

An Analysis-Rights of Women under the Indian Constitution

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Introduction:

It is a harsh reality that women have been ill-treated in every society for ages and India is not an exception to this universal problem. The irony lies in the fact that in our country where women are worshipped as shakti, the atrocities are committed against her in all sections of life. She is being looked down as commodity or as a slave, she is not robbed of her dignity and pride outside her house but she also faces ill-treatment and other atrocities within the four walls of her house also. The women are being considered as an abject of male sexual enjoyment and reproduction of children.

Women are deprived of economic resourced and are dependent on men for their living. Women works are often confined to domestic sphere, She had to do all house hold works, which are not recognized and unpaid. In modern times many women are coming out to work but has to shoulder the double responsibility; one she has to work where she is employed and secondly she also has to do all the house hold works, moreover, she is last to be considered and first to be fired as she is considered to be less productive that her counterpart. Her general status in the family and in the society has been low and unrecognized.

Law cannot change a society overnight, but it can certainly ensure that the disadvantaged are not given a raw deal. However, the courts can certainly go beyond mere legality insulting women against injustice suffered due to biological and sociological factors. Indian judiciary has been very sensitive to women and women related issues. The apex court took special interest in discharging its legal and constitutional obligations and safeguarding the interest of women in changing situation and societal demands.

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The battle for gender justice has been a long-drawn struggle. The sustained efforts of several social reformers, even in the face of resistance from social orthodoxy, have given impetus to the course of gender justice. Constitutional provisions, various laws and judgments of courts have made their own contribution to the cause of gender justice. However, more fundamental is the work and role of social reformers who sought to change the mind-set of orthodox tradition-bound society and usher in women's reforms in the social, economic and educational fields.

In its march towards full gender justice, India has declared 2001 as the year of women Empowerment. Hence there is a need to address vital issues for creation of maternity fund, ban on sex-determination tests, reservation for women in government jobs, treating bride burning and dowry deaths as murders, provisions of public toilets and smokeless chulhas in villages, more hostels for single women in urban areas, making them as joint owners of house and land and making women co-sharers in the wealth and incomes of their husbands to bring women on par with men in the real sense.

Gender justice and the Indian Constitution

The elimination of gender – based discriminations is one of the fundamentals of the constitutional edifice of India. In fact the constitution empowers the state to adopt measures of positive discrimination in favor of women for neutralizing the cumulative discriminations and deprecations' which women face.

Constitution of India has done a magnificent job in ensuring gender justice in the supreme law of the country. The preamble to the Constitution, inter alia, assures justice, social economic and political, equality of status and opportunity and dignity of the individual. It recognizes women as class by itself and permits enactment of laws and reservations favoring them. Several articles in our Constitution make express provision for affirmative action in favor of women. It prohibits all types of discrimination against women and lays a carpet for securing equal opportunity to women in all walks of life, including education, employment and participation.

The commitment to gender equality is well entrenched at the highest policy making level-the Constitution of India. A few important provisions for women are mention below in brief:

Fundamental Rights(Part III)

Article 14 of the constitution of India ensures to women the right to equality;

Article 15(1) specifically prohibit discrimination on the basis of sex and article 15(3) provides for affirmative and positive action in favor of women by empowering the state to make special provisions for them; and

Article 16 of the Constitution provides for equality of opportunity to all, in matters relating to public employment or appointment to any office and specifically forbids discrimination inter-alia on the ground of sex. These articles are all justiciable and form the basis of our legal-Constitutional edifice.

Directive Principles of State Policy (Part IV)

Article 38 requires the State to secure a social order in which justice social, economic and political for the promotion of welfare of the people. It requires the state to strive to eliminate inequalities in status, facilities and opportunities. Clearly the intention of the makers of the Constitution was to ensure that equality would not be only of opportunity but in reality.

Article 39 puts down the principles of policy to be followed by the state which include that the state should direct its policy toward securing the right to an adequate, means of livelihood, that there is equal pay for equal work, that the health and strength of workers men and women, are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength

Article 42 requires the state to make provision for securing just and humane conditions of work and for maternity relief.

Article 46 requires the state to promote with special care the education and economic interest of the weaker sections of the citizen. Clearly then the objective is to strive towards a gender just society.

Fundamental Duties(Part IV-A)

In part IV-A of the constitution incorporated through 42nd Amendment Act,1976,our natural obligation to renounce practices derogatory to the dignity of women has been elevated to the status of fundamental duty by article 51-A.

