Child, 1989 clearly states its purpose of preventing – (a) Inducement or coercion of a child to engage in any unlawful sexual activity, (b) the exploitative use of children in prostitution or other unlawful sexual practices and (c) the exploitative use of children in pornographic performances and materials. (172nd Report of the Law Commission of India on Review of Rape Laws, March 20000). Art. 39(f) of the Convention further talks of securing that childhood and youth protected against exploitation, moral and material abandonment. (Ibid.). In India, however there is no specific law on Child Sexual Abuse (CSA). The provisions on Statutory Rape though have been recognized by ITPPA and the punishment could extend to life imprisonment. (Shalini SCN and Lalitha SA 1988: 56).

Women and children in bonded labour and servitude also fall prey to the flesh trade. (Alternative NGO Report on CEDAW 2000: 29). Many of the devadasis or temple prostitutes come from landless families and 75% of them are bonded for life to upper caste money lenders who are sometimes in liaison with procurers and brothel keepers abducting the girls into prostitution. (Dipangshu Chakraborty 1999: 92).

The efforts of the Karnataka, Andhra Pradesh and Madhya Pradesh State governments in providing skill development, education, health care, awareness generation to the devadasis have been greatly successful in cutting down the huge scale of this cultural practice. These State governments have also rehabilitated the tribal and lower caste girls

who get inducted into prostitution because of poverty and a low social status. (Statement of DWCD, HRD Ministry 2000: 13).

Furthermore, the issue of rehabilitation of sex workers has been taken up vociferously by the women activists. The kind of rehabilitation provided by the state machinery has been severely criticized. As Jean D' Cunha in her detailed review of the SITA, 1956 pointed out: (1) These rehabilitation centres and protective homes are reformatory and corrective institutions who treat the prostitutes as delinquents needing psychotherapy. Even the children of the prostitutes because of their slow responses and low IQ levels are treated in the same manner.

There is no element of caring and understanding these individuals. Inmates of the Agra Protective Home actually went mad. The condition of Nari Niketans and the treatment meted out to its inmates is deplorable. E.g. as Shalini SCN and Lalitha S.A. have quoted from the Manushi in describing the pathetic condition of the Delhi Nari Niketan where there was no proper food and clothing, inmates not trained to earn a living, forms of bonded labour existing and continuation of commercial sex work. (1988: 89).

(2) A possible reason for this, which she brings to notice, is that those who run these institutions are over worked, and underpaid. E.g. even though they are supposed to keep track of those who left the institution for the first few years, they do not do this. Often pimps and brothel keepers dressed up as parents take away the prostitute (who out of fear and/or ignorance keeps quiet), from these Homes returning them to the brothels.

(3) The children are segregated from the mother and put in Juvenile Justice Homes, which psychologically affects them. Below the age of seven they are not even taken into these Homes. They are segregated from society. Even the Child Development and Care Centres are set up in red-light areas. (Statement of HRD Ministry 2000: 9). They do not join other children in proper schools.

(4) No legal aid is available to the prostitute. The necessary information especially

regarding employment opportunities generating an adequate income and skill development, proper counseling requiring both physical and mental or psychological attention and care, temporary shelters, are not provided for under the existing laws.

The inmates are not allowed to follow a course of action of their own choice. They are not given any choice or agency and in that sense, they are victimized twice. A runaway inmate, if caught, receives sadistic treatment at the hands of those who should be caring and such treatment goes unaccounted for. Even if an inmate is hospitalized, no investigations can be carried out and the offender will go unpunished. The inmates are treated as passive objects and not thinking subjects who can decide upon their own course of action, given certain basic infrastructural facilities like information, temporary shelter, etc. The state then upholds the protectionist approach, which operating within a patriarchal framework, treats women as a 'vulnerable' category denying them any choice or agency in opting for or rejecting the protection imposed upon them. (Alternative NGO Report on CEDAW, 2000: 22).

Women activists have suggested the establishment of Advisory Committees to review the working of these Homes. Such citizen committees have also been suggested to monitor police functioning. There is at present no law regarding institution of such committees but there are several legal loopholes as regards the abuse of their powers by the police.

The areas pointed out by the activists where the police fail to do their duty and need immediate redressal through the enactment of a few laws are as follows –

- (1) The police harass the prostitutes by taking haftas or bribes (Sunday Times 18th March, 2001) as also sexual favours. The police usually maintain an informal diary accepting a few thousands of rupees from any new girl entering prostitution. (Times of India, 18th August 2001).
- (2) They do not conduct the age-determining test and minors are passed off as adults. Raids are indecently conducted and nine-month pregnant minors are let off. Adult

women are picked up forcibly and girls leave for Nari Niketan without a single woman constable. (Ibid.). The police also frame false charges against women. And these women should be given free legal aid. (Shalini SCN and Lalitha S.A. 1988: 91). There are links between the brothel management, police and medical personnel resulting in false age certificates being produced before the magistrate and the minor is released.

- (3) The police are in collusion with the MLAs and MPs who allow the continuation of the flesh trade as it finances their election campaign expenditure and the brothels become substantive vote banks. There is no legal provision for investigation and prosecution of public officials who facilitate and/or participate in trafficking in persons unlike the Crime Bill approved by the U.S. Senate in October 2000 already mentioned earlier. (US Victim of Trafficking and Violence 2000: 1).
- (4) Unnecessary delay in investigation also allows the pimps, procurers and brothel keepers to go unpunished.
- (5) Most of the cases of kidnapping, missing child labour are not followed upon. It has been pointed out that if a record were maintained about the women living in red light areas, more than 40% of the kidnapping cases would be solved. (Sunday Times 18th March 2001).
- (6) Cases of domestic violence should also be dealt with stringently.

Many women activists have expressed the need for gender sensitization of the law implementation machinery. The GOI has claimed to take the necessary steps.⁸

Offences like pimping, brothel keeping is bailable and punishment is minimal. All these offenses should be made non-bailable and punishment should be harsher. Punishment

⁸ See Statement of DWCD, HRD Ministry, 2000: 8.

should also be made harsher for the male client who is HIV+ and infects the prostitute with the disease.

However, the liaison between the brothel keeper and the landlord has been broken by the provision in the ITPPA regarding the presumption of knowledge of premises being used for forced prostitution. (Shalini SCN and Lalitha S.A. 1988: 58-59).

Further, Section 5 of the ITPPA has increased the punishment or procurement for purposes of prostitution. (Ibid.) to a maximum punishment of 7 to 14 years imprisonment when committed against the will of the person. (Maithreyi Krishnaraj 1991: 128).

The situation is further worsened by the judge or the magistrate confusing the institution of prostitution with the prostitute herself. The magistrates often express astonishment at seeing the prostitutes displaying human qualities.

This being the case, her credibility as a prosecutrix in a crime of rape is doubted; Her testimony is seen as an act of revenge against a client for non-payment of services. She is regarded as impure and vindictive. (Elizabeth A. Stanko 1985: 93). This is another example of the protectionist approach, which denies relief to those undeserving of protection, gender stereotypes being reinforced. (Alternative NGO Report on CEDAW 2000: 22).

However, Section 6(on detention) and Section 9(on seduction) of ITPPA does the act of detaining a person for prostitution or seduction of a person in custody. The punishment is 7 to 14 years imprisonment with or without fine. (Maithreyi Krishnaraj 1991: 128).

From the facts discussed above, it is then quite evident that no formal and substantive equality exists. There is neither equality before the law, nor equal protection of the laws. The state and its laws are very much patriarchal in nature with lots of loopholes for the real offender and do not accord an equal status to the women in prostitution. Instead, women in prostitution are penalized for being equally human. And none of the

international covenants ratified by the GOI and not even constitutional provisions have been adhered to.

Conclusion

On the legal front, the prostitute should be completely decriminalized as far as soliciting is concerned because until she is provided an alternative and adequate form of employment, she would rather take to prostitution knowing fully well what appalling conditions exist in this kind of work, than starve. It is a conditioned consent; A consent conditioned by the lack of freedom from basic wants and freedom to choose one's ends in life. Therefore, the first step is decriminalizing the prostitute. And then to take the necessary steps for the prevention of prostitution in the long run since it is institutionalized inequality. Accordingly, the necessary health, education, housing and other facilities like poverty alleviation programmes should be initiated by the state before she enters prostitution, not always afterwards.

The poor family units especially in the rural areas, should be introduced to enough income generating schemes by the government so that the girls of the family are not pushed into this trade or just got rid off or abandoned due to the inability of the head of the family to feed her. It is often the case where the girl is married off to the first bidder who comes along. Sometimes the marriage is not even registered and her 'spouse' sells off the girl to a pimp. (Jean D' Cunha 1998: 103). Women are not born a liability, they are thought and/or made so by men and hence do not deserve such unequal and less than human treatment.

Further, increased representation of women at high decision making levels e.g. in the Parliament may start a debate and discussion on these issues and more sensitivity and eagerness could be shown in resolving the problems that exist. In this country, it is not the lack of resources which is the problem but rather the lack of political will to redress the grievances of the downtrodden, so that equality of status or respect and equality of adequate resources can be achieved in reality.

The media including the Internet should not portray negative images of women and womanhood. However, simply banning everything does not solve the problem. The causes why women allow themselves to be portrayed in that fashion, like in pornography, are to be addressed. And once the causes are removed, such institutions like pornography or prostitution also will eventually go out on its own without any coercion on the part of the state. The men exploiting their grievances should be severely punished.

In prostitution, it is the male client and not only the pimps, procurers and brothel owners who should be penalized very harshly. The latter are go-betweens who cater to the demand of these clients who create the market for prostitution. In Sweden, it is only the male client, the commercial sex user who is held guilty of a criminal offence and punished, the prostitute is not. "It is illegal to purchase sex; it is not illegal to be in prostitution." (Times of India, 2nd January 2002, article by Swapna Majumdar). In India, 3 months is hardly any punishment for solicitation and more often than not, the identity of the client, due to actual use and threat of use of coercion remains undisclosed and this results in his acquittal.

Understanding and accepting women and girls as individuals in their own right and as equally human as they themselves are, is something that men, right from their childhood have to be sensitized about. Such sensitization could be a part of the school curriculum, as those are the formative years of one's personality.

Accordingly, role expectations of men regarding women must be deconstructed. If there is no freedom of choice, which makes life worth living then there can be no moral judgments passed on any individuals also. The social differences that exist, as A.C. Scales puts it, in terms of domination, disadvantage and disempowerment are man-made and not a natural product. (Nancy J.Hirschman 1991: 48). Therefore, equal consideration and equality of respect and opportunity cannot be denied to women, no matter what profession they are engaged in.

Chapter-IV

RAPE

Introduction

The crime of rape is one of the most blatant and wide spread act of violence against women. According to the National Crime Records Bureau, GOI, out of 13.5% share of the Violent Crimes reported in the country, in 1999, 6.5% of them were cases of rape. (National Crime Records Bureau 1999: 129). The number of cases reported under Rape have been increased by 58.6% during the decade 1998-99. The highest number of rape cases has been reported in Madhya Pradesh followed by Uttar Pradesh and Bihar, Maharashtra, Rajasthan and Andhra Pradesh. (Ibid. 137 and 143, Violence Update, Vol.3, No.2 December 2001: 11). According to the report, all forms of violence against women have increased over the years and there has been under reporting of cases of atrocities against women. (Ibid.). However, it is also true that women are increasingly coming out in protest of violence against them and what is needed are adequate support systems. Even though the rate of disposal of rape cases have gone up, the number of acquittals have also increased. (Violence Update Vol.1 NO.3 January 1997: 7).

Section -I of this chapter will deal with certain issues which are vital to the understanding the act of rape. How rape is perceived or what is made of it, what are the factors which legitimize such perceptions – how male sexuality has been constructed in society, the dichotomized categories of public and private, masculinity and femininity, and the grounds on which the credibility of rape victims is questioned, will be discussed.

