

GENDER DISCRIMINATION

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Introduction to Gender justice- A Constitutional Prospective:

Gender discrimination throughout the world is amongst the most all pervasive forms of inequality. Gender inequality concerns each member of the society. In the midnight of august 15, 1947, when India awoke to 'life and freedom', but 170 million women barely knew what 'Trust with destiny' was all about. Swami Vivekananda had aptly stated:

“Just as a bird could not fly without wing only, a nation would not march forward if the women are left behind”.

Then constitution incorporated certain rights for women to enable to exhilarate of the status of women in the male dominated. Crimes against women in the form of child marriages, dowry, rape, trafficking of girl child, domestic violence, practice of satin system etc. Repeatedly the judicial had played a pro-active role in giving justice to women. The fundamental right guaranteed to women under the constitution article 14, 15, 16, 19(1) (g), 21, 23.

Article 14 of Indian constitution deals with equality before law. It guarantees to every person the right to equality before the law or the equal protection of the law within the territory of India. In the case AIR India v. Nergesh Meerza², the Supreme Court while dealing with the fixation of different age retirement for male and female employees. The provision preventing the female employees from having a child, expressed the view to the consequence that the retirement of air hostesses in the event of marriage taking place within four years of service doesn't suffer from any abnormality but retirement of air hostesses on first pregnancy is unconstitutional being violated under article 14 and 16 of constitution. It has considered cruel and insult to Indian womanhood.

Article 15 of Indian constitution, deals with prohibition of discrimination on ground of sex. In the case Dattatraya v. State of Bombay³, the Bombay high court held that the state could establish educational institutes for women only. Again, in Yusuf Abdul Aziz v. state of Bombay⁴ the validity of section 497 of the Indian Penal Code was challenged under article 14

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² AIR 1981 SC 1281: 1987 lab IC 961

³ AIR 1952 SC 181:1952 SCR 612

⁴ AIR 1954 SC 321 :1954Cri LJ 886

and 15(1) of the constitution. This section was held by Supreme Court to be valid since the classification was not based on sex alone.

Article 16 of Indian constitution deals with equality of opportunities in matters of public employment. In the case *Associate Banks Officers Association v. State bank of India*,⁵ the Supreme Court held that women workers are in no way inferior to their male counterparts, and hence there should be no discrimination on the grounds of sex against women.

Article 19 (1) (g) of Indian constitution deals with freedom of trade and occupation, under this Article, it guarantees that all citizens have the right to practice any profession or to carry on any occupation or trade or business. To realize the concept of 'gender equality', the Supreme Court has laid down exhaustive guidelines in the case of *Vishaka v. State of Rajasthan*⁶ to prevent sexual harassment of working women at their workplace. The court held that it is the duty of the employer or other responsible person to prevent sexual harassment of women workers and to ensure that there is no hostile environment towards women at their work place. The guideline was framed to protect the rights of working women to work with dignity under article 14, 19 21 of the Indian constitution.

Article 21 of Indian constitution deals with protection of life and personal liberty. In the case of *State of Maharashtra v. Madhukar Narayan Mandikar*,⁷ the Supreme Court held that even a woman of simple virtue is entitled to privacy and no one can raid her privacy as and when he likes. This article has invoked for the exhilaration and venerable life for the prostitutes. The Supreme Court has given opportunity to the prostitutes for education and training to facilitate their rehabilitation.

Article 23 deals with right against exploitation and prohibition of trafficking in human beings. For centuries, women have been oppressed, humiliated, tortured and harassed in all lifestyles mentally, physically and sexually. To safeguard and protect women against this article 23 of Indian constitution was enacted. 'Traffic in human beings' means selling and buying human beings as slaves and also includes immoral traffic in women and children for immoral or other

⁵ AIR 1998 SC 32

⁶ AIR 1997 SC 3011

⁷ AIR 1991 SC 207, 211

purpose.⁸ Many acts were passed to protect this right like the immoral traffic (prevention) Act 1956⁹, Devadasis (prohibition of Dedication) Act, 1988.

