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GENDER DISCRIMINATION AND GENDER JUSTICE

AUTHORED BY - LALITHA. S. &
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ABSTRACT

Gender Discrimination and Gender Justice in India remains a pervasive issue globally, with India being no exception. This research paper undertakes to examine the complex interplay between gender discrimination and the pursuit of gender justice within the Indian context and legal system. This paper researches into the gender discrimination within the Indian society and the existing legal frameworks, cultural norms, and societal attitudes, which perpetuate gender inequalities and hinder the realization of gender justice. Moreover, the research explores legal cases that lead to reform and also which plays an important role in challenging discriminatory practices and advancing gender justice agendas.

GENDER EQUALITY

Gender equality concerns each and every member of the society and forms the very basis of a just society and hence, the issue of "Gender Justice" is of enormous magnitude and mammoth ramification engulfing as all-embracing and illimitable canvas. In the midnight of 15.08.197, when India awoke to life and freedom, most of its 170 million women scarcely knew what the "Trust with Destiny" was all about. Victims of poverty, ignorance and oppressive social institutions and they hardly knew their destiny and who controlled it. However, the stalwarts who lead India to its independence were aware that if the new India of their dreams was to become a reality and not remain only a figment of imagination it would need social engineering on a massive scale, in respect of the backward and oppressed sections of the society and above all, its women. Swami Vivekananda had aptly remarked "*Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind.*"¹ The crucial question that arises for deliberation is: "Have the women been able to reap the benefits provided for them under the Constitution of India? The answer, unfortunately, is not encouraging. There is still a long way to go to achieve the goals enshrined in the Constitution. In spite of special constitutional guarantees

¹ Madhu Kishwar Vs State of Bihar., AIR 1996 SC 1864.

and other legislations, crimes against women in the form of child marriages, rape, dowry, practice of Sati, trafficking of the girl child, prostitution domestic violence and sexual harassment are on the increase. The review of the disabilities and constraints on women, which stem from socio-cultural institutions, indicates that the majority of women are still very far from enjoying the rights and opportunities guaranteed to them by the Constitution. Justice K. Ramaswamy has also stated: "Indian women have suffered and are suffering discrimination in silence. Self sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination. There are decisions of Supreme Court under Articles 15(4) and 16(4) that reservations in favour of SC, ST and OBC categories could not exceed 50% or could not be 100% do not apply to a special provision in favour of women under Article 15(3) of the Constitution.² Writing of a sensuous letter to a female employee, expressing love to her, admiring her qualities and beauty, and extending unsolicited help. Besides, sexual advances were also alleged. Held, that female employee's grievance ought to have been looked into according to the directions given in Vishaka v. State of Rajasthan³ difficult concept, legal right in its strict. Legal right is a sense is one which is an assert able claim, enforceable before Courts and administrative agencies, in its wider sense, a legal right has to be understood as any advantage or benefit conferred upon a person by a rule of law; there are legal rights which are not enforceable, though recognized by the law; there are rights recognized by the International Court, granted by International Law, but not enforceable; a legal right is capacity of asserting a secured interest rather than a claim that could be asserted in the Courts.⁴ It includes not only rights conferred by statute but also those which may be claimed independently of any statute.⁵ A legal right may be defined as an advantage or benefit conferred upon a person by a rule of law. Immunity in short is no liability. It is an immunity from the legal power of some other person. The correlative of immunity is disability. Disability means the absence of power. Legal right means the right vested in a person and is available against a person who is under a corresponding obligation and duty to respect that right and has to act or for bear from acting in a manner so as to prevent the violation of the right. Human rights-Definition of. Human rights are rights of humans relating to their life, liberty, equality and dignity. Said term would not apply to individual rights of parties even against State arising under contract. "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India. Fundamental rights of women. The fundamental

² Satish Menon Vs State of M.P. AIR 2009 MP185.

³ Vishaka Vs State of Rajasthan AIR 1997 SC 3011.

⁴ Daniel Hailey Walcott Vs state AIR 1968 MAD 349.

