

Gender Justice and Human Rights

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Abstract: *In every society women is ill-treated and India is not an exception. Millions of woman throughout the world are not availing their fundamental human rights for no other reason than that they are women. For centuries the Indian woman has suffered economic. deprecation and social subjection. Most of the national resources, means of production, trade and industry are owned and controlled by men. Out of gross national income only a nominal share goes to women. In this paper historical background, legislative measure for the protection of Women's rights, Constitutional guarantee, international treaty and judicial approach on women related issues is studied. This paper aims to throw light on real status of women in society in spite of her remarkable contribution. To overcome these controversies, there is need of empowerment- legal, social, economic and political.*

Key Words: *Deprecation, legislative measure, judicial approach, empowerment.*

1. INTRODUCTION:

The history reveal that women are victims of ill-treatment and not treated equally. The Indian culture has been built in the concept of male superiority and the subordinate status of the women. The women are sometimes deprived of their human rights. Women empowerment is the most important issue of the Indian society. Women should be allowed to freely live their life, give them equal rights to take part in any activity. Women create life still deprived of their rights. Equality is the basis of humanity.

It would be apt here to begin with what Lord Denning said in 1980

“A woman feels as keenly, thinks as clearly as a man. She in her sphere does work as useful as man does in his. She has as much right to her freedom to develop her personality to the full as a man. When she marries, she does not become the husband's servant but his equal partner. If his work is more important in life of the community, her's is more important in the life of the family. Neither can do without the other. Neither is above the other or under the other, they are equals.ⁱ

Millions of woman throughout the world live in conditions of abject deprivation of, and attacks against, their fundamental human rights for no other reason than that they are women.ⁱⁱ Sex jurisprudence cannot proceed on the basis of assumed equality of male and female section of Indian Society. For centuries the Indian woman has suffered economic, deprecation and social subjection. The Indian culture has been built in the concept of male superiority and the subordinate status of the women. This has resulted in her complete extermination from the field of economic independence.ⁱⁱⁱ

Almost all the national resources, means of production, trade, commerce and industry are owned and controlled by men, and even out of the gross national income only a nominal share goes to women. In effect, women comprise the largest deprived section of the society. To combat this ugly situation the Constitution has undertaken to declare India a socialist republic and Article 39 has provided for equitable utilization of the country's resources and means of production. It requires the State to abolish monopoly and redistribute, not amongst individuals but on the individuals but on the national scale, the available production resources for the benefit of the entire people.^{iv}

There can be no equality amongst unequal. Women cannot obtain economic justice, or even social justice, which ultimately depends on economic justice, or even social justice, which ultimately depends on economic justice unless the male monopoly of the resources and means of production is broken and the entire people become their owners, controllers and masters. The income of women cannot increase so long as they remain in the deprived class if citizens and men continue to hold economic power.^v

In India the situation of human rights is a complex one, as a result of the country's large size and tremendous diversity, its status as a developing country and a sovereign, secular, democratic republic, and its history as a former

colonial territory. The Constitution of India provides for fundamental rights, which include freedom of religion, freedom of speech. It also guarantees freedom of movement within the country and abroad and separation of executive and judiciary.^{vi}

The Indian Constitution promises social and economic justice to all, but the law has not cared to redeem these promises. Women still remain economically weak and socially handicapped. Subject to certain exceptions, the man is the bread-winner and the woman is dependent. Economic inequality and dependence of woman on man make the promise of economic justice a farce and social justice pretence.^{vii}

Even after dependence, Indian woman wear a pathetic look. All this period a tale of promises broken of hopes and aspirations suppressed a tale of exploitation and oppression and yet we feel the growing struggle, a mighty spirit and strong urge to liberate themselves from the chains of bondage. All these long years the Government has made laws which glitteringly boast of protecting women's rights but the implementation merely reduces them to a paper tag on our statute book. Even the General Assembly of United Nations recognised way back in 1967: "Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against human dignity".^{viii}

The United Nations proclaimed the year 1975 as International Women's year for the abolition of discrimination against women. The resolution endeavours: "To give striges for equality between men and women, to promote a higher role of women in economic, political, social and cultural life of countries, to promote their active participation in the struggle for the development of friendship and cooperation between nations, for peace and social progress".^{ix}

The Constitution of India guarantees equality of opportunity and status to men and women. It directs that women shall not only have equal rights and privileges with men but also that the State shall make provisions both general and special for the welfare of women. Despite the above constitutional guarantee, women have been subjected to deprivation, brutality and extortion.

2. WOMEN'S RIGHTS – A CONSTITUTIONAL COMPULSION:

To attain these objectives, the Constitution guarantees certain fundamental rights and freedoms such as freedom of speech, protection of life and personal liberty. While these may be termed positive rights, the negative rights are the prohibitions of discrimination or denial of equal protection.^x Indian women are the beneficiaries of these rights in the same manner as Indian men. Article 14 ensures equality before Law and Article 15 prohibits any discrimination. There is only one specific provision in Article 15(3) which empowers the State to make any special provision for women and children, even in violation of the fundamental obligation of non-discrimination among citizens, inter alia of sex. This provision has enabled the State to make special provision for women, particularly in the field of labour legislation like the Factories Act, The Mines Act etc. Article 16(1) guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 16 (2) forbids discrimination in respect of any employment of office under the State, on the grounds only of religion, race, caste, sex descent, place of birth, residence or any one of them.