Role of Directive Principles of State Policy in protecting the rights of women:

Part IV of the constitution from 3 to 51 contains what may be described as the active responsibility of the state. They are fundamental in governance of the country and it shall be the duty of the state to apply these principles in making laws as to attain a social order in which economic, social and political justice shall inform all the institutions all the institution of the national life. They are the principles that are based on the concept of 'Welfare State' and they are certain goals, social and economic; for immediate accomplishment by the Union and State government while framing policy or enacting laws.

Article 39(a), the state shall direct its policy toward securing that the citizens men and women equally, have the right to adequate means of livelihood¹⁰. Under Article 39 (d), the state shall direct its policy towards securing equal pay for equal work for both men and women¹¹. In addition, the parliament has enacted Equal Remuneration Act, 1976. Article 39 (e) is aimed at protecting the health and strength for worker, both men and women. Essential provision for women welfare is under Article 42 of Indian constitution, it imposes an obligation on the state to secure just and fair conditions for work and maternity relief. In the case *Dattatraya v. State of Bombay*¹² the court held that legal provision to give maternity relief to women workers under Article 42 of the Indian constitution does not contravene Article 15(1). Article 44 of Indian constitution it provides that the state shall secure for the citizens, a uniform Civil Code, within the territory of India. In the case *Sarla Mudgal v. Union of India*,¹³ a Hindu husband married under Hindu law and again married by converting himself into Islam. Therefore, Article 44 of the constitution was question in this case.

Causes for gender discrimination:

⁸ *Raj Bahadur Singh v. Legal Remembrancer*, AIR 1984 SC 180

⁹ Formerly known as the Suppression of Immoral Traffic in Women and Girls Act, 1956

¹⁰ *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180

¹¹ *Randhir Singh v. Union of India*, AIR 1982 SC 879; *Mackinnon Mackenzie and Co. Ltd*

¹² AIR 1952 SC 181; 1952 Cri LJ 955

¹³ AIR 1995 SC 1531

The root cause of gender inequality in Indian society lies in its patriarchy system. According to the famous sociologists Sylvia Walby, patriarchy is “a system of social structure and practices in which men dominate, oppress and exploit women”.¹⁴

Infancy to childhood - Female infanticide and sex-selective abortion is being adopted and strongly divulge the low status of Indian women. Census 2011 shows decline of girl population (as a percentage to total population) under the age of seven, with activists estimating that eight million female fetuses have aborted in the past decade.¹⁵The ratio depicts how girl child being killed.

Childhood to adulthood and education- Education is not widely attained by India women. Even though literacy rates are increasing, female literacy rate lag behind the male literacy rate. Literacy for females stands at 65.46%, compared to 82.14% for males¹⁶.having such a low literacy rate is parents’ perception that it is a waste of resources and eventually they have to get married and settled in husbands’ house.

Adulthood onwards- Discrimination against women has contributed to gender wage differentials, with Indian women on average earning 64% of what their male counterparts earn for the same occupation and level of qualification.¹⁷Although, government has made equal rights for women but they have not been implemented. In addition, many crimes involving women are taking place recently.

The three stage of women infant, childhood and adult. All of them the women are being discriminated at all ways and at all stages. Even though government has provided adequate right for equality but they have not been implemented yet. Still in some parts of our country few systems like dowry and sati are prevailing after being banned.

Benefits of gender equality:

There are many benefits if there is no discrimination based on gender. It may serve as a benefit to both individual as well as society. Women should be well educated because when we educate women we do not just educate one generation but rest of the generations as well. In addition, when girls are educated, their country becomes stronger and prosperous the nation’s income

¹⁴ Gender inequality in India, <http://www.indiacelebrating.com/social-issues/gender-inequality-in-india>

¹⁵ India’s unwanted girl, *BBC News* 2011-05-23

¹⁶ Literacy in India, *Census2011co.in*. Retrieved 2012-09-10

¹⁷ Workers face longer days for lower pay, *Wageindicator.org*. 2012-05-29 Retrieved 2012-09-10

may rise if women are rewarded equally to the work. The crime rates that are taking place in the nation may decrease eventually. In addition, the status given to the women may rise. The women will attain equal opportunity in taking decision for the family. Both men and women they will obtain equal opportunities for employment according to their qualification. Not just that, the country's GDP would increase. Gender equality is very essential for a developing country especially country like India. Where there are diversified culture and language. Once the women will acquire equal status as men, the country will become stronger and powerful.

