

Gender Justice And India's Obligations Under Domestic Laws And International Conventions

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Abstract: Women contribution to the socio-economic and political sphere is eminent and inalienably significant. Women constitute almost half of the population. The status of women is changing in response to several emerging trends. On the positive side more girls are attending schools, delaying marriage and child bearing, however diseases, malnutrition, low social status, gender inequalities and increasing crimes against women are some of the challenges. In order to meet these challenges, several efforts have been made at national and international levels. In India, our Constitution provides various fundamental rights to ensure the equal status and rights of both men and women. Article 51-A imposes a duty on the citizens to renounce the practices derogatory to the dignity of women. Apart from the Constitutional provisions, there are various statutes like Dowry prohibition Act, Domestic Violence Act, Indecent Representation of Women Act, Hindu Succession Act and so many such Acts which are enacted for protection of women. At the international level, various efforts have been made in order to provide protection and equal treatment to women. UN Convention on Protection of human rights, 1948 was just the beginning. The Convention on the Elimination of all Forms of Discrimination Against women, 1979 is a major convention signed in the direction of providing gender justice. After that so many Conventions have been signed to provide protection to women Worldwide. These efforts have improved the position of women to some extent but not to the satisfactory level. In spite of all these provisions, crime against women and gender discrimination is still on rise. So need of the hour is not only enactment of effective laws, but also the effective implementation of these laws and awareness amongst the general masses.

I. INTRODUCTION

An enlightened woman in a society is recognised as a key agent to accelerate the developmental processes which are sustainable. Any civilised society, modern polity or developing economy cannot ignore the aspirations of women as well as their rights in the society. Gender equality is at the very heart of a country's development process. Empowered women and girls contribute to the health and productivity of families and communities which improve prospects of next generation. According to United Nations Secretary-General Ban ki-moon, "women are not just the target of special measures to promote development but are also the driving force to overcome poverty, reduce hunger, fight illiteracy, heal the sick, prevent the spread of disease and promote stability".

Womanhood has been reverend in the ancient Indian culture as a manifestation of divine qualities. Womanhood is a

symbol of eternal virtues of human dignity expressed in compassion, selfless love and caring for others. The scriptures and later work in the Indian culture and philosophy stand witness to the fact that woman indeed receive high recognition and respect in Vedic age. The contribution of women rishi,s in the making of ancient culture were not less than those of the male counterparts.. Many women have made extraordinary contributions against all odds to the service of mankind at the national and global level. But despite all these facts, nearly in all human societies in different parts of the world are male dominated. Males are the active part and women are passive part of only a thing of enjoyment of males and in some societies they are only chattels contractible, saleable and endowed with the duty to serve the males. Over the years the status of women has improved the some extent, but the position which women through the world deserve has not been given to them. The improvised status of women is in sharp

contrast to an otherwise developing milieu in which social change does not accompany the rapid modernisation process. The prevalent gender bias being offensive to human dignity and human rights has emerged as fundamental crises world over. Human rights can be taken as those minimal rights which every individual must have against the State or other public authority by virtue of his being a member of the human family irrespective of any other consideration. The human rights of women are therefore an inalienable, integral and indivisible part of human rights. All forms of discrimination and grounds of gender are, thus violative of fundamental freedoms and human rights. Gender injustice and insensitiveness manifests itself in the form of discrimination, crime and violence against women.

II. GENDER JUSTICE

The concept of gender justice is a worldwide phenomenon. When we talk about "Gender Justice", then it includes both male and female which further represent the society at large. Here the problem is not to empower the women but to the equal justice to the Gender (both Sex). Gender justice means equal treatment and equitable value of the laws. Therefore, gender equality is fundamental human right that is guaranteed in international and regional treaties conventions, and national legislation. Gender Justice entails to eliminate man-made inequalities and discrimination by extending equal opportunities to socio-economic and political resources to women. World development (2006) defines 'gender equality as equal access to the opportunities that allow people to pursue a life of their own choosing and to avoid extreme deprivations in outcomes' that is gender equality in rights, resources and voice. The most substantive aspect of gender justice demands not only emancipation but also ensuring social security as well as safeguarding the modesty and integrity of women through an effective constitutional, institutional and women cuts across all religions, races, castes, classes and communities. Women are pillars of the society.