The issues of marital rape and statutory rape as violating the woman's right to agency will be elaborated upon.

How rape is used as an instrument of social control and exercise of power over both the individual and social groups will also be analysed.

Section-II will deal with these issues in legal terms under the headings of – Existing Laws, Interpretation of the Laws and Implementation of the Laws.

Section - I

To begin with the basic question – How is the act of rape perceived or what is recognized as rape? There are two contrasting views on this issue. The conservative and patriarchal ideology views rape only as an attack on a woman's chastity and not as an offence against human rights and dignity. (Ved Kumari 1994: 111). Premium is placed on woman's chastity, virginity, servility (Flavia Agnes 1998: 82) and naiveté or innocence (Elizabeth A. Stanko 1985: 118).

As Justice Chinnappa Reddy, quoted by Krishna Gupta observed, “the world today is a man's world, where the woman is never a woman in her own right, but where she is first a daughter, next a wife and last the mother...” (Krishna Gupta 2001: 66). Hence, rape is not considered as violation of the agency, integrity and autonomy of the individual woman but rather as a shame brought upon her family. In a case of Sultan Singh vs. State of Madhya Pradesh, 1990, the Supreme Court though upholding the conviction of rape, reduced the sentence to the period already undergone by the appellant on the ground that he had married the prosecutrix. (Gender Justice Reporter Vol. 1, January 1995).

There is also the belief in the male sex-right according to which “any ‘occasional’ release of male aggression towards women and their sexuality can be portrayed as ‘natural’ behaviour”. (Elizabeth A. Stanko 1985: 92). In other words, it is a normal biological sexual urge, which has to be appeased immediately. And this raises ‘reasonable’ doubt about the criminal nature of men's actions as regards rape. (Ibid.). Male sexuality then could be interpreted as the license to rape.

There also exists the notion that rape is pleasurable for women as it involves penetration, as Carole Pateman pointed out. (Pamela Abbott and Claire Wallace 1997: 250). And it implies traditional pleasurable sexuality. (Elizabeth A. Stanko 1985: 39).

Rape is defined as forced penetration of the vagina by the penis, as seen in Sections 375 and 376 of the Indian Penal Code. (Ved Kumari 1994: 106-107, Seema Sakhare 1994: 69). However, it is as Elizabeth A. Stanko points out, "Clearly woman-defined experience is overlooked; male definitions of what constitutes rape prevail. (Elizabeth A. Stanko 1985: 38).

The definition of rape as seen through the eyes of women is very different. Rape is seen as an act of human rights violation where the honor, dignity, autonomy and property¹ of the woman are violated. (National Law School Journal 1993: 75). Ved Kumari, quoting the 84th Report of the Law Commission on Rape and Allied offences in 1980, states, "Rape is the 'ultimate violation of the self'. It is a humiliating event in a woman's life which leads to a fear for existence and a sense of powerlessness. The victim needs sympathy and safety and a sense of reassurance." (Ved Kumari 1994: 105). Susan Griffin in 1979, as quoted by Govind Kelkar, defined rape as "the real crime of annihilation by men of the woman as a human being." (Govind Kelkar 1994: 13). "All rape is an experience of power, domination, degradation and humiliation, wherever, whenever and whoever commits the crime" as Euan Hague puts it. (Euan Hague 1997: 51).

Feminists like Jean D' Cunha among others have also pointed out that the male sexual urge is not a biological but a social construct. (Jean D' Cunha 1986:158). Germaine Greer aptly points out – "We have realized at last the rape has nothing to do with lust and everything to do with loathing..." (Germaine Greer 1999: 286). It is almost a hatred for women, which leads men to objectify and victimize women unhesitatingly. The objective of the rapist is to violate the woman's integrity and dignity, her self-esteem and personhood. (Jennifer Temkin 1986: 31).

¹ Carole Pateman talked of the idea of the individual as owner of property in her person as anti-patriarchal. (Carole Pateman 1988).

Moreover, rape occurs wherever the bodily integrity or physical autonomy, privacy, personal freedom and dignity of the woman are violated. (Jennifer Temkin 1986: 32). Hence, the definition of rape cannot be restricted only to penis-vaginal penetration. A wider definition needs recognition.

Intimately related to the social construction of sexuality is the notion of public and private, masculinity and femininity, which are used to legitimize the former. Each of these pairs has been dichotomized by patriarchal forces and hence is a social construct.

To elucidate this further, starting with the concepts of masculinity and femininity, Susan Barker talked of the male being considered as rational, independent, self-directed, autonomous, cultural belonging to the public realm of sovereignty and the state whereas the woman was conceptualized as emotional, natural, passive and dependent confined to the private realm of needs and desires. (Susan Baker 1999: 5).

Germaine Greer elaborated upon this by pointing out that-whereas men were not expected to cry (Germaine Greer 1999: 168) and the process of masculinization meant, “flight from the female”. (Ibid: 269), for the woman, grief was her glory. (Ibid. 171). Men priding themselves on toughness considered killing at war, a symbol of masculinity; (Ibid: 294); The ‘warrior-hero’ as it were. (Nancy C.M. Hartsock 1983). Genocidal rape by military men during the Bosnia-Herzegovina war (Euan Hague 1997: 50-51) is an example of such thinking. In India, the atrocities committed by army men and the police in Kashmir, as well as in Assam are also such instances. They will be discussed in greater detail in Section – II. Radical feminists like Euan Hague make this clearer quoting Brownmiller and Griffin that “...the rapist’s mentality operates from a masculine position, arguing that rape is an alliance of masculine sexuality’s aggressive, violent and dominating position with respect to femininity’s allegedly inherent passivity.” (Euan Hague 1997: 51). Stating the views of Hannah Arendt and others she says, “...masculinities construct men who enjoy a position of sexual dominance where pleasure is gained from the ‘act of humiliation, subjugation and submission of the rape

victim to the rapists' own will." (Ibid.). Stating the views of Kitzinger, 1994, she says, "Society constructs masculinity as a bearer of power and subjugates femininity to maintain the dominance of that power through patriarchy." (Ibid.).

Further, quoting Griffin, 1979, she states, "An aggressive masculinity dehumanizes and debases the sexual object² and 'many men appear to take sexual pleasure from nearly all forms of violence.' There has occurred an eroticization of violence, of dominance and submission with the social construction of male and female, the sexuality of male supremacy being institutionalized, (Catharine MacKinnon 1987) which often translates into rape. As Robin Morgan quoted by Irene Diamond stated, "Pornography is the theory and rape is the practice." (Irene Diamond 1980: 132). Whatever the motivation, male sexuality and violence in our culture seem to be inseparable. Brownmiller, as stated by Hague, said that, "Rape is an assertion of man's superiority and triumphant manhood." (Ibid: 52).

It is, then, as Catharine MacKinnon states, quoted by Elizabeth Stanko, "To be rapable, a position which is social, not biological, defines what a woman is." (Elizabeth A. Stanko 1985: 38). "Rape does not occur where there is no sense of a dichotomized masculinity and femininity..." as Christine Helliwell so very aptly puts it. (Christine Helliwell 2000). It is the 'sexualization of violence' which violates the personhood of women. Inequality between men and women arise due to men's desire to possess, subjugate and control women. (Ibid.).

Quoting Dworkin she adds further, "Men are [raping], because of the kind of power that men have over women. That power is real, concrete, exercised from one body to another body...exercised in public and exercised in private. (Ibid.). It is true that in terms of social status and resources, both of which are interrelated, men for the most part, are in a superior position as compared to women.

² As Catharine MacKinnon points out, 'Men have been the knowers, mind; women have been "to-be-known matter"', that is to be controlled and subdued, the acted upon. This is a social and not a natural matter...' (Catharine MacKinnon 1987).

However, Germaine Greer among others has questioned this binary opposition of the powerful male and the powerless female. She observes that, “It is not women who need men’s erections, but men.” (Germaine Greer 1999: 271). “Men who are afraid of other men can replenish their manhood at the expense of women who are afraid of them.” (Ibid: 275). Similarly, “when he sees women in work and man like himself out of work...he will decide that the woman has taken his job and brought him to his present humiliating dependency. Unemployed men are fragile; fragile men are dangerous, especially to women and children.” (Ibid: 268). To put it simply then, men have fallen prey to the same dichotomies that they themselves created. Therefore, men must deconstruct dichotomies also and not only women fighting for their liberation.

Coming over now to the public/private dichotomy which women are engaged in deconstructing as well due to the following purposes that such dichotomization serves. As Susan Baker points out – “The private sphere is supposed to refer to the family, unsullied by state regulation, where women are confined and men absent. In contrast the public sphere is supposed to refer to the world of rational discourse and political life, where men are engaged and women excluded.” (Susan Baker 1999: 5-6). “The private sphere is a site of sexual politics (as revealed, for example, by issues such as domestic violence and marital rape).” (Ibid.).

In other words, the public/private dichotomy is a gendered one considering the implications that follow from it –

Firstly, it “keeps the private beyond public redress depoliticizing women’s subjection within it and hence legitimizing practices that are oppressive to women.” (Susan Baker 1999: 140). Women are denied full rights because their activities are considered to be located within the private sphere outside the sphere where ‘public/citizen rights apply.’ There is a “a denial of care and services upon which full citizenship of women depends.” (Susan Baker 1999: 9).

The National Law School Journal (1993: 64) clearly states that, "...women-specific abuses may never be completely redressed unless and until the private realm is recognized as a legitimate area of human rights concern at the highest level, and is problematized as the crucial site of struggle for women's rights. However, the Government of India is yet to deconstruct this public/private dichotomy as it is of the view that, "introduction of Constitutional law in the home is like introducing a bull in a china shop... in the privacy of the home and married life, neither Art. 21 nor Art. 14 of the Constitution have a place..." (Alternative NGO Report on CEDAW Initial Submission to the CEDAW committee, India Coordinated by the National Alliance of Women, January 2000: 23). Art. 14 deals with the right to equality and Art. 21 deals with the right to life and personal liberty, both of which are enlisted as the fundamental rights of every Indian citizen in Part III of the Indian Constitution.

Further, as Carole Pateman, (quoted in the National Law School Journal 1993: 73) said, "In reality, 'the sphere of domestic life is at the heart of civil society rather than apart or separate from it.'" The National Law School Journal states Art. 16 of the United Nations Universal Declaration of Human Rights, 1948 – "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State." (Ibid.).

This brings up the issue of marital rape. The wife is considered the 'husband's property' and therefore he has 'an irrevocable right to have sexual intercourse with her. (S.V. Joga Rao 1994: 94). "...the raped wife can be censured for withholding the sexual access that is guaranteed to the husband in many definitions of marriage (and she usually is)." (National Law School Journal 1993: 74). This is in spite of the fact that "...the infliction of pain in marital rape, with its short term as well as long term consequences injure dehumanizes the woman," and therefore "should not be excluded on the ground that it occurs in the private realm." (Ibid: 76). Diana Russell expressing the women's concern opined that marital rape 'would qualify as torture'. (Ibid.).

Premium is placed on heterosexual conjugal relations in Indian family life and yet the quality of such relations remains unchartered. The concept of 'provocation' as analysed by Sue Lees, 1989 is often used as an excuse by the husband for raping his wife. These are – infidelity (unchaste)., bad housekeeping, withdrawal of sexual services, nagging (even Germaine Greer points this out, 1999: 286)., unrespectable, negligent in her wifely duties, battered women provoke such a response and loss of self-control. (Pamela Abbott and Claire Wallace 1997: 245-246).

Feminists then have questioned this non-recognition of marital rape. They have coined the term, " 'power rape', where a man in a dominant power relation abuses his position to have sexual relations." (Govind Kelkar 1992: 12). (Power rape has been recognized in case of custodial rape only, under the Indian law.).