The Directive Principles of State Policy enunciated in Part IV of the Constitution embody the major policy goals of a Welfare State. They concretize, together with the chapter on Fundamental Rights, the constitutional vision of a new Indian Socio-political order. The Directive Principles are declared as non-justiciable, but nevertheless fundamental in the governance of the country and the state is charged with a duty to apply these principles in making laws.^{xi}

Article 38 directs the State to secure a just social, political and economic order, geared to promote the welfare of the people. Art. 39 (b)(c) and (f) provide for the distribution of ownership and control of material resources of the community for the common good, prevention of concentration of wealth and means of production to the common good, prevention of concentration of wealth and means of production to the common detriment, and protection of childhood and youth against exploitation and moral and material abandonment. Article 40 provides for organization of village Panchayats to promote self-government. Reservation of seats for women in Panchayats and Municipalities have been provided in Articles 243-D and 243-T of the Constitution. Article 41 speaks about right to work, education and public assistance in cases of unemployment, old age, sickness, disablement and other types of undeserved wants. Article 43 provide for provision of work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure, of social and cultural opportunities, and the promotion of cottage industries. Article 44 provide for uniform civil code. Article 45 provide for free and compulsory education for all children up to the age of 14 and Article 47 provide for raising the level of nutrition and the standard of living of the people and improvement of public health.

3. RECOGNITION OF WOMEN'S RIGHTS UNDER THE BANNER OF HUMAN RIGHTS:

The Universal Declaration of Human Rights defines human rights as universal, inalienable and indivisible. Universal applicability of human rights indicates that human rights apply to every single person by virtue of their humanity. By invoking the universality of human rights, women have demanded that their very humanity be acknowledged. The idea that human rights are universal also challenges the contention that the human rights of women can be limited culturally specific definitions of what count as human rights and of women's role in society.

The United Nations World Conference on Human Rights held in Vienna in 1993 was the first such meeting since 1968, and it became a natural vehicle to highlight the new visions of human rights thinking and practice being developed by women. Its initial call did not mention women nor did it recognize any gender-specific aspects of human rights in its proposed agenda. Since the conference represented an historic reassessment of the status of human rights, it became the unifying public focus of a worldwide Global Campaign for Women's Human Rights a broad and loose international collaborative effort to advance women's human rights. The campaign launched a petition calling upon the World Conference "to comprehensively address women's human rights at every level of its proceedings" and to recognize "gender violence, a universal phenomenon which takes many forms across culture, race, and class... as a violation of human rights requiring immediate action. The petition was eventually translated into 23 languages and was used by over 1000sponsoring groups who gathered a half million signatures from 124 countries. The petition and its demands instigated discussions about why women's rights and gender-based violence in particular, were left out of human rights considerations, and served to mobilize women around the World Conference. By the time the World Conference convened, the idea that "women's rights are human rights" had become the relying call of millions of people all over the world and one of the most discussed "new" human rights debates that the mankind knew.^{xii}

The United Nations Commission on the status of Women in its twenty-fifth report had recommended to all member states to establish National Commissions or similar bodies with a mandate to review, estimate and recommend measures and priorities to ensure equality between men and women and the full integration of women in all spheres of national life.

4. JUDICIAL APPROACH:

To answer the women's related issues Indian Judiciary has effectively mediated. In *C.B. Muthamma v. Union of India* the validity of the Indian Foreign Service (Conduct and discipline) Rules of 1961 was challenged which provided that a female employee to obtain a written permission of the Government in writing before her marriage is solemnized and at any time after a marriage a women member of the service may be required to resign from service. The Supreme Court held that such provision is discriminatory against women and hence unconstitutional.^{xiii} In *Air India v. Nargesh Mirza*, the Supreme Court struck down the provision of rules which stipulated termination of service of an air hostess on her first pregnancy as it arbitrary and abhorrent to the notions of a civilized society. In *Pratibha Ranu v. Suraj Kumar* the Supreme Court held that the stridhan property of married women has to be placed in her custody, and she enjoys complete control over it. Another landmark judgement was given by the Supreme Court in the case of *Gita Haridharan v. Reserve Bank of India*, in this case the Court interpreted section 6 of the Hindu Minority and Guardianship Act, 1956 and held that the mother could act as the natural guardian of the minor during the father's lifetime if the father was not in charge of affairs of the minor.^{xiv}

In *Vishaka and other v. State of Rajasthan* the Supreme Court held that sexual harassment of working women at her place of an employment amount to violation of rights of gender equality and right to life and liberty which is clear violation of Article 14, 15 and 21 of the Indian Constitution. The Court further observed that the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse.

5. CONCLUSION:

In spite of having various legislation dealing with women and judgements of the Supreme Court protecting the interest of women the downtrodden and poor conditions of women has not been improved and she still faces all types of atrocities and legislature and judiciary somewhat fails to provide respect to women in society. Women enjoy a unique position in every society. In spite of their contribution in all spheres of life, they suffer in silence and belong to a class which is in a disadvantaged position on account of various barriers. There is need of empowerment –legal, social, political and economic. However it is based on the gender sensitivity of society towards their problems. One can find gender equality as an ideal in the constitutional provisions of equality before the law and equal protection of law.

In India, there are enough laws for the protection of women. Most of the laws are in a state of suspended animation. The laws are observed more in breach than in observance. In fact the picture is not as rosy as is sometimes painted. In spite of Fundamental rights and directive principles of state policy even after 67 years of independence, women are discriminated against –socially, economically and politically.

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