The Equal Remuneration Act, 1976, the Maternity Benefit Act, 1961, the Dowry prohibition Act, 1961 and the Immoral Traffic (Prevention) Act, 1956 are some of the enactments which owe their existence to the above-mentioned provisions of the Indian Constitution.

The Constitution 73rd and 74th Amendments Act of 1993

The 73rd and 74th Amendments (1993) to the Indian constitution have served as a major breakthrough towards enhancing the women's participation in democratic process. These amendments provided for reservation of 33.33 per cent of elected seats for women at different levels of local governance in both rural and urban areas. There is also a one-third reservation for women of posts of chairpersons of these local bodies. This is likely to be widened by constitutional amendment for women's representation in legislatures by reservation.

However, it must be remembered that guaranteeing a right in law does not ensure the ability to access the right in reality. The fact that the historical subjection of women has not been ended is constantly before us in the form of the reducing number of women in each census. It is falling at an alarming rate which is a matter of concern. Similarly crimes against women have been on the increase. Incidents of rape, sexual assault, sexual harassment, domestic violence, cheating etc. have been growing not only in numbers but also in intensity and brutality. The statistics provided by the Crime Bureau of India brings this before us every year. These statistics only reveal the numbers of reported cases. One can easily imagine how much bigger the numbers would be if one were to take into account the numerous unreported cases. In Addition, in the context of an expanding market economy, there has been the increasing objectification of women in the advertisements and the media. Parliament has from time to time either made amendments to the existing law or enacted new laws to address these various concerns.

JUDICIAL APPROACH TOWARDS GENDER JUSTICE

The Supreme Court in *Muthamma v. Union of India*(1979)4 SCC 260 and *Air India v Nargesh Mirza* AIR 1981 SC 1829 Struck down discriminatory service conditions requiring female employees to obtain government permission before marriage and denying married and pregnant women the right to be employed.

In *Vishaka v State of Rajasthan* AIR 1997 SC 3011 the Supreme Court observed that equality in employment can be seriously impaired when women are subjected to gender-specific Violence, Such as sexual harassment in the workplace. Therefore, the Supreme Court issued guidelines to ensure that the women have equal working conditions and are protected from sexual harassment. *Vishaka* was public interest class action and came up before Supreme Courts of India at the instance of certain social activists and NGOs seeking to prevent sexual harassment of working women in all work places. Their grievance was that while working

women remained vulnerable to this, neither the legislature nor the executive government was taking any effective preventive measure in this behalf. Therefore, the plaintiffs approached SCI for the enforcement of the fundamental rights of the working women as guaranteed by the Constitution.

This was endorsed in *Apparel Export Promotion Council v.A.K.Chopra* AIR 1999 SC 625 in which disciplinary proceedings for sexual harassment leading to dismissal from service were upheld by the Supreme Court

In Cases relating to public employment, the courts have quashed the discriminatory provisions that gave advantages to men and imposed disabilities on women. In *Maya Devi v.State of Maharashtra* 1986(1)SCR 743 where the requirement of husband's consent for wife's application for public employment was struck down as an anachronistic obstacle to women's equality and economic justice.

Since article 15(3) itself hints substantive approach, its application for giving special educational facilities, for giving representation in local bodies and for protection in places of work has a substantive dimension. Upholding a service rule that preferred women in recruitment to public employment to the extent of 30% of posts, the Supreme Court stated in *Government of A.P. v. P.K.Bijayakumar* AIR 1995 SC 164 to say that under Article 15(3) job opportunities for women cannot be created would be to cut at the very root of the underlying inspiration behind this Article. Making special provision for women in respect of employments or posts under the state is an integral Part of Article 15(3)".

The subordinated position of Christian woman, who was denied equal right in the matter of divorce against her husband, was brought to the limelight by way of anti-subordination interpretation in *Ammini E.J. v. Union of India* AIR 1995 Ker 252 Referring to the life of Christian wife being compelled to live as wife against her will the High Court of Kerala observed, It will be a humiliating and oppressed life without freedom to remarry and enjoy life in the normal course. It will be a life without freedom to uphold the dignity of the individual in all respects... The Court quashed the impugned provision as violative of articles 14, 15 and 21.