rights are regarded as fundamental because they are most essential for the attainment by the individual of his intellectual, moral and spiritual status. As per Justice P.N. Bhagwati: *"These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a pattern of guarantees on the basic structure of human rights and impose negative obligations on the State not to encroach on individual liberty in the various dimensions"*. The recognition of violence against women as a human rights violation and the implementation of legal and policy measures to make this recognition a reality, have been pivotal goals of the international movement for women's human rights. But the extensive efforts of women's human rights advocates, especially around the UN World Conference on Human Rights (Vienna 1993), many concrete commitments to tackle violence against women as a human rights abuse now exists at the international level. The UN defines violence against women as *"Any act of gender-based violence that results in or is likely to result in, physical sexual or psychological harm or suffering to women including threats of such acts coercion or arbitrary deprivation of liberty, whether occurring in public or private life"*.⁶ Hence, human rights not only know no boundaries but are non-discriminatory on the basis of sex. The office of High Commissioner of Human Rights attaches importance to practical and creative measures to realize the human right of women-civil, cultural, economic, and political and social rights. Report of the UN Secretary General on violence against women, points that there can be no human rights without women's rights. The Constitution of India provides many safeguards to women and their rights. Preamble to the Constitution, fundamental rights and directive principles of State Policy from the very essence of the Constitution. Article 14 declares equality before law. Article 15 prohibits discrimination on ground of sex. Therefore there is prohibition against discrimination amongst other things on the ground of sex in any provision under State. Various laws were passed for the protection and safeguard of women and their rights like Hindu Marriage Act, 1955. Hindu Succession Act, 1956. Hindu Guardianship Act, 1956, Dowry Prohibition Act, 1961 Maternity Benefit Act, 1951. Equal Remuneration Act, 1976. Sexual Harassment at Workplace Act, 2001. In spite of legal provisions, the position of women remains lower in the India social order. They are subjected to physical assault which go against the basic human right. Rape and other sexual offences shatter the life of a women. Despite so many laws and safeguards the case of rape and dowry deaths are increasing and violence that are violation of human rights. An extreme form of the violation of human rights in the burning of

⁶ Article 1 of The UN Declaration on Elimination of Violence against Women (1993).

young married women by husbands and in-laws for not satisfying their excessive dowry demands. A large number of these cases are reported as suicides or accidents. In India, 6,200 dowry deaths were reported in 1994. That is an average of 17 married women were killed daily when their families to make dowry payments to the husbands family (Moore, M. "Consumerism Fuels Dowry Death Wave," *The Washington Post*, 17.3.1995). In 2000, the proportions of women who reported attempted or completed forced sex with an intimate partner were: Brazil 10 per cent Japan. 6.2 per cent, Peru 46.7 per cent the Thailand 29.9 per cent. In 1995-1996 the proportions of women reporting ever being physically assaulted by an intimate partner were Egypt 34 per cent, Paraguay 10 per cent and USA 22 per cent. (The World Report on Violence and Health (2002), World Health Organization). A survey in Barbados revealed that one in three women was sexually abused during childhood or adolescence. In Canada, 62 per cent of women murdered died at the hands of an intimate male partner. In Costa Rica, 49 per cent of a group of 80 battered women reported being battered during pregnancy, 7.9 per cent reported miscarriages as a result. Further, Part IV of the Constitution from Articles, 3 to 51 contains what may be described as the active obligation of the State. These Directives Principles are ideals which are based on the concept of 'Welfare State and they fix certain goals; social and economic; for immediate attainment by the Union and State Governments while formulating a policy or enacting a law. According to Article 39(a), the State shall direct its policy towards securing that the citizens men and women equally, have the right to an adequate means of livelihood. Under Article 39(d), the State shall direct its policy towards securing equal pay for equal work for both men and women. It imposes an obligation upon the State to make provision for securing just and humane conditions of work and for maternity relief. Some of the legislations which promoted the objectives of this Article are the Workmen's Compensation Act, 1923, the Employees State Insurance Act, 1948, the Minimum Wages Act, 1948, the Maternity Benefit Act 1961, the Payment of Bonus Act, 1965, and the like. In the case of *Dattatraya v. State of Bombay*⁷, the Court held that legal provisions to give special maternity relief to women workers under the Article 42 of the Constitution does not infringe Article 15(1). It is now a well-accepted proposition in most of the jurisdictions that monetary or pecuniary compensation is an appropriate and indeed an effective and sometimes perhaps the only suitable remedy for redressal of the established infringement of the fundamental right to life of a citizen by the public servants. Social Justice means is that as two parties, if a deal is made without serious detriment of the other, then the Court would with the weaker section of the society.

⁷ *Dattatraya v. State of Bombay* AIR 1952 SC 181.

SOCIAL JUSTICE

Social justice is the recognition of greater good to larger number without deprivation of accrual of legal rights of anybody. If such a thing can be done, then, indeed, social justice must prevail over any technical rule. It is response to the necessities of time and situation in order to do greater good to a larger number even though it may detract from some technical rule in favor of a party in administering justice, whether social or legal jurisprudence has shifted away from fine spun technicalities and abstract rules to recognizes human beings and human needs and if this can be full filled without depravation of legal rights of any party concerned, courts must lean towards that if the High Court, in the facts and circumstances of a case, has towards that, it is improper for the Supreme Court in exercise of the discretion vested under Article 136 of the Constitution to interfere with that decision. Justice, social economic and political, is the preamble to our Constitution. Administration of Justice can no longer be merely protector of legal rights but must, whenever possible, be dispenser of social justice.⁸

CONCLUSION

Whether, male or female, whether men or women, whoever are good in physical and mental health only can achieve success in life and equality in society under law.

⁸ Sadhuram Basnal Vs Pulin Behari Sarkar AIR 1984 SC 1471.