

Gender Justice in India Women's Rights As Human Rights

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Abstract:-

Man as a human being entitled to equal in dignity and rights. These are none other than human Rights. All men are born free but everywhere they are in chains. Our first law-giver Manu said, where women are respected, the gods reside and feel happy and where they are not, all the efforts and work prove, useless. In our own time Gandhiji advocated equal rights for women. It was felt that human beings are born equal in dignity and rights. It was felt that there are certain, natural, inalienable and inherent rights of all the individuals and inalienable and inherent rights of all the individuals which have been translated into human rights by way of law creating processes of the societies- both at national and international level. It was only the natural law which implies the concept of equality and human dignity. Thus, the concept of human rights is based on justice, equality and human dignity and has a long history to crystallize in the form we find them today.

The concept of human rights is as old as ancient concept of Natural Rights based on natural law. The expression Human Rights is of recent origin emerging from international conventions and charters. The expression Human Rights is to be found in the charters of United National adopted at San Francisco on 25 June, 1945. The preamble of this charter declared that United Nations shall have for its object, inter alia, to reaffirm faith in fundamental human rights. Article 1 states that the purposes of United Nations shall be, among others, to achieve international cooperation. In promoting and encouraging respect for human rights and for fundamental freedom for all without distinction as to race, sex, language, or religion. Human rights started with the existence of human being. But, the attention of the world community has been drawn towards the protection of human rights after the end of world wars. The violation of human rights on large scale necessitated the unequivocal assertion of human rights.

Introduction:-

Women's are the greatest gift to the humanity and they are representative of the beautiful creation of god. They are most tender, gentle and fragile one and needs to be handled and

protected with immense care and delicacy. They are born with disabilities they lived upon mercy of men. This is the actual status of a women in this modern era. It happens because the mindset of men toward a woman only a helping hand and without any desire and hope personality. She is made for men's enjoy only.

The implementation of many laws which are made for women protection has some loop holes. Problem is not about lack of law but actually their implementation. So, it's our responsibility that helps to create positive environment for women healthy environment. This paper will examine and analyse the gender justice in India and actual status of women in our Indian Society as well as violation of their human rights.

Human Rights and Women

The women of today want a change in their status in the society. They do not want to play a secondary role only. The women constitute nearly 50% of the world population. Women's are managing offices as well as homes, maintaining the right balance.

Therefore, they want to play a positive and constructive role in the world. They also want to contribute towards the economic, social and political development of the society. The violation of the rights of women is a human rights violation of her body and her right as person. Therefore, the human rights of women of all kinds, whether working or not-working, married or unmarried, educated or uneducated, rural or urban, have been recognized globally and also by the National Constitutions and organic laws.

Women rights are human rights. The universal Declaration of Human Rights proclaims the equality of the sexes. The Fourth World Conference on women held in Beijing in 1995, was an important step forward in terms of Human Rights for women. The declaration adopted there turned the focus on this gender. But, in practice, even now women rights are not being implemented in the manner they ought to have been implemented.

Promoting women rights calls for special attention. It has been an important area of focus for the whole world and the international agencies. Now there is global recognition to the women rights and these rights are considered as an integral and an inalienable part of universal Human Rights. This principle was earlier confirmed at the World Conference on Human Rights in Vienna in 1993.

Keeping in view the spirit of the Universal Declaration of Human Rights that affirms the principle of the inadmissibility of discrimination and proclaims that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind. Including distinction based on sex. Convention on the Elimination of All Forms. Of Discrimination against Women was adopted by the General Assembly on Forms of Discrimination against Women was adopted by the General Assembly on December 18, 1979, but it came into force on September 3, 1981. Under this convention, the State parties are required to eliminate discrimination against women in all its forms and manifestations. The State Parties are also required to embody the principle of the equality of men and women in their constitutions and other laws so that the women may enjoy the same political, social, economic and cultural rights which the men enjoy. In this Convention, obligations have also been imposed to eliminate discrimination against women in marriage and family life. Even earlier, the UN General Assembly had adopted “Convention on the Political Rights of Women” on 20th December, 1952. The Convention, inter alia, provided that women shall be entitled to vote in all elections on equal terms with men without any discrimination and they shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination, Besides, they shall also be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.

In order to improve the status of women and to give them the right to hold and possess properties, various other Acts were passed. The Women’s Rights to property Act, 1937, gave rights to the widow to demand partition in the deceased husband’s estate and to claim and possess properties equal to the share of her son. But it gave no such right to her daughter. The Hindu succession Act, 1956 also gave partial relief to the daughter. In 2005 there is a drastic changed in women’s copartionary property rights as a son¹. As per this law the women has an equal status as a son.

Our Constitution also grants equal rights to women. The State is empowered to make special provisions for women and children under Article 15(3). Consequently, the state has introduced reservations for women in public employment, in admissions to

educational institution and the Legislatures at least at the Local self-Government level, among other schemes for their benefit. Even the Fundamental duties contained in part IV-A of the Constitution also enshrines the principle of dignity of women. Certain other organic laws like the Equal Remuneration Act, 1976, the maternity benefit Act, the Pre-natal Diagnostic techniques (Regulation and prevention Misuse) Act, 1994, the dowry prohibition Act, 1961, Domestic Violence Act 2005. Even the Indian penal code, 1860 also contains number of provisions to prevent domestic violence against women on the ground of demand of dowry.