III. INTERNATIONAL CONCERN

Equal rights between men and women are at the heart of the United Nation Taking cognizance of this repression all over, the United Nations passed various instruments with a focus on women's emancipation and with the object of enhancing the dignity of women all over the world. The United Nation has come a long way from being a security agency to become an organisation concerned with human rights, justice and equality. In the area of women's issues it has gathered enormous support, whereby it has promoted and protected women's rights and women's empowerment. After the inception, the UNO moved quickly to affirm that the advancement of women was a major thrust area of its work. Four progressive phases are discernible in the evolution of their efforts.

In the first period, from 1945 to 1962, the UN worked to secure women's legal equality. These included inequalities in laws and customs concerning marriage and family. With the

formation of commission on human rights and commission on the status of women, 1946, and the adoption of the Universal Declaration of Human Right, 1948, the organisation began its work on behalf of women with a drive to establish the legal basis for promotion of their equal rights. As per the declaration of Human rights, women along with men are entitled to all rights and the terms 'No One' and 'everyone' includes both men and women.

Convention on the political rights of women, 1953, desires to implementation of principle of equality of right for men and women contain in charter of UN. According to Article 1 of the convention, women shall be entitled to vote in all elections on equal terms with men, without any discrimination. They will be eligible for elections and will be entitled to hold public office and exercise all public functions. Convention on the nationality of married women, 1957 prescribes the rules to ascertain the nationality of married women.

During the second period from 1963 to 1975, more and more Governments responded to the UN by adopting laws and programme to protect women's rights. Adoption of Declaration on the Elimination of Discrimination against Women, 1967 acted as a catalyst and the organisation encompassed apart from the codification of rights to economic and social realities of women. The third phase from 1976 to 1985 coincided with the United Nations Decade for women. The United Nations projected the fact that women's equality and rights, far from being isolated issues, were important factors in the well-being of societies everywhere. In the Declaration on Elimination of Discrimination against women, 1967 under article 10 of the declaration states that all appropriate measures shall be taken to ensure to women married or unmarried equal rights with men in the fields of economic and social life like right to equal remuneration with men, right to leave with etc. The findings immediately had a global impact manifested in the convention on Elimination of all forms of Discrimination against Women, 1979, which is an International Bill of Human Rights for women.

In the current forth phase, from 1986 till date the United Nations and its institutions have been strengthened and the support for the rights of women have been strengthened and the support for the rights of women have been woven into the mainstream efforts of all the organisation's agencies and bodies. The World Summit for Children, 1992 and the World Conference on Human Rights, 1993, International Conference on population and Development, 1994, World Summit for Social Development, 1995, synthesised the achievements, recognising the pivotal role of women in eradicating poverty and mending the social fabric. In 1993, Declaration on the Elimination of Violence Against Women under Article 1 of the Convention defines the violence against women as "any Act of gender based violence that results in or is likely to result in physical, sexual, psychological harm to women, including threats of such acts, coercion or arbitrary deprivation of liberally, whether occurring in public or private life. Article 3 of the Convention recognises the human rights and fundamental freedoms in political economic, social cultural, civil or any other field like right to life, right to equality, right to liberty and security of person, rights to be free from all forms of discrimination and Right to just and favourable

conditions of work etc. Article 4 stated that the States should condemn violence against women and should not invoke any custom tradition or other religious consideration to avoid their obligations with respect to its elimination. In the Optional protocol to the Convention on the Elimination of discrimination against women 1999, States reaffirmed their determination to ensure the full and equal enjoyment by women of all human rights and fundamental freedoms and to take effective action to prevent violations of these rights and freedoms.

In the year 2000, the heads of the States and Governments gathered at the UN headquarters and passed the United Nation Millennium Charter, 2000. Here in this charter the States recognised that in addition to these separate responsibilities, they have a collective responsibility to uphold the principle of human dignity, equality and equity at the global level. On the issue of human rights, democracy and good governance it was resolved to somewhat all forms of violence against women and to implement the Convention on Elimination of all forms of Discrimination against women. Besides all these International initiatives, the south Asian Association for regional cooperation or SAARC consisting of seven south Asian countries are meeting at the regular intervals to work united for the cause of women. In the eleventh summit of SAARC in January 2002, a Convention on Preventing and combating Trafficking in Women and Children for prostitution was adopted to effectively deal with the various aspects of prevention, interdiction and suppression of trafficking in women and children.