'The presentation of culture, in the context of personal laws also, which perpetuate such violence against women has been severely criticized and its existence questioned.' (National Law School Journal 1983: 69). Especially keeping in mind Muslim Personal Law. As Catharine MacKinnon pointed out '...that the concept of "culture" itself needs to be unpacked to reveal its structuring patriarchal power relations.' (Ibid.).

Indian law does have a few provisions on marital rape, the age limit of the wife being till 15 years. (Ved Kumari 1994: 106; Seema Sakhare 1994: 70). What is obvious then is that the prevention of child marriage was being given recognition, not marital rape. The legal debate as regards this issue will be clarified in detail in Section – II of this chapter.

Another issue, which runs parallel to marital rape leading to the violation of the woman's right to agency, is that of date rape. The National Commission in its legal study on rape, (2000: 23) clearly states – "In the west, there are 'date rapes', acknowledged by law, wherein a boy dates a girl and forces a physical relation on her. The situation is not the same in India and judicial attitudes differ." If two people are familiar and intimate with each other, that there does not arise any question of rape or forced sexual intercourse, is the ruling norm. Hence, there exists no recognition of date rape in India. As Germaine

Greer, (1999: 287) states – ‘A date turns to a rape when the lovelessness of the man’s interest can no longer be disguised. Marital sex turns to rape in the exactly the same way.’ Of course in India, a woman under 16 years of age can hardly date in the sense of having sexual intercourse with her friend out of her own free will, as he can be penalized under the provision of statutory rape. (Seema Sakhare 1994: 70).

It is as Frances Olsen said, “...statutory rape laws violate the female’s right to privacy and her right to be as free sexually as her male counterpart...Gender-based statutory rape laws reinforce the sexual stereotype of men as aggressors and women as passive victims. The laws perpetrate the double standard of sexual morality.” (Frances Olsen 1991: 307).

Further, since the public sphere is given so much importance and is considered the realm of rationality, the sufferings of women in the private sphere are brushed aside as too emotional and even irrational.

The second implication of this public/private dichotomy is that the woman, if she transgresses the boundary of her traditional private sphere and tries to or does enter public life, she deserves to be raped. A very concrete example of this was given by Madhu Kishwar (1999). She observed that electoral politics in India relied to a great extent on violence and intimidation, which makes it difficult for a woman to make on her own without a male protector. The case to the point that she gave was that of Pramila Dandavate working on women’s issues, whose seat was compromised by a candidate from the Shiv Sena. In return, no Shiv Sena candidate was put up against her husband who was contesting elections.

Following from these two binary oppositions of masculinity/femininity and public/private, the two issues of- rape as an instrument of social control and the issue of credibility of the rape victim’s testimony or statement arises. Each of these will be discussed in detail separately.

To first discuss the issue of rape being an instrument of social control of women by men in society, instances of this have already been discussed. To put it in the words of Germaine Greer, “Women as targets for attack functions as an instrument of social control. The object is ...maintenance of fearfulness.” (Germaine Greer 1999: 168).

The objective of infusing fear into the minds of people so that they are made submissive accepting a superior authority is true, not only of individual men and women, but also of social groups. Here, rape is an instrument of exercising and/or establishing power over social groups. Instances of these are the caste wars where the struggle of the dalits i.e. the lower castes to uplift their position in society is crushed by the atrocities both rape and murder committed by the upper castes on these people³, as also communal riots as the recent events in Gujarat show.

Moreover, as Germaine Greer among others have pointed out that, “...victimization is further developed as the victim’s taking blame for the act. Women who have been raped are expected to feel ashamed, dirty and so forth. (Germaine Greer 2000: 138). Blaming the victim saying that she got what she deserved is the standard line. (Elizabeth A. Stanko 1985: 92).

Coming now to the issue of credibility of the rape victim- whether her statement is to be believed or disbelieved, it is the male notion of how he perceives femininity, which rules.

“Credibility is tied to notions of appropriate femaleness.” (Ibid: 128). – The credibility of prostitute, single parents, strippers, alcoholics, students have been questioned. (Ibid.). Being an inquisitive and insistent victim as regards the investigation of the crime of rape, is a drawback as far as credibility of the rape victim is concerned. (Ibid: 85).

“Visiting a man’s flat, accepting a ride home from a party, having dinner and a drink with a man: all are situations that could be construed as women’s invitation for sexual

³ See Anupama Rao’s article, ‘Understanding Sirsagaon: Notes Towards Conceptualizing the Role of Law, Caste and Gender in a Case of Atrocity. Pg. 204-247 in Rajeshwari Sunder Rajan (ed.). ‘Signposts: Gender Issues In Post-Independence India’, 1992, Kali for Women, New Delhi.

relations.” (Ibid. 92). Her dress, her degree of resistance is scrutinized. (Ibid.). The fact however remains that “rapists choose their victims based on accessibility and vulnerability, rather than attractiveness.” (National Commission for Women’s Report on Rape 2000: 17). Another myth about rape is that “it is customary for the woman to say ‘no’ when in reality she means ‘yes’.” (Ibid.).

If the rape victim had runaway with her boyfriend wanting to live with him, as it happened in the Suman Rani case of 1989, then she is described as a woman of “questionable character and easy virtue with lewd and lascivious behaviour” and the imprisonment for rape sentence was reduced to half its term. (See NCW’s Report on Rape 2000: 23). The Mathura Rape case (Flavia Agnes 1998: 84). was another such instance where the tribal girl was disbelieved and the accused acquitted because of her having been habituated to sexual intercourse. As Catharine MacKinnon pointed out, even a good user of contraception is presumed to be sexually available and is raped with relative impunity. (Catharine MacKinnon 1987). There was another case concerning a tribal girl where two persons had entered the house in her father’s absence and taking her to the jungle had raped her. The High Court convicted the accused two persons of rape but reduced the sentence stating, “sexual morals of the tribe to which the girl belonged are to be taken into consideration to assess the seriousness of the crime.” (Ibid: 91).

Another myth about rape is that strangers can only commit it – ‘blitz rape, though facts prove otherwise. (Elizabeth A. Stanko 1985: 92, Rape Victims: Networking for a Supportive Infrastructure 1998: 7).

Even caste is used as a factor for doubting credibility, as evident in the Bhanwari Devi Rape Case (1992-95). where the Sessions and District Court at Jaipur ruled that a lower caste woman could not have raped by upper caste, respectable, middle aged men. (NCW’s Report on Rape 2000: 33-34). “There have been and continue to be Phoolandevi’s in India, raped by upper caste Thakurs, symptomatic of the menace of the caste system in India.” (Ibid.).

Furthermore, “ ‘hysterical women tend to imagine attacks; ‘cheating’ women report rape rather than admit having affairs; ‘young’ women cry rape out of fear of spoiling their reputations.” (Elizabeth A. Stanko 1985: 119). A drunken woman is “less inclined to withhold consent” and therefore it is not rape. (Ibid: 127). Even a child raped is accused of tempting her father with her flirtatious behaviour and the accused is acquitted. (Pamela Abbott and Claire Wallace 1997: 245).

The point is made very clear that whatever the notion of femininity – from the docile, naïve, chaste type to the extremely sexually active kind of woman, it is men who will decide which woman is morally good or bad. And accordingly the rape victim’s statement will be accepted or rejected.

Section - II

All the issues raised in Section – I will be dealt with in this Section in legal terms, i.e. what has been the position of law as regards these issues and what are the changes that women have demanded (keeping in mind the issues raised by them in Section – I). However, recognizing the fact that legal process has various aspects, these issues will be dealt with under the headings or categories of: - the existant laws, its form, the interpretation of the laws and finally the implementation of the laws.

The Existing Laws

As pointed out in Section – I, rape is defined only as forced vaginal penetration by the penis in Articles 375 and 376 of the Indian Penal Code (NCW’s legal study on rape, 2000: 19-20, 24-26). This is a very conventional and narrow definition of rape as it fails to recognize and acknowledge the act of rape, not only as a violation of bodily integrity and physical autonomy but also as a violation of a woman’s dignity, her personhood or selfhood.

Penetration of the vagina by fingers or any other part of the human body or by foreign objects like a stick, oral and anal rape, keeping in mind the women's perspective of rape, also should be brought under the definition of rape as 'sexual assault'. (NCW's legal study on rape, 2000: 20). The NCW report states that "The primary focus should be on the assault, rather than on merely the act." (Ibid.). There are "...larger issues of humiliation, degradation and violence that occur when such objects" (like bottles, sticks or fingers). "are used." (Ibid.).

Based on the reports of the State Women's Commissions of NGOs and law school, the suggestion was given that "the definition" of rape "be expanded so as to cover a wide range of sexual violence in addition to the sexual act. It was opined that the amendments introduced in 1983 have not succeeded in evolving an effective definition of rape, which went beyond the parameters of a patriarchal value system. In fact, the same old notion of chastity, virginity, premium on marriage and fear of female sexuality are reflected in the judgments of the post amendment period. The sexual act continues to be the governing ingredient in the offence of rape. As a result, the definition overlooks women's experience of sexual crimes, which are not confined only to rape as defined but go much beyond to other sexual tortures, too." (Ibid: 47-48). Artificial insemination with donor semen without the knowledge of the women under anesthesia also amounts to rape, as recognized abroad.

The 172nd Report of the Law Commission of India on Review of Rape Laws, March 2000 (20-22, 25). defined what constituted rape under the heading sexual assault including all the kinds of rape mentioned above except for the one as artificial insemination with donor semen without the knowledge of the woman, which was indeed progressive.

However, they still have not been accepted and implemented. Of course, in India, if consent for sexual intercourse is obtained through false promises, the act amounts to rape, which is also good. (Shoma A. Chatterji 2000: 58). Related to this, is, the issue of attempted rape and indecent assault. The 172nd Report of the Law Commission on Rape, 2000: 22 further stated that -"Penetration to any extent is penetration for the purposes of

the Section”, i.e. the Sections on Rape (Section 375 and 376 of the IPC). This recommendation was made due to the pressure exerted by the women activists to recognize certain acts like an unsuccessful attempt to penetrate or incomplete penetration as rape which currently falls under the category of attempt to rape (Flavia Agnes 1998: 92).

Further, even when the accused felled the woman to the ground stripping both her and himself and tried to introduce his male organ into her private parts, despite her strong resistance, no injury being caused as yet in the private parts as any other part of the body of the woman, it amounted only to outraging a woman’s modesty under Section 354 of the IPC and not an attempt to rape. (Ibid: 93). The maximum punishment here is only two years. (Ibid: 92). The 172nd Report of the Law Commission, 2000: 35-36 recommended a punishment of three years and fine but did not recognize such acts as an attempt to rape. Besides, the problem of proving the intention of the accused to outrage the modesty of the woman leads to acquittals. (Christine Chorine, Mihir Desai and Colin Gonsalves Book II 1999: 459).

Thus there comes into being a gradation of offences under the terms ‘sexual assault.’ The reformed Michigan law on sexual assault is very similar to this. (Jennifer Temkin 1986: 28, 31).

The enhancement of punishment to mandatory death sentence for rapists, as proposed by the Ministry of Home Affairs has been questioned by the NCW and women’s groups as a “populist shortsighted measure that is most likely to greatly reduce convictions in rape cases while superficially seeming to treat it as a serious crime. A similar attempt was made early this year to introduce ‘rape insurance’ scheme within the national insurance policy. This was withdrawn after widespread criticism by women’s groups.” (Alternative NGO Report on CEDAW January 2000, India coordinated by NAWO: 24). However, if the accused suffering from HIV+ infects the rape victim, the punishment should be more than the normal 7 years, as suggested by the NCW (2000: 44).

The patriarchal, conventional and a very narrow definition of rape is also evident in the laws as regards the issues of marital rape and statutory rape.