In *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa*, AIR 1987 SC 1281 the court observed that there was discrimination in payment of wages to lady stenographers and such discrimination was being perpetuated under the garb of a settlement between the employees and the employer. The Court finally not only made it mandatory to pay equal remuneration to lady stenographers as their male counterparts but also observed that the ground of financial incapability of the

management cannot be a ground to seek exemption from the equal Remuneration Act,1976.

Interpretation of the guardianship law in the light of article 15 by the Supreme Court in Githa Hariharan v. Reserve Bank of India AIR1999 SC 1149 could equate the position of mother to that of father in the matter of guardianship.

INTERNATIONAL MEASURES FOR GENDER JUSTICE

The 20th century has witnessed the upsurge of women empowerment movement universally. The Universal Declaration of Human Rights{1948} reaffirming faith in the fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women, contemplated the entitlement of all cherished freedoms to all human beings without any distinction of any kind, including discrimination based on sex, The International Covenant of Economic, Social and Cultural Rights,1966 and the International Covenant of Economic, Social and Cultural Rights,1966 and the International Covenant of Social and Political Rights,1966 lays stress on equality between men and women.

The fundamental rights and the directive principles which themselves have incorporated the equality principles have been perceived to have been influenced by the Universal Declaration of Human Rights.

The Covenant on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979 is the United Nations' landmark treaty marking the struggle for women's rights. Described as the Bill of Rights for women, it spells out what constitutes discrimination against women and propagates strategies based on non-discriminatory model, so that women's rights are seen to be violated, if women are denied the same rights as men. The Covenant prohibits all distinctions and restrictions and the exclusion of the enjoyment and exercise of empowering women, her rights and freedom-Civil, political, economic and cultural

General Recommendation 19 to CEDAW formulated in 1992,deals entirely with the violence against women and explicitly states that gender based violence is a form of discrimination which seriously inhibits a women's ability to enjoy rights and freedom on the basis of equality with men and asks state parties to have regard to this, while reviewing their laws and policies. It is discriminatory when the women have reasonable ground to believe that her objection would disadvantage her in connection with her employment, or when it creates a hostile working environment.

The Government of India ratified the CEDAW Resolution on 25th June 1993 and had also made an official commitment at the fourth world conference on women in Beijing undertaking to formulate and put into operation a national policy on women and to take other measures as required under the said instrument. At the time Vishaka, however, the legislature had not made any law to give effect to CEDAW resolution and as such there was a void in domestic law, said the SCI.

The equality principles were reaffirmed in the Second world conference on Human Rights at Vienna in June 1993 and in the Fourth world conference on women held in Beijing in 1995. India was a party to this Convention and other Declarations and is committed to actualize them.

The Declaration on the Elimination of Violence against Women 1993 is a comprehensive statement of international standards with regard to the protection of women from violence. The Declaration sets out the international norms which states have recognized as being fundamental in the struggle to eliminate all forms of violence against women. Any grave or systematic violations are liable to be inquired into and penalized ever since the Optional Protocol of December 2000.

The Constitution has empowered the parliament to make such laws by providing article 253 and thereafter by putting an obligation on the state to give effect to the covenants by such enactments by providing such an obligation under article 51.

CONCLUSION AND SUGGESTIONS

All the wings and layers of government—legislature, executive and judiciary at central, state and local levels—have the responsibility towards empowerment of women.

Legislation has enacted many laws in bringing about equality between men and women to fulfill the obligation not only of the international conventions but also of the Constitution of India. A Combined reading of article 14,15 and 21 of the Constitution of India categorically provides that no law can be made or can be applied which discriminates against law cannot remedy the inequalities and bring about justice, development and empowerment. It can act as a spring board of doubt of all sections of society required to achieve the ends.

Whatever the causes may be, it is the duty of human to protect the human rights of those who are victims. Even though the government is trying to take care of this natural right by formulating various policies, enacting and formulating laws but these are not enough to tackle this problem unless a strong move to protect the

rights of women is launched by the people's movement. This is not a one man's job-entire humanity will have to join hands. Gender injustice is a problem that is seen all over the world. But unless there are certain attitudinal changes, women will continue to get a raw deal. They need to be educated. Educated mothers take care of their children irrespective of the boys or girls.

REFERANCE:

Indian Bar Review

Vol.XXXVIII(1&2)2011(January-June 2011)

Ashok kumar Deb(Editor)

Daulatram Ram Sharma (Joint Editor)

Bar Council of India Trust (New Delhi)

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