IV. GENDER JUSTICE IN INDIA

A Constitution is the basic document of a country having a special legal sanctity which sets the framework and the principal functions of the organs of the Government of a State and declares the principles governing the operation of these organs. The principle of equality as one of the milestones has been embodied in the preamble of India. The Constitution provides certain fundamental rights to all citizens irrespective of their sex, caste or religion. Article 14 provides equality before law. Article 15 specifically prohibits discrimination on the ground of sex. However the Article 15 empowers the State to make special provisions for women. Gender equality becomes elusive in the absence of right to live with dignity. The right to personal liberty guaranteed under Article 21 included the right to privacy. Article 23 of the Constitution specifically prohibits traffic in human beings. Traffic in human beings has been prevalent in India for a long time in the form of prostitution and selling and purchasing of human beings. This Article is intended to eradicate this inhuman practice. Part IV of the Constitution, which contains the Fundamental Duties of the citizen of India, was added by the Constitution (42nd Amendment) Act, 1976. Article 51A (e) of the Constitution lays down that "It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women". Apart from the fundamental Rights, fundamental duties and directive principles provides for provisions like right to vote, reservation in local self government. Still there is a wide gap between the goals enunciated in the Constitution,

legislature, programmes and related mechanism on one hand and situational reality of the status of women in India on the other. In order to protect women from the gender specific offences certain laws have been passed by the legislative organs. These legislations are enacted firstly, to fulfil the obligations under taken in the International conventions by India, secondly to protect women from various inequalities, offences and to promote gender equality. Various legislations on Gender justice has been discussed in the following manner:

GENDER JUSTICE UNDER PENAL LAWS

At the time of enactment of Indian Penal Code there existed many social problem relating to women like dowry death, murder, suicide and bride burning and harassment (physical as well as mental) to married women. Thus the legislature incorporated provision under laws to overcome these problems. The parliament enacted the Criminal Law Amendment Act, 1983, by which a new section was inserted i.e. section 498-A to meet out any type of cruelty inflicted on married women coupled with the age old greed, practice for extracting material benefits in the disguise of "Dowry Demand". Section 304-B Indian Penal Code is another provision important to establish Gender justice. Dowry death, murder, suicide and bride burning are the symptom of peculiar social malady and are an unfortunate development of social set up. So in order to deal firmly with section 498-A and to give teeth to provision, legislature in 1986 inserted a new provision under section 304-B Indian Penal Code to deal with dowry deaths, which is again supported by section 113-B of Indian Evidence Act of 1872. The reason for the above mentioned provisions is that the earlier legislation i.e. The Dowry Prohibition Act, 1961 failed to check and stop the unlimited growth of this social evil. Further section 306 Indian Penal Code and section 113 Indian Evidence Act also deals with the evil of Dowry with the consequence of abatement to commit suicide. The procedural safeguards are also available under section 177 and 198-A Criminal Procedure Code beside sections 354 and 509 of Indian Penal Code.

SEXUAL HARASSMENT OF WORKING WOMEN AT WORK PLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2003

Article 11 of the Convention on Elimination of all Forms of Discrimination, to which India is a party, requires State parties to take all appropriate measures to eliminate discrimination against women in employment. The Supreme Court of India in case of Vishakha V. State of Rajasthan has also reaffirmed that sexual harassment is a form of discrimination against women and also violates the Constitutional right to equality. With a view to ensure protection to women, This Act has been passed by the Government. Under this Act the term "Gender equality" includes protection from sexual harassment and right to work with dignity, which is a universally recognised basic human right. The main feature of this Act is to provide number of remedies like constitutional, civil, compensation, criminal action, transfer in case of harassment by third party, public interest litigation etc.

INDECENT REPRESENTATION OF WOMEN (PROHIBITION) ACT, 1986

It is again landmark legislation in the field of Gender justice. This act was brought to check the increasing immoral reproduction of women as a means of advertisement, film production, publications and other means of spreading business or trade by unfair allurements. The society is rushing forward by leap and bounds to exhibit obscenity by unfair and ugly representation of women which encourages illicit corruption and immorality in the society. The main features of the act are to check indecent representation of women in any way tending to derogate or to degrade women. The act was proposed to prohibit all advertisements, publication, selling, distribution, circulation of books, and pamphlets etc containing indecent representation of women. Offences under the proposed act were made punishable with imprisonment of either description for a term extending to two years and fine extending to two thousand rupees on first conviction and sound and subsequent would attract a higher punishment.