Statutory rape provisions under Section 375 of the IPC clearly violate the woman's right to agency, as mentioned already in Section – I. It goes against the very definition of rape as forced intercourse of the man with the woman since the woman could have had sexual intercourse with man willingly without any fear or inhibitions.

The issue of marital rape is unrecognized in law, the public/private and masculinity/femininity dichotomies being kept intact. The intention of the lawmakers was to address the problem of child marriage and to prevent it. Hence, rape of the wife by husband was recognized only if the wife was under 15 years of age (Section 375 of IPC) and 12 years of age (Section 376 of IPC). In case the age is between 12-15 years, the maximum punishment was only two years imprisonment with fine. (NCW's study of rape 2000: 19, 41). Section 198 of the Cr.PC that deals exclusively with the "Prosecution for offences against marriage" does not mention marital rape as an offence. (S.V. Joga Rao 1994: 92).

Further, in case the man rapes his wife after being separated from her by a court decree, the maximum punishment is only two years imprisonment with a fine, which is much less than the minimum seven years imprisonment. (Flavia Agnes 1998: 99). As Flavia Agnes further points out – "...a strange and perverse logic that it (i.e. forced sexual intercourse – an act against which the woman has registered a criminal case!), might lead to reconciliation." (Ibid.).

However, even though the words, 'marital rape' may not be specifically mentioned in the laws on domestic violence, there is undoubtedly the recognition of such cruelty to a wife as perpetrated by the husband in Sections 323 (bailable offence, maximum imprisonment for one year and bailable with fine), 325 (maximum imprisonment for three years and bailable) and 336 (maximum imprisonment for three months with Rs. 250 as fine, bailable). If property [in person] and not just the issue of dowry deaths, is recognized

then Sections 327 (maximum imprisonment of 18 years and fine, non-bailable offence) and 329 (maximum ten years to life imprisonment and fine, non-bailable offence) also give recognition to marital rape. (Anil Kalia and Deepa Bajaj 1998: 29-30).

The most important of these provisions is Section 498 –A of the Cr.PC which was introduced in 1983. (Maithreyi Krishnaraj 1991: 120). It penalizes subjection of the woman to cruelty by her husband or relative of the husband. For the purposes of this Section, “cruelty” means –

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. “Repeated sexual violence” and “Taunting, demoralizing and putting down the woman with the intention of causing mental torture” was criminalized under this Act. (Lawyers Collective Legal Handbook 1 1992; 37-38). The only problem is that “the conduct must be shown to be repeated and consistent” as court rulings show. (Ibid.). And the maximum punishment is three years with fine, again much less than the minimum punishment of rape. (Ibid.).

Moreover, the crime of hurt under Section 319 of the Cr.PC also recognizes such cruelty like any hurt causing the wife to suffer pain for more than twenty days. (Ibid: 40). A crime of grievous hurt is also mentioned in Section 320 of the Cr.PC. (Ibid: 41).

In personal laws also like Section 10 of the Hindu Marriage Act, marital rape is recognized. It states that – “Any wife may present a petition to the District Court or to the High Court, praying that her marriage may be dissolved on the ground ...of rape, sodomy or brutality.” (Christine Chorine, Mihir Desai and Colin Gonsalves Book 1 1999: 596).

Next comes the issue of the age of consent which is extremely important in either giving or denying to the woman her right to agency. There exists a lot of confusion as regards the age of consent factor in rape laws. The provision on statutory rape in Section 375 of the IPC puts the age limit at 16. In the same section as regards the rape of a wife by her husband is 15 years. For the same offence, in Section 376 of the IPC, the punishment is 12 years. Inconsistency with the Child Marriage (Restraint) Act of 1929 where the age of consent is 18 years (NCW's Report on Rape 2000: 46) or the age of majority for all legal purposes (Flavia Agnes 1998: 100) is very evident here.

Sanctioning marriage for women between the ages of 15 and 18 years does not even do away with child marriage, which was the objective of the lawmakers.

Then again, if a woman is capable of consenting to sexual intercourse at 15 years of age then how is she considered unable to do so at the age of 16 (as expressed or implied in the provision on statutory rape in Section 375 of the IPC).

It is obvious then that both abuse of the wife by the husband and child-marriage are still socially sanctioned.

Further, the onus of proof regarding consent is placed on the prosecutrix and not on the accused except in cases of custodial rape, i.e. rapes by policemen, public servants, managers of public hospitals and remand homes and wardens of jails. (Flavia Agnes: 1998: 85, Ved Kumari 1994: 108-109). This questions the credibility of the rape victim. The Mathura Rape Case had triggered off a campaign for changes in rape laws, one of the demands being that the burden of proving that she had not consented should be on the accused. A fallout of this, though very partial was the recognition of this in cases of custodial rape. (Ibid: 84-85). The denial to her of hiring a public prosecutor of her own choice moreover makes the task of proving that she did not consent even more difficult. (Flavia Agnes 1998: 98).

Lastly, the provision of incamera trial which has now been made mandatory as against an open court trial, irrespective of the wishes of the rape victim thereby again denying her the right to agency, has been severely criticized by women, the exception to such opposition being the trial in case of child rape. Section 327(2) of the Cr.PC, 1973 providing for incamera trials (Jayasree Gupta 1999:12) is another example of the protectionist approach of the GOI but it is not clear who is being protected –the victim or the accused; his identity on no account should be revealed since, as the Law Commission puts it, “ ‘..making an allegation of rape against him imposes upon him an equally unpleasant, humiliating and embarrassing experience...’ and so he is entitled to the same protection as the alleged victim...” (Nandita Haksar 1999: 75).

There is also a virtual press censorship of the rape trial, which though made a bailable offence, is still considered an offence. (Flavia Agnes 1998: 85).

Interpretations of the Laws

The issue of credibility of the rape victim and her testimony – whether she consented or not to the act of sexual intercourse in rape, is of great importance.

Even though, Section 114A of the Indian Evidence Act (IEA), 1872 states that if the woman stated in her evidence that she did not consent, the court shall presume it to be so, (Ved Kumari 1994: 107, Jayasree Gupta 1999:12). except for custodial rapes, it is left to the prosecution to prove that she did not consent.

Another Section of the IEA- Section 155(4). allows questioning on her past sexual history in Court by the defence lawyer who tries to demonstrate that the raped woman is of a ‘generally immoral character’ (Ved Kumari 1994: 108-109). As a result, women who go to court, the lower or the higher ones, feel that they are being tried rather than the culprit, as mentioned in “Shades of Courage, Women and IPC Section 498A Special Cell for Women and Children”, published by the Tata Institute of Social Sciences (1999: 66). Sue

Lees defined it as judicial rape where rape victims “are subjected to ruthless character assassination and humiliation.” (Pamela Abbott and Claire Wallace 1997: 250).

Notions of credibility and corresponding examples of court cases have already been discussed in Section – I but a few more points are to be noted. Any notion is forwarded for acquitting the accused:

It is assumed, for example, that a paraplegic cannot be raped. (Sonia Goswami and Astrida Neimanis 1998: 245).

Lack of severe injury marks on the sexual organ of the accused or the perpetrator of the sexual assault in case of the rape of a minor is enough reasonable ground to acquit the rapist. (Flavia Agnes 1998: 90).

Lack of severe injury marks on the rape victim due to her submission under fear is also used as a ground of acquitting the accused, which is clearly a breach of clause (3) of Section 375 of the IPC. An example of this is the Mathura Rape Case and its judgment delivered in 1979 (Shanta Serbjeet Singh and Jyoti Sabharwal 1998: 52).

Further, under Section 54 of the IEA, the good character of the accused is presumed and made relevant (NCW’s study of rape 2000: 28). The 172nd Law Commission Report on Review of Rape Laws in 2000 recommended the deletion of Sections 155(4) and 53A and it suggested a new clause (4) to be added to Section 146 of the IPC for this purpose. (75, 77).

Delay in lodging the FIR after the act of rape, also leads to a lessening of punishment for the crime. E.g. the 1989 Suman Rani Case or Prem Chand and others vs. State of Haryana, where the punishment of the police constables was lessened to five years imprisonment only, instead of the mandatory ten years in case of custodial rape. (O.P. Mishra 2002: 12).

Patriarchal notions of male and female sexualities with the belief in the natural male sex-right and the premium placed on marriage and caste sentiments also have been used as grounds for lessening the punishment and acquitting the accused: -

Justice Krishna Iyer in the 1979 Supreme Court Judgment reduced the rape sentence stating – “Youth overpowered by sex stress in excess. Hypersexed homo sapiens cannot be habilitated by humiliating or harsh treatment...Given correctional course his erotic aberrations may wither away.” (Flavia Agnes 1998: 87). What of course was this correctional course was not stated though legitimizing the male sex-right. Youth offenders are usually sentenced to only three, instead of a minimum seven, years imprisonment, which is like ‘sending the accused to a picnic.’ (Ibid: 90). This is a serious drawback since, as seen in child molestation cases, the offenders are mostly the youth. (Ibid: 89). Many are released also on probation for good conduct. (See the cases mentioned by O.P. Mishra 2000: 12).

The patriarchal notions of marriage where the woman is considered property of the husband, marital rape is not acknowledged in law above 15 years of age of the wife. Provisions regarding the rape of wife by her husband under 15 years of age of the wife, are present in law but the objective is not the recognition of marital rape but prevention of child marriage, as mentioned earlier.

Premium on marriage is used as a ground for absolving the rapist even in the case of rape of a minor. If the accused has a daughter of marriageable age, his sentence is reduced, as greater punishment would hamper the prospect of getting a suitable match for his daughter. Further, the minor –a ten year old is paid monetary compensation by the 45 year old accused to be used for her marriage expenses and the presumption that if married, the anguish in her heart would be wiped out. (See Flavia Agnes 1998: 90-91).

Caste considerations also come in the way of punishing the rapist. E.g. the Bhanwari Devi Case, 1992-95, where she was gang raped by the ‘respectable’ upper caste members of the society. The court considering it impossible that upper caste men could rape a

lower caste woman acquitted the accused. (NCW's Report on Rape 2000: 33-34) and her testimony was disbelieved.

As already mentioned in Section I, the age, occupation and caste and class factors are also used to raise 'reasonable' doubts regarding the credibility of the rape victim, to prove that she had in fact consented and was lying in court.

Another factor related to the issue of credibility pertains to the kind of questioning and harassment faced by the prosecutrix in a court of law. Minute details are asked even from minors who may also be suffering from a particular disability and may be also sleeping. e.g. the case of gangrape of a 17 year old suffering from epilepsy while she was sleepwalking. In court, she was asked question like – how she felt when accused No.1 inserted his organ, whether she felt the warmth of seminal discharge of all the five accused and so on. (See Flavia Agnes 1998: 97).

Further, women have also questioned the practice of giving compensation to the aggrieved party as it makes a mockery of the grievous nature of the crime. However, the reason given by some judges like Chief Justice Lodha is very different –“undermining the honor of the ravished family..” (Sangeeta Ahuja Vol. I 1997: 201). Moreover, even if the compensation is paid, solely the judge using his discretion on the matter decides its amount.

In some cases of course, there is no compensation at all even when the rape victim got pregnant due to the act of rape. No maintenance money was paid for the mother and child at all. (See Sangeeta Ahuja vol. 1997: 189-250 where tribal women bore about 1000 children due to rape by police officials in Thiruvelli in Kerala, also pg. 186 – the Gajraula rape case where the court did not award compensation).

Implementation of the Laws

Both the issues of abuse or misuse of the existing laws as well as their non-implementation will be discussed with reference to three groups of people – army men, police officials and very importantly, the GOI.

