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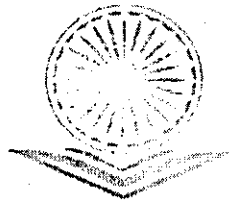
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4. Legislative and Judicial Approach towards Gender Justice in India

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Abstract

We live in a gendered world. Gender justice entails ending the inequalities between women and men that are produced and reproduced in the family as well as in the community. Gender equality is a fundamental human right that is guaranteed in national legislations, conventions and international and regional treaties. It is harsh reality that women have been ill treated in every society for the ages and India is no exception for it. In male-dominated Indian society, women being a vulnerable group face discrimination at different levels.

In order to ameliorate the condition of women in India, legislature enacted the large volume enactment. India has international obligation to protect the women and ensure gender justice. Hence gender equality is the basic scheme for number of legislation in India. The role of judiciary is also commendable in ensuring gender justice. The study aims to highlight the status of Indian women, their problems and discrimination faced by them. It describes their basic human rights as well as constitutional and statutory rights. This paper is an attempt to evaluate gender justice in India.

Introduction

"That country and that nation that do not respect women have never become great, nor ever be in future."- Swami Vivekananda.

The women are the soul of our community and they are self build and self trained human responsible for the morale development of their children. inspiration for the family and an example for the community to follow. As a wife, woman is his best friend and inspiration. The history conveys that, "Each successful man has an inspiring woman responsible for success".

It is harsh reality that women have been ill- treated in every society for ages. India is no exception. Women in India being a vulnerable group face discrimination at different levels.

Presently women represent 48.5 percent of the country's population¹. In male-dominated Indian society, women often face discrimination. They are considered as an object of male sexual enjoyment and reproduction of children. Women are discriminated because of their gender. The patriarchal system in India made women to live at the mercy of men, who exercise unlimited powers over them. The status of women is a benchmark of social process and is a very important part of the human development. Several developmental programmes have been implemented by the Five Year Plans. Judiciary as well as Constitution of India which is fundamental law of our country play vital role in ensuring Gender Justice.

Gender justice means equal treatment and equitable value of the sexes. Gender justice entails ending the inequalities between women and men that are produced and reproduced in the family as well as in the community. Gender equality is a fundamental human right that is guaranteed in international and regional treaties, conventions, and national legislation. Achieving gender equality means that men and women are able to share equally in the distribution of power and knowledge and have equal opportunities, rights and obligations both in their private and public lives. To achieve gender equality gender justice has to be practiced.

Gender Justice – It,S Need

The need of gender justice arose due to gender discrimination and male domination since ancient times. In India 48.5% population is covered by the female who are restricted by various social taboos. The Indian women play multiple roles such as daughter, sister, wife, and mother. She is committed to serve the family. She creates life and gives strength to it. She plays important role in the preservation of our culture. Women have been the foundations of the family and society in general. If the foundation is not solid and carefully maintained and protected by those who are responsible for her protections there are chances of disintegration of family system and ultimately the disintegration of the society itself².

Hence, women who are backbone of family should have given due respect and equal treatment. This paper highlights status of Indian woman, their human rights. It is an attempt to analyze gender justice in India.

Rights of Women Under Constitution of India

¹ As per Census 2011, the population of India is 1210.19 million comprising 586.47 million (48.5%) female.

² Shankar Rao C.N., *Sociology of Indian Society*, S.Chand & Company, 1st Edn., 2006

Gender equality is enshrined in Constitution of India in it's Preamble, Fundamental Rights, Fundamental Duties and Directive Principles.

Indian Constitution guarantees equality for women. Indian Constitution not only guarantees equality to women but also empowers the State to adopt measures of positive discrimination in favour of women.

Article 14 of the Constitution of India guarantees equality before law and equal protection of law.

Article 15 prohibits discrimination against any citizen on the grounds of religion, race, caste, sex, etc., Article 15(c) of the Indian Constitution allows the State to make any special provision for women and children.

Article 23 provides against exploitation of women & prohibition of trafficking in Human beings and Forced labour.

Article 39 (a) mentions that the State will direct its policies towards securing all citizens, men and women, the right to means of livelihood.

Article 39(e) ensures equal pay for equal work.

Article 42 directs the State to ensure just and human working conditions.

The Constitution imposes a fundamental duty on every citizen through Article 51 (A) (c) to renounce practices derogatory to the dignity of women.

The 73rd and 74th amendments to the Constitution of India, adopted in 1992 provided for reservation of seats (at least 1/3) in the local bodies of Panchayats and Municipalities for women. Another Constitution Amendment (84th Constitutional amendment) reserve 33 per cent in parliament and State Legislature.

Article 243-D of the Constitution contains that not less than 1/3rd of the total number of seats to be filled in direct election in every Panchayat shall be reserved for women. Same provision has been made in Article 243-J for reservation of seats to women in the direct elections to every Municipality. Thus, there is a reservation of 33% seats for women in local bodies.

Constitution of India also imposes obligation on the State to protect the rights of the women and to fulfill the requirements of international conventions regarding the rights of the women. Indian Government passed the Protection of Human Rights Act, 1993 and constituted a

body known as the National Human Rights Commission for promotion and protection of human rights.

Judicial Initiative towards Gender Justice

The judiciary play important role for protection of rights of women and also to ensure gender justice. Due to the failure of the legislations to protect women, judiciary has come forward to protect women. The Supreme Court has been playing an effective and meaningful role towards protection of human rights of women. The judiciary by its landmark judgments had filled up the gap created by the Legislative machinery. The judiciary had extended helping hands to women when the legislature had denied it. The higher judiciary has shown concern for women's rights in recent times; It also had been greatly influenced by the international declaration and covenants on women rights. Apart from securing several non – Justifiable socio – economic rights for women as guaranteed fundamental rights, the Apex Court has frequently resorted to evolving novel measures such as compensatory jurisprudence, judicial law – making and the like with a view to secure gender justice.

In the case of **Suchita Srivastava and another vs Chandigarh administration**³ it was held that women's right to make reproductive choice is a part of personal liberty conferred under Article-21 and that may include procreation as well as abstaining from procreation

It was rightly decided in the landmark case of **Nargesh Meerza vs Air India**⁴ that a woman shall not be denied employment merely on the ground that she is a woman. This leads to violation of Article-14 of the Constitution.

In **Vishakha v. State of Rajasthan**⁵, the Supreme Court took a serious note of the increasing menace of sexual harassment at workplace and elsewhere. In Vishakha Case, the court assumed the role of legislature and defined sexual harassment and laid down guidelines in order to provide safe and healthy environment for working women

In **Apparel Export Promotion Council v. A.K.Chopra**⁶, The Supreme Court found all facets of gender equality including prevention of sexual harassment in the fundamental rights granted by the Constitution.

³ 2000 S I, P. (C) No. 17985

⁴ 1981 AIR 1829, 1982 SCR (1) 438

⁵ AIR 1997 SC. 301

⁶ AIR 1999 SC 625

In the case of **Manu Bhargava vs Union of India**, the Apex Court talked about the distinction and equal pay for equal work. It was held that the doctrine is applicable in case of the same and similar jobs. In the case of **Harjyoti Das vs State of Haryana**, the Supreme Court held that if two persons are doing similar kind of work under similar conditions, there is no distinction in the right of equal pay for equal work on the ground that their respective positions were different.

Legislative Approach: Promoting Gender Justice

Along with the legal provisions for women, some legislation are especially crucial, which provide protection to women in work.

Protection of women against sexual harassment at workplace Act, 2013 provides guidelines for workplace against sexual harassment. Act provides for the establishment of Internal Complaints Committee for protection of women.

Dowry Prohibition Act 1961 bans giving and taking of dowry at or before marriage.

Maternity Benefit Act (1961) regulates the employment of women in certain establishments for certain period before and after child birth and provides for maternity benefit and certain other benefits.

Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act (1994) prohibits sex selection before or after conception and prevents the misuse of pre-natal diagnostic techniques for sex determination leading to female foeticide.

Medical Termination of Pregnancy Act (1971) provides for the termination of certain pregnancies by registered medical practitioners on humanitarian and medical grounds.

Protection of Women from Domestic Violence Act (2005) is a comprehensive legislation to protect women in India from all forms of domestic violence. It also covers women who are in a domestic relationship with the abuser and are subjected to violence of any kind, physical, sexual, verbal, emotional or economic.

Indecent Representation of Women (Prohibition) Act (1986) prohibits indecent representation of women through advertisements or in publications, writings, paintings, or in any other manner.

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Immoral Traffic (Prevention) Act (1956) is the premier legislation for prevention of trafficking for commercial sexual exploitation. In other words, it prevents trafficking in women and girls for the purpose of prostitution as an organized means of living.

Hindu Succession Act (1956) recognizes the right of women to inherit parental property equally with men.

Mines Act (1952) and Factories Act (1948) prohibits the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides for their safety and welfare.

Along with various legal provisions for women some legislation are especially enacted to ensure gender justice in India such as,

Dowry Prohibition Act (1961) prohibits the giving or taking of dowry at or before or any time after the marriage from women.

Equal Remuneration Act (1976) provides for payment of equal remuneration to both men and women workers for same work or work of a similar nature. It also prevents discrimination on the ground of sex, against women in recruitment and service conditions.

Indian Penal Code (1860) contains provisions to protect Indian women from dowry death, rape, kidnapping, cruelty and other offences.

Mines Act (1952) and Factories Act (1948) prohibits the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides for their safety and welfare.

Conclusion and Suggestions

In spite of having so many enactments dealing with women and judgments of the Supreme Court protecting women the downtrodden and poor condition of women has not been improved and she still faces all types of atrocities. After independence the founder father of the nation wanted to reform the society and to establish egalitarian society. To achieve this end they used law as an instrument to check the gender discrimination. But due to strong patriarchal mentality and unfavorable social environment they failed to accomplish the goal of gender justice.

Complete gender justice is complex to achieve typically in a country like India where the diversity of culture, subcultures is vast and there is a lot of rigidity in traditions and beliefs. Lack of education, lack of development, poverty, improper enforcement of the laws, lack of awareness among women, deep rooted patriarchy, economic dependence of women all lead to the degradation and exploitation of women in our society.

Even though the government is trying to take care of this natural right by formulating various policies, enacting and formulating laws. This is not a one man's job – entire humanity will have to join hands.

To ensure gender justice the need of the hour is that laws should be enacted and they should be backed by strong public willingness and public opinion. Because so long as conservative social thinking remain deep rooted in the society laws will not be able to achieve their ends. It must be asserted that idea of gender justice would be effective only if it is supported by major section of the society.

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