THE PRE-NATAL DIAGNOSTIC TECHNIQUES (REGULATION AND PREVENTION OF MISUSE) ACT, 1994.

The prenatal diagnostic techniques (regulation and prevention of misuse) act 1994 has been brought to provide for regulation of use of pre- natal diagnostic techniques for the purpose genetic and metabolic disorders or chromosomal abnormalities or certain congenital miss-formations or sex linked disorders and for the prevention of misuse of such techniques for prenatal sex determination for the purpose of committing female feticide, and for the matter concerned and incidental to such act. This act provide the prohibition of misuse of pre-natal sex foetus, leading to female feticide and prohibition of advertisement of pre-natal diagnostic techniques for detection or determination of sex.

THE COMMISSION OF SATI (PREVENTION) ACT, 1987

The evil tradition of sati pratha had spread throughout and in the ancient times and was being practiced by Hindu women. To eradicate this evil custom, the commission of sati (prevention act), 1987 was brought by central government in parliament and was passed in, 1987 this act was passed to provide for more effective prevention of commission of sati and glorification and matters connected there with or incidental thereto. This act makes the attempt to commit sati, abetment and glorification of sati punishable offences for which imprisonment and fine up to 3, 00,000 may be imposed under this act special courts have been constituted and the powers have been given to their courts in respect of such offences.

THE IMMORAL TRAFFICKING (PREVENTION) ACT OF 1956

This Act punishes all those persons who are making their living on the earning of prostitution or indulging in any manner to promote this profession. The main object of this

enactment is to give or show proper respect to both male and female and not to consider them as mere commodity.

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005

The main theme for passing this Act is to protect the sacramental nature of Hindu marriage by placing both the parties at a common platform through counselling. It provides immediate relief to the aggrieved party, may be in terms of medical aid, maintenance, shelter home and other financial help.

These are some of the legislations intended to protect the women from gender specific offences. For all other gender neutral offences a large number of legislations have been passed by Indian legislature's .Apart from these measures the establishment of National Women Commission is also a major step in this regard. The UN Commission on the status of women in its 21st report had recommended to all member States to establish National Woman Commission or similar bodies with a mandate to review estimate and recommend measures between man and woman in all spheres of life. Acting on this resolution and on demand of several woman organisations, the Government of India set up a committee in 1974 known as the Committee on the Status of Women. In order to ensure the implementation of various measures, the committee recommended the constitution of statutory autonomous commission at the centre and the State. Hence the National Commission for woman was constituted as a result of The National Commission For Women Act, 1990. The National Commission for women has proposed various amendments in the Criminal Procedure Code and personal laws.

V. JUDICIAL TREND

The Judiciary also performs an appreciable role in securing Gender Justice. In *Anjali roy v. State of west Bangal* the Calcutta High Court observed that word 'for' in clause (3) signifies that special provision can be made 'in favour of women' and not against them. In another landmark judgement *Thota Seshrathamma v. Thota Manikamma* the Supreme Court held that Section 14 of the Hindu Succession Act, 1956, absolutely vests the inherited property right in women, which was earlier held them as limited estate, has been held to be protected from the attack under Article 15(3). Whenever any dispute of Gender Justice come before the court the first and foremost duty of the judge is to make a compromise between the parties and to realise them that male and female are the two sides of the same coin and cannot separated from the other. The Supreme Court held that when a compromise arrived at between the parties at the instance of judicial officer then continuation of the proceedings would amount to a base of the process of court and hence such proceedings are liable to be quashed. The Apex court pointed out that there is a valid justification for classifying the husband and his relatives as separate class for the purposes of section 498-A IPC because normally the offence is committed within the four walls of the matrimonial home, where others have no easy access. There is

no invidious discrimination nor is there anything obnoxious to the doctrine of equality so as to violate the guarantee enshrined in Article 14 of the constitution.

