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GENDER EQUALITY: THE BATTLE FOR JUSTICE

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ABSTRACT

Worldwide, people are subject to persistent human rights violation because of their gender identity. These human rights violation take many forms, from denials of the right to life, freedom from torture, and security of person, to discrimination in accessing economic, social and cultural rights such as health, housing, education and right to work. Gender inequality refers to unequal treatment or perceptions of individual based on their gender. It arises from differences in socially constructed gender role as well as biologically through chromosomes, brain structure, and hormonal differences. Gender equality is integral to a country's economic development. Gender based discrimination reveals ugly face of the society. This issue is very old and is Global. Really it is a travesty of all canons of social justice and equality for women who constitute half of the world's population and work for two-third of the world's working hours and earn just one tenth of the world property and remain victim of inequality and injustice. There is a need to change the mind-set of the society. This paper will explore the actual socio legal condition of Indian Women and will also focus on recent break through emerged in judicial arena in the realm of gender justice.

KEYWORDS

gender inequality, violation, discrimination, torture, injustice.

INTRODUCTION

 Gender equality is a social order in which women and men share the same opportunity and the same constraints on the full participation in both the economic and the domestic realm. Gender does not mean sex of a person but describes social inequality between the sexes. Gender Equality is based on the idea that no individual should be less equal in opportunity, access to resources and benefits or in Human rights etc. It is a harsh reality that the women have been ill-treated in every society for ages and India is not exception to it.¹

HISTORICAL BACKGROUND

In Ancient India, Women were respected and were held in high esteem though the families, during this period, practised the patriarchal system; women were look after and educated. But during the medieval period, there was a degradation of the status of women. The daughter began to be regarded as a source a misery. The dowry system, sati and the veil system downgraded women. Their condition was quite pathetic. Even the status of women is not really promising in modern times also. The problem of domestic violence against women has become the part and parcel of their life. Domestic Violence, where a woman is subjected to cruel and inhuman treatment is very common. Women in the Indian society have been victims of Humiliation, torture and exploitation. Domestic violence against women stem from the fact that man cannot even today accept her as his equal partner. They are discriminated on basis of gender. They do not get same access to health care, education, economic rights as the man of their society do. In the recent time, different forms of violence against women such as, female feticide, dowry, eve-teasing, rape and wife beating have been on the rise. Though there are different forms of violence, but ultimately the purpose remains the same. Domestic violence is the most insidious form of violence which our women suffer in silence because of social norms and also because of her economic dependence on the perpetrators of the violence.²

GENDER JUSTICE AND THE INDIAN CONSTITUTION

Post-Independence Indian Women attained the bonafide citizenship of new nation. It was widely felt that women should be assigned an equal status with men not merely on ground of justice but also on the basic condition of growth and that step would be taken for transforming degree into de facto equality. Much later Mrs. India Gandhi, the later Indian Prime Minister (1917-84) remarked: I don't think that any society can progress if half of its member do not have equal opportunity and their talent and capabilities are ignored.

The preamble to the Indian Constitution undertakes "to secure to all citizens Justice - social, economic and political, liberty of thought, expression, belief, faith and worship; Equality of status and opportunity; and to promote among them all fraternity, assuming the dignity of the individual and the unity of the Nation".

In order to achieve these objectives, the Constitution contain a number of provisions. Few of them are Art. 15 guarantee the right against discrimination, Art. 15(3) talks about the special protection for women, Art. 16 provides right to equal opportunity in public employment irrespective of the sex of person. In 77th Amendment of the Constitution, 33% seats have been reserved in panchayats for women's. The 73rd Constitutional Amendment Act, passed in 1992 by parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural area or urban area. Art. 39 talk about equal pay for equal work; Art. 42 require the state to make provisions securing humane conditions of work and maternity relief.³