The Armed Forces (Special Powers) Act, 1958 (AFSPA) and the Assam Disturbed Area Act, 1955 have been constantly misused by the armed forces and police leading to several cases of institutional rape. Atrocities on women committed by the armed forces usually go unpunished. E.g. the Wavosa outrage where the army committed mass rape on civilians. The army men of course said that it was an operation against militants. (Rape and Molestation: A Weapon of War in Kashmir – A Report prepared by the Jammu and Kashmir Human Rights Awareness and Documentation Centre 1998: 14-15). The Armed Forces illegally detain (Ibid: 41) women in their custody, not handing them over to the police. The interrogation takes weeks, months and sometimes even dead bodies are handed over to the police and relatives, if any, without any explanation given whatsoever. (Ibid: 17). Moreover, fear of being raped restricts the freedom of movement of Kashmiri women. Minor girls are scared to attend schools, which are often turned into Army Camps that the Army has occupied for years. (Ibid: 28). Women are scared to go alone to even hospitals or clinics, their right to good health being jeopardized. (Ibid: 30). Thus, women activists have demanded that these special acts be annulled. (Ibid: 40), though they have been upheld by the Supreme Court. (S.K. Verma and Thomas Paul Vol. XXXIII-IV: 1997-1998, pg. 542-543. The special powers of the army and police officers under these acts are mentioned here. It also mentions the Army Act of 1950, which is also the code of conduct for army men).

The HRD Ministry of the GOI however upholds the integrity of the Armed Forces saying that the United Nations also deploys them and that the safeguards for women and the code of conduct laid down in the Geneva Protocol do not apply in India as there is no armed conflict pertaining to its definition given in the Geneva protocol.

Sangeeta Ahuja has stated the atrocities on women perpetrated by the jawans of Assam rifles in Tripura. (See Sangeeta Ahuja vol. 1997: 202-203). The state government and the army officers dismiss the allegations as “baseless political propaganda of the opposition...They threatened to take action against those who complained and described the criticism of the anti-national act.” (Ibid.).

It is evident then that the legitimized and prided notion of aggressive masculinity or the warrior-hero, as mentioned earlier in Section – I has resulted in increased violence against women violating their civil equality as well.

The nature of police investigations has been questioned on several grounds, the basic contention being that they reinstate and reinforce the kind of patriarchal thinking including the upholding of the dichotomized binary oppositions, as discussed earlier.

There are several factors as regards their mode of investigation as also their reluctance to investigate in certain cases –

Firstly, the unnecessary delay in investigations during which time the evidence could have easily been tampered with, e.g. The Guntaben gangrape case. The CBI took many years to complete their investigation, one of the reasons being that the evidence of 584 persons was taken in court. The accused policemen were hardly prosecuted and acquitted even though the CBI found that the police had illegally detained her. The rape took place in 1986 and only in 1993, the court awarded just compensation. (Sangeeta Ahuja Vol. I. 1997: 185, 197-198). As Flavia Agnes has pointed out, “usually it takes around five to ten years for a rape case, which has resulted in a conviction to be decided by the high court.” (Flavia Agnes 1998: 98). The NCW’s Report on Rape, (2000) taking in the views of all the women’s organization concluded that investigations and judgments should be delivered between six months to one year at best.

To continue, in cases of marital rape, the police refuse to lodge a FIR. As the National Law School Journal 1993: 74, states – “Agents of the state may be employed to send an

abused woman back to the site of her abuse, the family, to ‘protect’ its ‘natural’ form and maintain family unit (and they usually are).” In 1983, the Law Commission had recommended that police officer’s refusal to register a complaint of rape be treated as a criminal offence. (Flavia Agnes 1998: 85). But it is yet to be implemented.

Then again, there are lapses in the medical report. (Ibid: 98). Ideally, medical examination should be conducted on 26 points as mentioned in the police manual including DNA fingerprinting, as mentioned in the NCW’s Report on Rape (2000) as also conducting a test to see whether the rapist was infected with AIDS or any other communicable disease, in which case, the punishment should be enhanced, as mentioned earlier. In case the woman was seemingly drunk, tests should be conducted as to whether she was drugged or not. (Canadian Women Studies Journal Vol. 20 No. 3 2000).

Further, no woman police officers are present during the arrest and collection of evidence, from the raped woman, and while recording her statement. At least one woman social activist from a recognized women’s organization along with a lawyer of her choice as also a family member should be present. The 172nd Report of the Law Commission on the review of rape laws gave good detailed recommendations on how investigation should proceed including the immediate medical examination of the raped victim and sending the report to the police officer. Special consideration was given especially to the children below 16 years who are rape victims – how their statement should be recorded and where it should be recorded. Accordingly, the suggestion given was to insert a new Section – 166A in the IPC. (172nd Report of Law Commission on Review of Rape Laws 2000: 36-37, 60-61). The views of ‘Sakshi’ a well-known women’s organization was also considered.

It is clear that both Army officers and the police have violated the procedure meant for police officers as mentioned in various provisions of the Cr.PC. (For details see Sangeeta Ahuja Vol. I. 1997: 207-209, see also S.K. Verma and Thomas Paul Vol. XXXIII-IV 1997-1998: 184-185 regarding safeguards to check the abuse of police officers). The Law Commission in 1983 had suggested that no arrests should be made at night as well the

presence of a relative, social worker and a lawyer of the rape victim's choice while her evidence is recorded. (Flavia Agnes 1998: 85). But again these have not been implemented.

Finally coming over to the role of the GOI in protecting women's equality and bringing to an end the violence against them, the facts suggest that the GOI is no less patriarchal and have both actively and passively (in not taking action) helped in perpetrating and legitimizing the inequalities faced by women.

As has been already pointed out throughout Section- II of this chapter, none of the recommendations made by the Law Commission, the National Commission for Women, the National Alliance of Women, the NGOs and State Women's Commissions and Joint Women's programmes (whose views were discussed in detail in the NCW's report on rape, 2001 have been implemented.

The Central Government is expected to take action on the recommendations made annually by the Human Rights Commission, the latter being authorized under Section 19 of the Code of Civil Procedure 1908 to seek a report from the Central Government pertaining to any violation of human rights by members of the armed forces. The GOI is also expected to keep the Commission informed of its actions. (Gender Justice Reporter Vol. I January 1995: 18). But as usual, this has not happened in reality.

The National Perspective Plan for Women, 1988-2000 talking of the creation of "a democratic, egalitarian, secular and co-operative social structure" (Gender Justice Reporter Vol.1. January 1995: 83) and of economic development, equity and social justice for women, have yet to be implemented. The plan was to review the 5- year plans examining the programmes launched for women, the situation of women in rural development, employment, supportive services, education, health, legislation, political participation, media and communication and voluntary action, suggesting strategies for holistic development of women by 2000 A.D. It seems the GOI requires another law to have implemented this and any other such policies in the future.

The working of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 which came into force in 1990 prescribing punishments which are higher than for the corresponding offences under the IPC and which also states the provision of legal aid, travelling and maintenance expenses to victims and witnesses and other facilities including the adoption of measures to ensure the safety of the SCs/STs in such areas also giving relief and rehabilitation to victims/dependents of atrocities,⁴ has hardly been adhered to. Rape of tribal women does fall under the Act.

It is not that there are no good laws (though the enactment of a few more is needed and some of the existing laws need to be reformed). There are. And it is also not true that the GOI has introduced absolutely no good changes in the law. An example of this is the insertion of Section 498A in the Cr.PC in 1983. But instances of such action taken are very few indeed.

As a result, women have rightfully claimed that international covenants like CEDAW or the Beijing Platform of Action, the Convention on the Rights of the Child and so on (discussed in the earlier chapter). have been ratified by the GOI but have not been realized in reality, due to the patriarchal attitude and thinking of the state which has not changed much over the years. As mentioned in the chapter on “Equality”, the Women’s Action Research and Legal Action for Women (WARLAW) had petitioned the Union of India and the Chairman of the National Human Rights in this regard.

Conclusion

On the legal front, certain new laws need to be enacted in the following areas –
Registration of Marriage Bill which has been kept pending (Indu Prakash Singh 1989: 139).

⁴ Statement by the Secretary of Department of Women and Child Development, HRD Ministry at the 22nd Session of CEDAW on the occasion of Hearing of India’s 1st Report under CEDAW, January 2000: 3.

There is no separate law on Child Sexual Abuse. Under the current provisions on rape, the “procedures of evidence and trial remain the same for a child as for the adult.” (Alternative NGO Report on CEDAW 2000: 26).

Regarding the rape of refugee women, the United Nations in 1996 declared that women subject to male violence are entitled to refugee status and asylum and physical protection if they leave their country, and they themselves should participate in the management of their shelters to bring down the incidence of sexual abuse, and to inform them of their rights. The GOI has yet not passed any laws pertaining to this issue.

Regarding, provision of social securities and other welfare benefits, including shelters, 24- hours rape crisis hotlines, free legal aid to the poor and employment opportunities for destitute women who were and/or become victims of sexual assault. This is inclusive of the vulnerable categories of children, tribals, the disabled and the refugees. As in pornography and prostitution, in rape also it is necessary to take steps to prevent such incidents from happening and not just dealing with the consequences of such acts of violence. These vulnerable groups of people need the most care and provision of basic amenities required for living a decent life.

Even the legal aspects of the rape of a handicapped especially regarding evidence and the type of questioning in rape trials needs to be elaborated upon in law.

Drugs like Rohypnol, Valium, Halcion and Xana used to drug the intended rape victim, except for use in medical science research, should be legally banned. (Canadian Women’s Studies Vol. 20 No.3 2000).

Social awareness of the laws is also required. The findings of SAKSHI are indeed startling. For instance, “No judge had even heard of recommendation 19 of the Convention on Elimination of All Forms of Discrimination Against Women, which facilitates violence as a Human Rights Violation.” (Gender and Judges 1996: 75). And

even though half of the judges interviewed felt that women had access to justice less than 40% of the time (Ibid: 80), 70% of the judges interviewed showed a willingness to participate in gender equality programme on violence against women” (Ibid: 81). In this context, it may be mentioned that, an Indo-British training project on gender and law, which talked of elimination of gender discrimination, 1996-97 was undertaken. Commission to show cause why both the international covenants ratified by India and the Indian Constitutional provisions have not been adhered to. (From the WARLAW’’s petition in the Supreme Court of India at New Delhi in Kali’s Yug: Empowerment, Law and Dowry Deaths’ 1995: 107-127).

It is the ‘willingness of the people to change’ which is of utmost importance. (Krishna Gupta 2001: 152). Quoting from the National Perspective Plan for Women, 1989-2000, she further states that – “Effective change cannot be brought without a simultaneous movement to change the social and economic structures and the culture (values, ideologies and attitudes). of society.” (Ibid: 157).

This involves several issues – Firstly, the status of the girl child in the family needs to be improved and should no longer be conceived as a liability. (Ibid.). India has one of the highest rates of child marriages, due to social, economic and religious compulsions and women are trained mainly in household tasks as a domestic help. (Indu Prakash Singh 1989: 139).

Gender sensitization is also required. This would involve deconstruction of binary oppositions especially the notion of male sexuality that justifies violence against women in the name of the natural male sexual urge. Such deconstruction is to be done by men as well, not only by women as they themselves have got trapped in their own conceptualizations. Even they themselves would be liberated if these dichotomies were deconstructed.

In fact, it has been suggested that the appropriate punishment for rape is castration. (Germaine Greer 1999: 279). As the NCW report on rape, 2000 showed, even social ostracization has been suggested as punishment.

What are then to be understood and dealt with is not just the act of rape but rather what it signifies and its purpose.

CONCLUSION

The purpose of this dissertation was to answer two questions: 1) What is the nature of prevalent inequalities with respect to the issues of pornography, prostitution and rape; how have these been institutionalized; and in what way do they perpetuate further inequalities of different kinds. 2) Which conception of equality would redress the prevalent inequalities with respect to these three issues?