Beti Bachao, Beti Padhao Andolan:

Prime minister, Narendra Modi had started this campaign in the country to educate girls and to save girls. In this campaign, "The Prime Minister of this country had come to them like a beggar and was begging for the lives of daughters," Narendra Modi said¹⁸. PM had launched two campaigns for girl "Beti bachao and Beti padhao". To encourage birth and education of girls and tackle the awful low child sex ratio of 918 girls for 1000 boys. Describing the desire to treat in female feticide as a "mental illness" Modi said that if this discrimination does not end it could cause a "terrible crisis" soon because of a lack of women in the country. PM launched the two schemes from Panipat in Haryana that has among the lowest child sex ratio in the country (837 girls to 1000 boys).

Bachpan bachao andolan v. Union of India¹⁹:

In the case it has been filed in public interest under the article 32 of Indian constitution in this, the children were made to work in a circus under extreme inhuman conditions. These children could not make contact with their family. There are instances of sexual abuse on a daily basis, physical abuse as well as emotional abuse. Most of them are trafficked from some poverty-stricken areas of Nepal as well as from backward districts of India. This signifies that how the children are also been exploited in all the fields. This incident encountered the petitioner who filled a case for trafficking of children in circus. Once they enter into the circuses, they are confined to the circus arena, with no freedom of mobility and preference. The petitioner was involved in social movement the emancipation of children in exploitative labour, bondage and servitude. Bachpan Bachao Andolan has been able to release thousands of children with the

¹⁸ PM Modi launches 'Beti Bachao, Beti Padhao' campaign, says female feticide is a sign of 'mental illness', <http://timesofindia.indiatimes.com/india/PM-Modi-launches-Beti-Bachao-Beti-Padhao-campaign-says-female-foeticide-is-a-sign-of-mental-illness/articleshow/45985741.cms>

¹⁹ AIR 2011 SC 3361

help of the judiciary and the executive as well as through affiliation, social mobilization and education. For the first time the petitioner came to know about the dilemma of children in Indian circuses way back in 1996. At that time, the petitioner had rescued 18 girls from a circus performing in Vidisha District of Madhya Pradesh. This again signifies the suffering of female is far more than male and until now the scenario has not improved rather it has been worst. This issue became the burning issue for the nation. After that, the petitioner did not look back rather tried to help and gave them justice and freedom to all those who suffered from the trafficking of children. Judiciary punished all the people who were involved in this crime.

Female Infanticide Prevention Act, 1870, also Act VIII of 1870:

It was a legislative act under passed under British rule. To prevent the murder of female infants by some upper-caste Hindu communities by means penalties and death sentence. The act was enacted to reduce the abortion of female fetus. The death rate of female is far more than male. This again clearly distinguishes the gender discrimination in the nation. The natural ratio is assumed to be between 103 to 107, and any number above it is considered as suggestive of female feticide. According to Indian census, the sex ratio the 0 to 6 age group in India has risen from 102.4 males per 100 females in 1961. this was mainly committed in the regions of Punjab, Haryana and Jammu and Kashmir. Due to this act, it was illegal to abort a female child. Even if they tried to commit this act, the judiciary would punish them.

Conclusion:

It is very essential to equalize the discrimination that is being continued until today in 21st century. Where there mind is very modern but still they are discriminating in sex. In India, although there are claims that inequality has decreased in the post-liberalization period, careful. Analysis of data shows that these views are mostly unsubstantiated. Historically directed at women, gender discrimination manifests in a variety of ways, including restricted access to educational and employment opportunities, increased exposure to sexual harassment and fewer options for acquiring affordable, quality health care. We all can try to stop the discrimination that is being continued since our ancestor. If each person can make an effort to reduce the discrimination of gender in the county, the country will have prosperous future ahead. In addition, there is no tool for development more effective than empowerment of women.