ROLE OF JUDICIARY

The Judiciary also in its own turn has helped in the process of Equalization between Man and Women. In our country Judiciary is known as the independent wing of government. This Independent Judiciary has two roles Firstly, the traditional role i.e. to interpret the laws, and secondly, is judicial activism i.e. to go beyond the statute and to exercise the discretionary power to provide justice. Jurisprudence extended the power of judiciary go beyond the statutory limit to give better and complicit justice, towards gender equality in the interest of society. Judges are applying the discretionary power to provide better justice to women in the new context of the Socio Economic conditions. Judiciary has played an active role in enforcing and strengthening the constitutional goals which talk about protecting the rights of women.⁴

Due to intervention of the supreme court, the Criminal Law (Amendment) Act of 2013 expands the scope of sexual and gender based crimes against women. Under the sexual Harassment of women at the workplace (prevention, prohibition and redressal) Act 2013 the government of India has pledged to establish 100 one stop Crisis centres and creation of 1000 Crore Nirbhaya fund to respond to Violence against Women's and Girls. In *C. B. Mathamma v. Union of India*⁵ the validity of Indian Foreign Services (Conduct and Discipline) Rule of 1961 was challenged in this it was said that female employer will have to obtain written permission of the government before her marriage and at any time after her marriage a women member of the service may be require to resign from service. The Supreme Court held that such a provision is discriminatory against women and hence unconstitutional. In *Vishakha & Others v. State of Rajasthan*⁶ the Supreme Court held that the harassment of women at work places amount to violation of gender justice and right to life and liberty which is clear violation of Art 14, 15 and 21. In *Mrs. Neera Mathur vs. Life Insurance Corporation of India*⁷. Neera Mathur was a probationer in the Life Insurance Corporation (LIC). During probation she applied and was granted maternity leave. She was simply discharged from service after she returned. Her discharge was defended by the LIC on the ground that she had given false declaration at the stage of entering the service. The court held that 'the particulars to be furnished under columns (iii) to (viii) in the declaration are indeed embarrassing if not humiliating.' These columns were held unreasonable and discharge was set aside. In *Punjab National Bank by Chairman and another v. Astamija Dash*⁸ it was held that as per provision of the maternity benefit Act, 1961 a woman can avail leave during the period of six weeks from the day immediately

following the day of her delivery, miscarriage or medical termination of pregnancy. If request is made by herself, she would not be asked to work for the period specified as per section 4(4). She would be entitled to the benefits of section 6 and 9 of the Act.

In *Ashok Kumar v. State of Rajasthan*⁹ the Supreme Court criticised the Session Court for ignoring the evidence, merely because it was given by a lady doctor in a case where victim was woman. The court said; 'we consider it necessary to record that the judge was uncharitable in discarding the testimony of Dr. Patrisia and doubting her truthfulness principally because she was a woman.' In *Air India V Nargesh Mirza*¹⁰ the first Air Hostess case, apart from other questions, the legality of regulation 46(c) was challenged. This regulation provided superannuation of an Air Hostess at the age of 35 years or on marriage if it takes place within four years of service or on first pregnancy, whichever is earlier. The court declared the provision for retirement on first pregnancy to be unreasonable and said, 'Whether the woman after bearing children would continue in service or would find it difficult to look after the children is her personal matter and a problem which affects the Air Hostess concerned and the Corporation has nothing to do with the same.'

CONCLUSION

From the above discussion it is clear that the legislature, which take care of rights and privileges of women, are numerous in number but due to ignorance and illiteracy those legislations cannot be properly enforced. The plethora of Indian Legislations aims at women empowerment. The legislative and judicial initiatives have placed the women in a better place in society. Yet the women in India has to go for miles to achieve cent percent Empowerment. Gender equality is genuine equality among human being where neither man is superior nor a woman is superior, they should be treated equally but the law alone cannot do much. All the sectors have to work for this cause whether it be Ngo's or people representatives. As it has been rightly said by Swami Vivekananda "just as bird could not fly with one wing alone a nation would not march forward if the women's are left behind" so for the progress of the nation women's have to be treated equally.

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