An inquiry into the first question revealed that the realization of equality in practice has been impeded by the operation of the patriarchal ideology, which manifests itself at various levels in society as well as the law. At the most immediate level, patriarchy has yielded a set of binary oppositions, which have shaped the distinction between men and women. It has constituted the image and role of men and women in a way that aggression, domination, freedom of choice have become the natural prerogative of the male while passivity, obedience, submissiveness have come to be associated with the female. Women are expected to act in accordance with these norms and are judged on the basis of the same. Violence against women has often been ignored and men have absolved themselves of the crimes they have committed on the basis of this gendered world-view. By portraying themselves as fulfilling a natural sexual urge or by representing women as sexually hyperactive, they have justified their actions.

Violence against women in society has been both physical and/or psychological and it has been used as a mechanism of social control of women. Victimization of women is made complete by indoctrinating them with the ideas of fear and shame. Collectively this has led to the violation of the most fundamental human rights of women leading to the denial of civil equality for them.

Further, it is men who have defined both the male and female sexualities. The former has been defined in terms of the male sex-right or the right to access to the female body which is justified on grounds of the male sexual urge being natural and uncontrollable. The male sex-right is further enforced by the threat and actual use of coercion. This has

been openly given recognition in the, 'safety-outlet' theories, which legitimize such institutions of inequality in the name of preventing the disruption of family life and public order.

A fall-out of this has been the sexual objectification of women, where women, instead of being treated as sexual subjects, have been perceived as passive objects that are only to be used for enjoyment of sex. They are not treated as individuals in their own right or as end in themselves but rather are perceived only in terms of instrumental value. Morality has also been used to deny equality to women. Feminists have pointed out the double standards of male sexual morality and argued that it is men who have created such institutions of inequality. At the same time, it is they themselves who have denied equality to the women in these institutions on the ground that they are morally corrupt. Disparities in economic opportunities and social status have made women further vulnerable and subordinate. Consequently, while addressing the issue of violence against women, it is necessary to ensure substantive equality along with formal equality.

However, while pursuing this ideal, what needs also to be noted is that both the roles of men and women are products of social construction. That the law, as a social construct is gendered and does not provide fair and equal treatment to all is an aspect that needs to be emphasized. The examination of the issues of pornography, prostitution and rape in the preceding chapters revealed that the legal process- the prevalent laws, their interpretation and implementation- are also not immune from the effects of patriarchy. In brief, three elements come to the fore:

- 1) The issue-specific laws do not adhere to and give full and effective implementation of the provisions of the Indian Constitution, especially with regard to the prevention of such acts of violence against women. Instead of addressing the causes of such acts of sexual violence in order to prevent them, they only deal with the consequences. Not all forms of violence against women are even recognized by the state. For example, the provisions on the issue of domestic violence in law, though grudgingly considered physical and/or mental cruelty of the wife by the husband unacceptable, it does not clearly mention the terms, 'marital rape', as a result of which the maximum

punishment awarded is much less than that awarded under the legal provisions on rape in the Indian Penal Code. Much remains to be done by the state in changing the law and punishing the offenders, committing the acts of violence against women and safeguarding the rights of the victims. As of now, neither the constitutional laws of the country, for example, the legal provisions on rape still sanctions child marriage which goes against the right to development of the child as mentioned in the Indian Constitution, nor the International Covenants have been fully implemented, as the petition of the WARLAW suggests (for details, see Chapter I on Equality).

- 2) The hierarchized dichotomies, which govern social behaviour and actions, have not been deconstructed in law, especially in the interpretation and implementation of the laws. Law has reinforced these dichotomies which are deeply linked to the notion of sexuality. Some of the dichotomies are masculinity/femininity, culture/nature, public/private, state/society or political/non-political, active/passive, subject/object, self/other, forced/voluntarism, fact/fiction, heterosexuality/homosexuality, purity/pollution. These dichotomies, for example, the public/private dichotomy, has allowed the oppression of women to go unheeded in the private sphere be it marital rape, which is not even recognized as a crime, acts of violence against women occurring due to consumption of pornographic material by men in private which affects the status of women in public also. Even in the institution of prostitution, which embodies the unequal treatment of the woman prostitute and the male client in it, by penalizing public institution for purposes of prostitution, law has forcefully pushed the institution of prostitution in to the private sphere where the sufferings of the prostitute remain unaddressed. Similarly, the self/other dichotomy does away with the element of care in relationships including both the giving as well as the receiving of sexual pleasure. In all the three issues, women are used as sex objects for the pleasure of men, their own desires are not considered at all. In other words, their sexual objectification takes place.
- 3) Besides the non-recognition of certain acts of violence against women as a criminal offence, another result of such binary oppositions is that unequal punishment is meted out

in law to men and women for the same crime. For example, in the case of soliciting for the purpose of prostitution, the male client is punished for a maximum imprisonment terms of three months and/or fine but for the same offence the prostitute may be imprisoned for a year and has to pay a fine. In rape cases also, whereas the prosecutrix is cross-examined on her past sexual history by the defence lawyer, the good character of the accused is assumed and no questions are usually asked till it is proven otherwise.

Further, judging the moral worth of a woman only in the light of her sexual practices, again has led to the unequal treatment of men and women in law. For example, the fundamental freedoms constituting the civil equality of the prostitute is violated or denied to her on the ground that she is morally corrupt whereas those of the male client remain intact. Similar is the case of the raped prosecutrix where her credibility is doubted on the grounds of her moral worth in terms of her past sexual history. There have been many cases of acquittals of the accused in court because since the prosecutrix was used to frequent sexual intercourse, her credibility was open to questioning and doubts were raised on the issue of her withholding consent. As mentioned at the beginning of this point, the implementers of the law, like the police are extremely patriarchal. Operating with a set of pre-given binary oppositions such as purity/pollution, public/private do not adhere to the laws as they exist.

Moreover, the male sex-right which, is a part of the dichotomized social constructions of male and female sexualities is further upheld and legitimized in law. The inferior status of women including the girl child has remained unaddressed in law. Women have been identified not as individuals in their own right but always in relation to some other individuals and institutions. In other words, law does not recognize the distinct individuality and autonomy of women.

The Indian state also upholding these binary oppositions, continues to follow the paternalistic and protectionist approaches, the former denying the right to agency to women by imposing upon them a certain course of action or not allowing them to choose for themselves what they want as seen in the case of the rehabilitation of prostitutes and

the latter shields the need for addressing for the causes of these acts of violence against women.

Thus, neither equality of respect, nor equality of wellbeing is upheld by the legal process. In prostitution, it is the prostitute who is penalized; in rape, the burden of proving that she did not consent to the sex-act is placed on the prosecutrix and in pornography, neither is there freedom of speech and expression for women nor do women (in most cases) have access to any other form of livelihood. The same is true of prostitution for the most part. There is no dichotomy between forced and voluntarism in this respect. Starvation, lack of sexual freedom and the blatant use of physical coercion, as in the case of rape are all elements of force at play. There is nothing voluntary or acting out of free will for women in these instances of sexual violence.

Keeping in mind all these factors which clearly illustrate the gender specific nature of law, much needs to be done to ensure fair and equal treatment for women.

- 1) At present, there are several lacunae in the laws, which should be done away with. For example, there should be a proper gradation of all sexual offences in law, where the boundaries or the lines of distinction between them will be clearly defined. Such clarity in defining the boundaries of every sexual assault lead to the extent of punishment being in consonance with the gravity of the crime. Presently, the definitions not being clear, lesser punishment is awarded to the offender for a serious crime of violence against women.
- 2) Law, as also the state, should focus more on the perpetrators of violence against women, rather than only dealing with the nature of the victim and the consequences faced by her due to such acts of violence against women. It is the male patriarchal psyche, which has to undergo a change.
- 3) The real issues of difference, domination, disadvantage and disempowerment which are social constructs need to be focused upon and the ground of biological difference which legitimizes such acts of violence against women should not be used.

- 4) Further, the negative representation of women needs to be addressed in law. Sexism or the portrayal of women as sex objects needs to be done away with. In this respect, the media must be made more accountable and laws should be enacted for this purpose. The media, as is a well-known fact, has a strong impact on the individual's personality development. This would also require a critical review of the dominant and popular culture in society.
- 5) Gender sensitization in the legal process is also essential, especially for the interpreters of the law and the law enforcement personnel. Instead of taking up this issue at a later stage in life, gender sensitization could be made a part of the socialization process itself, especially during the formative years of an individual's personality.

With respect to the second question – Which model of equality would redress the prevalent inequalities with respect to these three issues of sexual violence, it is to be noted that women deserve at least formal equality or equality before the law.

Justification of violence against women on grounds of the uncontrollable and natural male sexual urge requiring immediate appeasement is deeply interwoven with the patriarchal constructions of the notions of male and female sexualities including the male sex-right and the double standards of male sexual morality, as also the binary oppositions which, need to be deconstructed if equality is to be achieved. Self-definition and self-determination is to be exercised by all, each individual choosing one's role and ends in life freely without the imposition of force and violence upon them. In this context, there is need also to move away from considering the male properties as the only human standard.

Such equality of respect for diverse and freely accepted roles as also the belief in the equal human worth of all individuals can only exist when certain conditions are met.

The positive role of the state in securing the basic amenities of like an adequate livelihood, meeting the basic requirements of food, clothing and shelter, educational

facilities which is extremely important in the development of mind which is capable of critical thinking. It is to be noted that simple literacy is not enough. Further, medical facilities, legal aid and legal awareness also need to be secured to all, especially to the most vulnerable categories of the downtrodden destitute and poverty stricken women who are the perfect victims of sexual violence.

Empowerment of women in terms of their increased representation in decision making bodies from the central and state governments to the panchayats, to the family which is the basic unit of society would allow for more discussion and debate on these issues like that of sexuality which are as of now simply taken for granted, in society. Democratization of every sphere of life is required for, it is the foundation of substantive equality.

It is essential to note that both male and female roles are social constructs. Even men find themselves trapped in the image of masculinity, which they have imbibed and it is for them to realize that they have the real choice to reject such a role of being powerful by achieving dominance including the cornering of all resources by using force and violence. They do not face any violence like women do if the latter decide to formulate their own roles instead of blindly accepting the role expectations, men have of them. Women's equality would lead to men's liberation. This understanding is crucial for achieving equality between the sexes. Thus, gender inequalities, illustrations of which are cases of sexual violence, can only fade away if critical thinking occurs on the part of both women and men.

BIBLIOGRAPHY

BOOKS

Abbott, Pamela, and Claire, Wallace, 1997, *An Introduction to Sociology, Feminist perspectives*, Routledge Publishers, USA, Canada, London.

Ahuja, Ram, 1998, *Violence Against Women*, Rawat Publications, Jaipur and New Delhi.

Ahuja, Sangeeta, 1997, *People, Law and Justice: Casebook on PIL*, Orient Longman Ltd., New Delhi, Volumes I and II.

Archer, John, and Barbara Lloyd, 1985, *Sex and Gender*, Cambridge University Press, Cambridge, London, New York, New Rochelle, Melbourne, Sydney.

Baker, Susan, and Anneke Van Doorne – Huiskes (ed.), 1999, *Women and Public Policy: The Shifting Boundaries Between the Public and Private spheres*, Ashgate Publishing Ltd., Aldershot (UK), Brookfield (USA), Singapore, Sydney.

Bartlett, Katharine T., and Rosanne Kennedy (ed.), 1991, *Feminist Legal Theory: Readings on Law and Gender*, Westview Press, Boulder, San Francisco and Oxford.

Bhandare, Murlidhar C. (ed.), 1999, *The World of Gender Justice*, Har-Anand Publications Pvt. Ltd., New Delhi.

Bulbeck, Chilla, 1998, *Re-orienting Western Feminisms: Women's Diversity In A Postcolonial World*, Cambridge University Press, Cambridge, UK; New York, USA; Melbourne, Australia.

Chakraborty, Dipangshu, 1999, *Atrocities on Indian Women*, S.B.Nagia A.P.H. Publishing Corporation, New Delhi.