In *Air India V. Nagesh Meerza* where the air hostess of Air India International Corporation had approached the Supreme Court against the discriminatory service conditions in the regulations of the air India putting a bar on the marriage and pregnancy of air hostesses before the completion of 4 years of service. The Supreme Court struck down the Regulations on the ground that they were entirely unreasonable and arbitrary. In another judgement, the Hon'ble Supreme Court held that in appropriate case, the sentence can be reduced to less than the minimum statutory limit. In fact the proviso of Sub-Section (2) of section 376, IPC itself given such power to the court saying that for adequate and special reason to be mentioned in the judgment, Punishment can be imposed. The Apex court observed that "in view of the fact that the offence was one time act and in view of the young age the sentence of imprisonment can be reduced to the period already undergone." This verdict has thrown light on the liberal attitude of judiciary even in the cases of rape just to maintain gender justice in the society. The judiciary also take a stand that in the absence of domestic law occupying the field, to formulated effective measure to check the evil of sexual harassment of working women at all work places, the contents of international convention and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19 (1) (g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein.

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.

VI. CONCLUSION AND SUGGESTIONS

Gender equality is considered to be a desirable by product of human development. Now it is essential to reduce the gender inequality and make a proper balance between gender justice and women empowerment. There is a need for targeted effort to ensure that rights of the women in different circumstances, which include destitute women, women in conflict of circumstances, women affected by natural calamities, women who are victim of martial violence and prostitutes etc. are to be protected. For the emancipation of women in every field, economic independence is of paramount importance. Along with economic independence, equal emphasis must also be laid on the total development of women. It is unfortunate that the discrimination against women starts when she is still in the womb through female foeticide. Apart from the foeticide, there are many issues and one of them which is a cause of anxiety, is trafficking in women and girls. It is gross violence of human rights.

A girl child is not a burden but an essential constituent of the society. The key to her empowerment lies not her being killed in the womb but in her receiving education and becoming independent. Our society set up is such that if any offence is committed against women, then the society instead

of fighting for her will start finding faults in the conduct and character of the women. As a result the women are reluctant to register the case against the person who violates their person and commits crime against them. Laws are not enough to combat the growing menace of gender justice. A wider social movement for educating women about their rights is what is needed. Human rights for all must be made the focal point of good governance. Women equality in power sharing and active participation in decision making, including decision making in political process at all levels must be ensured for the achievement of the goals of empowerment. Some initiatives have been taken at the International and National levels. The UNDP (United Nations Development Programme) in the year 1995 introduced two new complementary indexes, Gender related Development index (GDI) and the Gender empowerment measure (GEM). The GDI indicator measures the inequalities between men and women in terms of access to basic needs. GEM evaluates women's access to political and economic posts. In 2010, HDR, GDI and GEM indices were superseded by gender inequality index (GII), a composite measure reflecting inequality in achievement between women and men in three dimensions: reproductive health, empowerment and the labour market. This data reveals the factual position of Gender justice. Now it is high time to think over this concept and bring male and female on the mainstream in various institutions. In my opinion, the following suggestion may to greater extent solve the problem and eliminate the inequalities between the genders.

Awareness must be created amongst men and women about their rights; those are laid down in International Conventions and National laws.

Government should extend the equal opportunities to Socio-economic and political resources to women.

The need of the hour is to develop sensitisation in the beurocracy and to facilitate political will to look at the problem of violence. Strict strategies should be framed to solve the issue of violence and impact of violence perpetrated against violence.

Those NGO, s should be encouraged which plays effective role for the promotion of human rights and Fundamental freedoms. These NGO, s should be financially aided by the Government for implementing measures in an appropriate manner.

Education is an essential tool which changes the position of women in society. An educated woman should be aware of her rights and duties. This in the longer run is beneficial for the whole society.

Family environment should support and encourage the woman for identifying her individuality and promoting her to take independent decisions not for herself but also for her family.

Pregnancy test and termination of pregnancy laws should be more strict and effective. In case of pregnancy, special care of health and nutrition should be assigned to husband and other family member either through society or law violation of such norm and law would be meted out with serious consequence.

There are number of statutory laws for the protection of women. The need of the hour is not enactment of new laws but the effective implementation of existing laws. Implementation

system should be made stronger for providing equal justice to women.

Economic independency of women also proves helpful in bringing about the status of gender on equality basis

Role of media and NGO's can be relevant provided they work on the positive track.

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