Recently till the preparation of this article bill for reservation of 33% is passed in Rajya Sabha the upper house of parliament for women reservation.

The Judiciary has played a very important role in the enforcement of the protection of human rights of women all over the world. The Indian judiciary led by the supreme court of India has exhibited a welcome judicial response in recognizing, popularising and enforcing these rights. A few areas of judicial contribution in this field have been mentioned hereunder.

(a) Right against Sexual Harassment:-

In *Vishaka V State of Rajasthan*² In the instant case supreme court referred to the convention on the Elimination of All forms of Discrimination Against Women (CEDAW) and also resultant violation of gender equality under Articles 14 and 15 right to life to personal liberty

(b) Right to Privacy of Women:-

In *State of Maharashtra V. Madhukar Narain*³ without referring to Article 21, the Supreme Court has held that even a woman of easy virtue is entitled to privacy and that no one can invade her privacy as and when he likes. The Supreme Court has consistently maintained that the offence of rape is violation of right to privacy of the victim.⁴

(c) Right of Economic and property Empowerment:-

In another landmark judgment in *Daniyal Latif v. Union of India*.⁵ A five judge constitution Bench of the supreme court upheld the constitutional validity of the Muslim divorced women (Protection of Rights on Divorce) Act, 1986 and held that a Muslim divorced woman had right to maintenance even after iddat period under the 1986 Act. The Court said that a Muslim husband is liable to make reasonable and fair provision for

the future of the divorced wife which clearly extends beyond the iddat period in terms of section 3(1) (a) of the Act.

Every daughter will now be entitled for her share in her father's property. In a landmark decision, the Supreme Court has held that the 2005 law that made daughters equal to sons in claiming right in father's property will apply even to those girls born prior to this date. This will open a Pandora box of sorts as millions of women are likely to come forward to take advantage of the new situation.

This decision is significant since the 2005 amendment to the Hindu Succession Act did not provide for retrospective operation of the law.

Daughters who are living as on the date of amendment (September 9, 2005), the recent decision has made it a general rule that a daughter (living or dead) on the date of amendment will be entitled to share in father's property, thus making her children too to claim this right.⁷

A Bench of Justices AK Sikri and Ashok Bhushan ruled, The amended provision (Section 6 of Hindu Succession Act) now statutorily recognizes the rights of coparceners of daughters as well since birth. It is the very factum of birth in a coparcenary that creates the coparcenary, therefore the sons and daughters of a coparcener become coparceners by virtue of birth.⁸

(d) Right of Equality and right against Triple Talaq:-

Right equality is one of the most important human rights. But the reality is that throughout history, women have been discriminated against. For instance, in countries like the United States of America, France and England, through claiming democratic system of Government, did not initially grant right to vote to women until 1921 in Britain and USA, and much later in France and there are still countries where equality of law and political rights have not been extended to women. As regards services, there are on an average 27.4 percent of women administrators in industrially advanced nations and 10 percent in developing countries. In India, it is only 2.3 percent.

But equality of course, implied that the rights recognized by the covenants are rights of all human beings equally and the various provisions apply to all persons everyone, every human being' and that 'no-one' shall be deprived of those rights.

The role of Judiciary in the field of equality as a right of equality under Article 14. Clause (1) of Article 15 as well as clause (3) of towards Women's Right which is empower the state for making special provision for Women's and Children's.

In August 2017, The Supreme Court passed a seemingly remarkable judgment in the *Shayara Bano v Union of India* on the practice of instant triple talaq, stating that it was "manifestly arbitrary" and "against the basic tenets of Islam. The court split 3:2 the minority opinion, including erstwhile Chief Justice JS Khehar, had asked the Centre to legislate on the matter of *talaq-e-biddat*, and the majority opinion stated that the practice is inherently illegal and unconstitutional. The Centre, in a bid to stay true to the judiciary, introduced the triple talaq bill and passed it in the Lok Sabha on Thursday.

The bill is titled, The Muslim Women (Protection of Rights on Marriage) Bill, 2017' and its objective is "to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands". Under the bill, the declaration of talaq "by a person upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, void and illegal." The practice of triple talaq is criminalized under this bill; a cognizable and non-bailable offence under the Code of Criminal Procedure, 1973, wherein the punishment for pronouncing talaq upon one's wife is imprisonment that may extend to three years and fine. Chapter III of the bill highlights provisions on the Protection of Rights of Married Muslim Women'. It provides for a 'subsistence allowance, determined by a magistrate, for her and any dependent children. A Muslim woman who has been subjected to triple talaq is also entitled to custody of her minor children.⁹

Similarly, Article 16 Guarantee equal opportunity for all citizens in matters relating to employment or appointment to any office under the state. The clause (2) of this Article prohibits discrimination on ground of sex. Constitution (73rd and 74th Amendment) Act., 1992 made a provision for reservation of seats for women in Panchayat and local bodies. In *Yusuf Abdul Aziz v. State of Bombay*.¹⁰ and *Sowmithri Vishnu v. