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12. Multiculturalism and Gender Discrimination: Legal and Judicial Approach towards Gender Justice in India

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Abstract

Multiculturalism means the coexistence of different cultures. Multiculturalism is an essence of our country as in India people of different cultures are living together. Women, who come from different background, cultures, minority groups and living in multicultural societies, lack self-esteem and self respect due to the pressure from their own cultures and their own communities. 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 India 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.

The study aims to highlight the concept of multiculturalism, gender discrimination and idea of gender justice in India. This paper is an attempt to evaluate contribution of Indian Constitution and judiciary to ensure gender Justice in India.

Introduction

Multiculturalism is an essence of Indian culture. In India people of different religions, cast, and community are living together. They speak different languages, wear different clothes, and follow varieties of customs. People of different religions have belief in ideology of their religion. They worship their god and celebrate their festivals. Hence cultural diversity has been present in India since ancient time. But when we think about gender equality it is observed that women in India being a vulnerable group face discrimination at different levels. Women have been ill- treated in every society for ages. In male-dominated Indian society, women often face discrimination. Presently women represent 48.5 percent of the country's population.

Women are discriminated because of their gender. Women in India are facing numerous evil practices such as discriminations, oppressions, violence within the family, at work places and in the society. Women are exploited in the society at different levels because of their unawareness about their legal rights. In our society existence of women is always subject to men. Woman in her childhood is under the protection of her father after marriage under the protection of her husband and in old age at the mercy of her sons. The patriarchal system in India made women to live at the mercy of men, who exercise unlimited powers over them.

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 right that is guaranteed in constitution 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.

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.

Constitutional Law and Gender Justice

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.

Constitution of India guarantees equality for women. The Constitution of India guarantees equality to women and also empowers the State to adopt measures of positive discrimination in favour of women. Gender equality principle is observed in the Constitution India in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles.

Article 14 of the Indian Constitution guarantees equality before law and equal protection of law. It means all are equal before 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. Immoral Traffic (Prevention) Act 1956 is passed to prevent 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.

Article 39 (a) directs State to ensure all citizens, men and women, the right to means of livelihood,

Article 39(c) ensures equal pay for equal work. In order to prevent gender discrimination in the matters of recruitment and promotions Equal Remuneration Act was passed. The Act provides for payment of equal remuneration to both men and women workers for similar kind of work.

Article 42 directs the State to ensure just and human working conditions and to provide maternity relief to woman employees. Maternity Benefit Act aims to provide maternity benefits and certain other benefits to woman employees and to regulate the employment of women in certain establishments for certain period before and after child-birth.

Under, Article 15 (A) (e) The Constitution imposes a fundamental duty on every citizen to renounce practices derogatory to the dignity of women.

The 73rd and 74th amendments to the Constitution of India effected in 1992 provided reservation of seats (at least 1/3) in the local bodies of Panchayats and Municipalities for women. Another Constitution Amendment (84th Constitution amendment) reserve 33 per cent seats in the Lok Sabha, Rajya Sabha, 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. Similar provisions have been made in Article 234-T 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. India has also ratified various International Conventions and Human Rights Instruments committing to secure equal rights of women.

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 judiciary has encouraged widest possible coverage of the legislations by liberal interpreting the terms. The Supreme Court has been playing an effective and meaningful role towards protection of human rights of women. 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 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 the case of **Randhirsingh vs Union of India**⁶, the Apex Court talked about the doctrine of equal pay for equal work. It was held that the doctrine is applicable in case of both men and women. Again, in the case of **Bhagwan Das vs State of Haryana**¹, the Supreme Court declared that when persons are doing similar kind of work under similar condition, then they

cannot be denied of their right of equal pay for equal work on the ground that their mode of recruitment was different. Haji Ali Case and Sabarimala Case are two landmark cases which play a vital role in protection of woman's Right to Freedom of Religion. In Haji Ali darga case in a historic verdict, the Bombay high court permitted the entry of women up to the restricted grave area of the famous Haji Ali Dargah, located on the rocks off the Worli seashore. In Sabarimala Case, Supreme Court held that women should be allowed to pray at the place of their choice. The Court held that "woman's right to pray was not dependent on any law but it is a Constitutional right"

A new era has begun with the setting up of statutory institutions such as National Human Rights Commission, National Commission for Women. A numerous independent human rights watch – groups in India, viz., people's union for Democratic Rights (PUDR), People's Union for civil Liberties (PUDL), Women's Initiative etc., have done great job in the protection of rights of women. A number of social activists such as, Ms. Sheela Barse, Madhu Kishwar, Brinda Karat and Indira have been working hard and performing commendable job in raising gender issues among general public.

Conclusion and Suggestions

It must be asserted that idea of gender justice would be effective only if it is supported by major section of the society. In spite of having so many legislations dealing with issues of women and judgments of the Supreme Court protecting women the downtrodden and poor conditions of women has not been improved. Woman in India still faces all types of atrocities and discriminations. After Independence the founder father of the nation, wanted to change the social structure of our country and to establish an egalitarian society. In order to achieve this object there is dire need to check gender discrimination. Number of legislations were enacted to achieve this end but due to strong patriarchal mentality and unfavorable social environment they failed to accomplish this object.

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 community legislations will not be able to achieve their ends.

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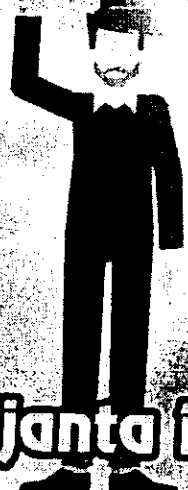
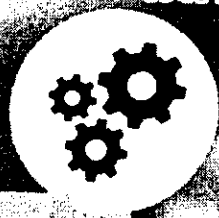
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