Chatterji, Shoma A., 2000, *Indian Women From Darkness to Light*, Parumita Publications, Calcutta.

Chorine, Christine, Mihir Desai, and Colin Gonsalves (ed.), 1999, *Women and Law*, Published by Legal Information Centre, Bombay, Book I and Book II.

Dhanda, Amita, and Archana Parashar (ed.), 1999, *Engendering Law; Essays In Honor Of Lotika Sarkar*, Eastern Book Company, Lucknow.

Diwan, Paras, and Peeyushi Diwan, 1994, *Women and Legal Protection*, Deep and Deep Publications, New Delhi.

Eisenstein, Zillah R, 1988, *The Female Body and The Law*, University of California Press, Berkeley, Los Angeles, California and London.

Flew, Anthony, 1989, *Equality in Liberty and Justice*, Routledge Publications, London, New York.

Fricke, Miranda, and Jennifer Hornsby (ed.), 2000, *The Cambridge Companion To Feminism In Philosophy*, Cambridge University Press, UK, Australia.

Goodnow, Jacqueline, and Carole Pateman (ed), 1985, *Women, Social Science and Public Policy*, for the Academy of the Social Sciences in Australia, George Allen and Unwin Ltd., Sydney, London and Boston.

Gould, Carol C. (ed.), 1997, *Key Concepts In Critical Theory: Gender*, Humanities Press, New Jersey.

Greer, Germaine, 1999, *The Whole Woman*, Doubleday Publishers Limited, London, New York, Toronto, Sydney, Auckland.

Gupta, Jayasree, 1999, *Human Rights and Working Women*, Publications Division, Ministry of Information and Broadcasting, Government of India, New Delhi.

Gupta, Krishna, 2001, *Women, Law and Public Opinion*, Rawat Publications, Jaipur, New Delhi.

Hartsock, Nancy C.M., 1983, *Money, Sex and Power: Towards A Feminist Historical Materialism*, Longman Publications, New York.

Haug, Frigga (ed.), 1987, *Questions For Feminisms, Female Sexualization*, Translated by Erica Carter from the German. London, Verso.

Hooks, Bell, 2000, *Feminist Theory From Margin To Center*, 2nd, edition, Pluto Press, London.

Jackson, Stevi, and Sue Scott (ed.), 1996, *Feminism and Sexuality, A Reader*, Edinburgh University Press, Edinburgh.

Jethmalani, Rani (ed.), 1995, *Kali's Yug: Empowerment, Law and Dowry Deaths*, Har-Anand Publications, New Delhi.

Joshi, Madhu D., 1996, *Women and Children in Prostitution: Human Rights, Perspective (Report of National Workshop)*, A joint Women's Programme, Publication and Uppal Publishing House, New Delhi.

Kalia, Anil and Deepa Bajaj, 1998, *Gender Inequalities: A Compendium on Gender Issues*, Child Survival India, New Delhi.

Kappeler, Susanne, 1986, *The Pornography Of Representation*, Polity Press, Cambridge in association with Basil Blackwell, Oxford.

Kapur, Ratna (ed.), 1996, *Feminist Terrains In Legal Domains; Interdisciplinary Essays On Women and Law in India*, Kali Publications For Women, New Delhi.

Kapur, Ratna, and Brenda Cossman, 1996, *Subversive Sites: Feminist Engagements With Law In India*, Sage Publications, New Delhi, Thousand Oaks and London.

Kelkar, Govind, 1992, *Violence Against Women: Perspectives and Strategies In India*, Indian Institute of Advanced Study, Shimla and Manohar Publication, New Delhi.

Kemp, Sandra, and Judith Squires (ed.), 1997, Oxford Readers, *Feminisms*, Oxford University Press, Oxford, New York.

Kishwar, Madhu, 1999, *Off the Beaten Track, Rethinking Gender Justice for Indian women*, OUP, New Delhi.

Krishnaraj, Maithreyi, 1991, *Women and Violence: A Country Report*, SNDT Women's University, Bombay.

Kudchedkar, Shirin and Sabiha Al-Issa (ed.), 1998, *Violence Against Women, Women Against Violence*, Pencraft International, Delhi.

Kulshreshtha, Sudhir K., 1995, *Fundamental Rights and the Supreme Court with special reference to Articles 14 to 22*, Rawat Publications, Jaipur, New Delhi.

MacKinnon, Catharine A., 1987, *Feminism Unmodified: Discourses On Life and Law*, Harvard University Press, Harvard.

Mellor, Mary, 1997, *Feminism and Ecology*, Polity Press and Blackwell Publishers Ltd., Cambridge, Oxford.

Meyers, Diane Tietjens (ed.), 1997, *Feminist Social Thought: A Reader*, Routledge Publication, New York and London.

Nagel, Thomas, 1991, *Equality and Partiality*, OUP, New York, Oxford.

Nussbaum, Martha C., 2000, *Women and Human Development-The Capabilities Approach*, Kali For Women, New Delhi.

Pateman, Carole, 1988, *The Sexual Contract*, The University Press, Stanford Calif.

Phillips, Anne (ed.), 1987, *Readings In Social and Political Theory; Feminism and Equality*, Basil Blackwell Ltd., Oxford.

Phillips, Anne, 1991, *Engendering Democracy*, Polity Press in association with Basil Blackwell, Cambridge.

Phillips, Anne, 1999, *Which Equalities Matter*, Polity Press, Cambridge.

Pietila, Hilikka, and Jeanne Vickers, 1996, *Making Women Matter: The Role of the United Nations*, Zed Books Ltd., London and New Jersey.

Richardson, Diane, and Victoria Robinson (ed.), 1993, *Introducing Women's Studies: Feminist Theory and Practice*, Macmillan Press Ltd., Hampshire.

Sarkar, Lotika, and B. Sivaramayya (ed.), 1994, *Women and The Law: Contemporary Problems*, Vikas Publishing House, New Delhi.

SCN, Shalini, and Lalitha S.A., 1988, *Women Soliciting Change*, Indian Social Institute and Joint Women's Programme, New Delhi.

Singh, Indu Prakash, 1989, *Women, Law and Social Change in India*, Radiant Publishers, New Delhi.

Singh, Shanta Sarbjeet, and Jyoti Sabherwal (ed.), 1998, *The Fiftieth Milestone: A Feminine Critique*, Sterling Publications Pvt. Ltd., New Delhi.

Sleightholme, Carolyn, and Indrani Sinha, 1996, *Guilty Without Trial: Women In The Sex Trade in Calcutta*, Stree, Calcutta.

Stanko, Elizabeth A., 1985, *Intimate Intrusions – Women's Experience of Male Violence*, Routledge and Kegan Paul, London, Boston, Melbourne, Henley.

Stewart, Robert M. (ed.), 1986, *Readings in Social and Political Philosophy*, OUP, New York, Oxford.

Thapan, Meenakshi (ed.), 1997, *Embodiment: Essays on gender and Identity*, OUP, New Delhi, Calcutta, Chennai, Mumbai.

Tong, Rosemary, 1984, *Women, Sex and the Law*, Rowman and Allanheld Publishers, New Jersey.

Tronto, Joan C, 1993, *Moral Boundaries: A Political Argument For An Ethic of Care*, Routledge Publishers, New York, London.

Verma, S.K., and Thomas Paul, 1997-98, (eds), *Annual Survey of Indian Law*, Volume xxxiii-iv: Indian Law Institute, New Delhi.

Warren, Karen J., 2000, *Ecofeminist Philosophy- A Western Perspective on What It Is and Why It Matters*, Rowman and Littlefield Publishers, Inc., Lanham, Boulder, New York, Oxford.

Wilson, H.T., 1989, *Sex and Gender Making Cultural Sense of Civilization*, E.J. Brill, Leiden, New York, Kobehavn, and Koln.

ARTICLES

Agnes, Flavia, 1998, "Violence Against Women: Review of Recent Enactments", in Swapna Mukhopadhyay (ed.), *In the Name of Justice: Women and Law in Society*, Manohar Publishers, New Delhi.

Baker, Susan, 1999, "Risking Difference: Reconceptualizing the Boundaries Between the Public and the Private Spheres", in, Susan Baker and Anneke van Doorne-Huiskes, *Women and Public Policy: The Shifting Boundaries Between the Public and the Private Spheres*, Ashgate Publications Ltd. Aldershot, Brookfield, Singapore, Sydney.

Beauvoir, Simone De, 1987, "Women and Creativity", in Toril Moi (ed.), *French Feminist Thought: A Reader*, Basil Blackwell Publications Limited, Oxford, New York.

Berlin, Isaiah, 1986, "Two Concepts of Liberty", in Robert M. Stewart (ed.), *Readings in Social and Political Philosophy*, OUP, Oxford, New York.

Bertone, Andrea Marie, 2001, "Sexual Trafficking in Women: International Political Economy and the Politics of Sex", USIS, Calcutta.

Bordo, Susan, 1999, "Feminism, Foucault and the Politics of The Body", in Janet Price and Margaret Shildrick (eds), *Feminist Theory and The Body: A Reader*, Edinburgh University Press, Edinburgh.

Cameron, Deborah and Elizabeth Frazer, 1996, "On the Question of Pornography and Sexual Violence Moving Beyond Cause and Effect" in, Stevi Jackson, and Sue Scott (ed.), *Feminism and Sexuality, A Reader*, Edinburgh University Press, Edinburgh.

Chodorow, Nancy, 1994, "Gender, Relation and Difference in Psychoanalytic Perspective", in *The Polity Reader in Gender Studies*, Polity Press and Blackwell Publishers, Oxford, Cambridge.

D'Cunha, Jean, 1986, *The Suppression of Immoral Traffic in Women and Girls Act, 1956: A Critical Review Working Paper*, No: 13, Research Centre For Women's Studies, SNDT Women's University, Bombay.

D' Cunha, Jean, 1998, "Prostitution and Sex Trade: A Review of Contemporary Feminist Perspectives and Strategies", in Shirin Kudchedkar and Sabiha Al-Issa (eds.), Pencraft International, Delhi.

Diamond Irene, 1980, "Pornography and Repression: A Reconsideration" in Stimpson, Catherine R. and Ethel Spector Person, *Women, Sex and Sexuality*, The University of Chicago Press, Chicago, London.

Dworkin, Andrea, 1993, "Against the Male Flood; Censorship, Pornography and Equality", in *Women Transforming Communications Letters from a War Zone*, Lawrence Hill Books, New York.

Dworkin, Andrea, 1996, "Pornography", in Stevi Jackson and Sue Scott (eds), *Feminism and Sexuality, A Reader*, Edinburgh University Press, Edinburgh.

Dworkin, Ronald, 1996, "Do Liberty and Equality Conflict?" in Paul Barker (ed.), *Living as Equals*, OUP, New York, Oxford.

Eisenstein, Zillah, 1987, "Elizabeth Cady Stanton: Radical-Feminist Analysis and Liberal-Feminist Strategy", in Anne Phillips (ed.), *Readings in Social and Political Theory Feminism and quality*, Basil Blackwell Ltd., Oxford.

Goodnow, Jacqueline, 1985, "Topics, Methods and Models: Feminist Challenges in Social Science", in, Jacqueline Goodnow and Carole Pateman (eds), *Women, Social Science and Public Policy*, George Allen and Unwin Limited, Sydney, London, Boston.

Goswami, Sonia and Astrida Neimanis, 1998, "Sexual Assault in Universities", in, Shirin Kudchedkar and Sabiha Al-Issa (eds), Pencraft International, Delhi.

Greer, Germaine, 2000, "Victim No Longer: Feminism and the Reform of Criminal Law", in Colin Blackmore and Susan Iversen (eds), *Gender and Society*, OUP, New York, United Kingdom.

Hague, Euan, 1997, "Rape, Power and Masculinity: The Construction of gender and National Identities in the war in Bosnia-Herzegovina, in Ronit Lentin (ed.), *Gender and Catastrophe*, Zed Books, London and New York.

Haksar, Nandita, 1994, "Dominance, Suppression and the Law", in, Lotika Sarkar and B. Sivaramayya, (eds), *Women and the Law: Contemporary Problems*, Vikas Publishing House, New Delhi.

Haksar, Nandita, 1999, "Human Rights Lawyering: a feminist perspective", in, Amita Dhanda and Archana Parashar (eds), 'Engendering Law; Essays in Honor of Lotika Sarkar, Eastern Book Company, Lucknow.

- Halberstam, Judith, 1999, "F2M: The Making of Female Masculinity", in, Janet Price and Margaret Shildrick (eds), *Feminist Theory and the Body: A Reader*, Edinburgh University Press, Edinburgh.
- Hauser, Konnelia, 1983, "Sexuality and Power", in Frigga Haug (ed.), *Questions For Feminism*, Female Sexualization, London.
- Helliwell, Christine, 2000, "Its only a Penis: Rape, Feminism and Difference", in, SIGNS, Journal of Women in Culture and Society, Vol. 25, No.3, Spring, University of Chicago Press, Journals Division, Chicago.
- Hirschmann, Nancy J., 1999, "Difference As An Occasion For Rights: A Feminist Re-thinking Of Rights, Liberalism and Difference", in Susan Hekman (ed.), *Feminism, Identity and Difference*, Frank Cass and Company Ltd., Great Britain and US.
- Hrdy, Sarah Blaffer, 2000, "Prehominid Origins of Patriarchy", in Colin Black and Susan Iversen (eds), *Gender and Society*, Oxford University Press, New York, United Kingdom.
- Kasturi, Sudha, and Rinki Bhattacharya, 1998, "Women and Shelter", in Shirin Kudchedkar and Sabiha Al-Issa (eds), Pencraft International, Delhi.
- Kittay, Eva Feder, 1997, "Pornography and the Erotics of Domination", in, Carol C. Gould (ed.) *Key Concepts in Critical Theory: Gender*, Humanities Press, New Jersey.
- Kumari, Ved, 1994, "State's Response to the Problem of Rape and Dowry", in, Lotika Sarkar and B. Sivaramayya (eds), *Women and the Law: Contemporary Problems*, Vikas Publishing House, New Delhi.
- Kumari, Ved, 1999, "Gender Analysis of the Indian Penal Code", in, Amita Dhanda and Archana Parashar (eds), *Engendering Law, Essays in Honour of Lotika Sarkar*, Eastern Book Company, Lucknow.
- Lacey, Nichola, 1993, "Theory into Practice? Pornography and the Public/Private Dichotomy", in Anne Bottomley and Joanne Conaghan (eds), Blackwell Publishers, Oxford, UK and Cambridge, USA.
- Langton, Rae, 2000, "Feminism in Epistemology", in, Miranda Fricker and Jennifer Hornsby (eds), *The Cambridge Companion to Feminism in Philosophy*, Cambridge University Press, United Kingdom, Australia.
- Lavate, Vijaya, 1998, "Children of Prostitutes" in Shirin Kudchedkar and Sabiha Al-Issa (eds), *Violence Against Women, Women Against Violence*, Pencraft International, Delhi.
- Littleton, Christine, A., 1991, "Reconstructing Sexual Equality", in, Katharine T. Bartlett and Rosanne Kennedy, (ed.), *Feminist Legal Theory: Readings on Law and Gender*, Westview Press, Boulder, San Francisco, Oxford.

Littleton, Christine, A, 1997, "Reconstructing Sexual Equality", in, Diana Tietjens Meyers, (ed.), *Feminist Social Thought: A Reader*, Routledge Publications, New York and London.

MacKinnon, Catharine A. 1996, "Feminism, Marxism, Method and the State An Agenda for Theory", in Stevi Jackson and Sue Scott (ed.), *Feminism and Sexuality, A Reader*, Edinburgh University Press, Edinburgh.

Maynard, Mary, 1993, "Violence Towards Women", in Diane Richardson and Victoria Robinson (eds), *Introducing Women's Studies, Feminist Theory and Practice*, MacMillan Press Ltd.

Mishra, O.P., 2000, "On Rape", in Constitutional and Legislative foundations for gender equality: Women's movement and legal change", Block 4 WED- 02, IGNOU, School of Social Sciences, New Delhi.

Mitchell, Juliet, 1987, "Women and Equality", in Anne Phillips (ed.), *Readings in Social and Political Theory-Feminism and Equality*, Basil Blackwell Limited, Oxford.

Norman, Richard, 1986, "Does Equality Destroy Liberty?", in Robert M. Stewart (ed.), *Readings in Social and Political Philosophy*, OUP, Oxford, New York.

Olsen, Frances, 1991, "Statutory Rape: A Feminist Critique of Rights Analysis", in Katherine T. Bartlett and Rosanne Kennedy (eds), *Feminist Legal Theory: Readings in Law and Gender*, Westview Press, Westview, Boulder, San Francisco, Oxford.

Palmer, Elizabeth A., 2001, "Senate Clears Crime Bill Reauthorizing Violence Against Women Act and Criminalizing Trafficking in Persons, USIS, Calcutta.

Phillips, Anne, 1987, "Introduction", in Anne Phillips (ed.), *Readings in Social and Political Theory Feminist and Equality*, Basil Blackwell Ltd., Oxford.

Rajan, Rajeshwari Sunder, 1996, "The Prostitution Question(s) (Female) Agency, Sexuality and Work", in Ratna Kapur (ed.), *Feminist Terrains in Legal Domains: Interdisciplinary Essays on Women and Law in India*, Kali for Women, Delhi.

Rao, Anupama, 1992, "Understanding Sirsagaon: Notes Towards Conceptualising the Role of Law, Caste and Gender in a Case of Atrocity, in Rajeshwari Sunder Rajan (ed.), *Signposts: Gender Issues in Post-Independent India*, Kali For Women, New Delhi.

Rao, S.V. Joga, 1994, "Marital Rape", in, Lotika Sarkar and B. Sivaramayya (eds), *Women and the Law: Contemporary Problems*, Vikas Publishing House, New Delhi.

Rawls, John, 1986, "A Kantian Conception of Equality", in, Robert M. Stewart (ed.), *Readings in Social and Political Philosophy*, OUP, New York and Oxford.

Richardson, Diane, 1993, "Sexuality and Male Dominance" in Diane Richardson and Victoria Robinson (eds), *Introducing Women's Studies: Feminist Theory and Practice*, MacMillan Press Ltd., Hampshire.

Robinson, Mary, 1999, "The Principle of Equality" in M.C.Bhandare (ed.), *The World of Gender Justice*, Har-Anand Publications Private Limited, New Delhi.

Sagade, Jaya, 1998, "The Girl Child as a Victim of Rape", in, Shirin Kudchedkar and Sabiha Al-Issa (eds), *Violence Against Women, Women Against Violence*, Pencraft International, Delhi.

Sakhare, Seema, 1994, "Law of Rape in Operation", in, Lotika Sarkar and B. Sivaramayya (eds), *Women and the Law: Contemporary Problems*, Vikas Publishing House, New Delhi.

Scott, Joan W., 1997, "Deconstructing Equality-Versus-Difference: Or, the Uses of Post Structuralist Theory For Feminism", in, Diana Tietjens Meyers (ed.), *Feminist Social Thought: A Reader*, Routledge Publications, New York and London.

Sen, Amartya, 2001, "The Many Faces of Gender Inequality", USIS, Calcutta.

Taylor, Charles, 1986, "What's Wrong With Negative Liberty", in Robert M. Stewart (ed.), *Readings in Social and Political Philosophy*, OUP, Oxford, New York.

Temkin, Jennifer, 1986, "Women, Rape and Law Reform", in Sylvana Tomaselli and Roy Porter (ed.), *Rape*, Basil Blackwell Ltd., Oxford, New York.

Vance, Carole, 1997, "Pleasure and Danger: Towards a Politics of Sexuality", in, Sandra Kemp and Judith Squires (eds), *Feminisms*, OUP, Oxford and New York.

Vishwanath, Susan, 1997, "Sexuality and Power in Feminist Discourse in India", in Meenakshi Thapan (ed.), *Embodiment Essays On Gender and Identity*, OUP, Delhi, Calcutta, Mumbai, Chennai.

Walkowitz, Judith R, 1980, "The Politics of Prostitution", in Stimpson, Catherine R. and Ethel Spector Person, *Women, Sex and Sexuality*, The University of Chicago Press, Chicago, London.

JOURNALS

Canadian Woman Studies, Vol.20, Number 3, A York University Publication, Ontario (North York) Women 2000, Eradicating Poverty and Violence in the 21st Century.

D' Cunha, Jean, 1986, "The Suppression of Immoral Traffic in Women and Girls Act, 1956: A Critical Review", Working Paper No.13, Research Centre For Women's Studies, SNDT Women's University, Bombay.

Domestic Violence Lawyer's Collective, Legal Aid Handbook. 1, Kali For Women, Publication, New Delhi, 1992.

Kapur, Ratna and Dr. N.R. Madhava Menon (ed.), 1993, National Law School Journal, Special Issue On Feminism and Law, Vol.1, National Law School of India University, Bangalore.

Sarkar, Lotika, 1995, Women's Movement and the Legal Process, Occasional Paper, No: 24, Centre For Women's Development Studies, New Delhi.

Violence Update January 1997 Vol. 1 No.3 Centre For Social Research, New Delhi.

Violence Update December 2001 Vol. 3 No.2 Centre For Social Research, New Delhi.

Rape Victims: Networking For a Supportive Infrastructure, Delhi Commission for Women, 1998.

REPORTS

Alternative NGO Report on CEDAW, Initial Submission to the CEDAW Committee, January 2000, India Coordinated by the National Alliance of women.

Crime in India, 1999, National Crime Records Bureau, Ministry of Home Affairs, Government of India, New Delhi.

Government of India, Department of Women and Child Development and National Institute of Public Cooperation and Child Development. Background Material Feedback from Presentation of India's First Country Report On Implementation of CEDAW. Statement by the Secretary of DWCB, HRD Ministry at the 22nd session of CEDAW on the occasion of Hearing of India's First Report under CEDAW (24th and 31st January 2000, New York).

Gender and judges – A judicial point of view, Sakshi Publication, 1996, New Delhi.

Rape and Molestation: A Weapon of War in Kashmir, Institute of Kashmir Studies, Srinagar, 10th March, 1998, A Report Prepared by the Jammu and Kashmir Human Rights Awareness and Documentation Centre, Srinagar.

Beijing, UN 4th World Conference on Women, Published by Women's Feature Service, New Delhi, 1998.

Lotika Sarkar, 1988, National Specialized Agencies and Women's Equality: Law Commission of India.

Shades of Courage, Women and IPC Section 498 A, Special Cell for Women and Children, Tata Institute of Social Sciences, Mumbai, 1999, Akshara Publications.

The Report of Law Commission of India, 172nd report on Review of Rape Laws, March 2000.

Gender Justice Reporter, Volume 1, January 1995, An Annual Publication reporting developments in Law concerning the status of women. A Joint Publication of the Centre for Women and Law, The National School of India University.

Indo-British Training Project on gender and law –A collection of gender training modules and reports by participants of 1996-97 Programme, School of Law, University of Warwick, UK, National Judicial Academy.

Rape – A Legal Study, National Commission For Women. 2000.

Statement of CEDAW from the Women's Equality and Congressional Action Day Summit Report, 1999.

US Victims of Trafficking and Violence Protection Act of 2000, USIS, Calcutta.

News Papers

Sunday Times, 18 March 2001.

Times Of India, 18 August 2001.

Times of India, 02 January 2002.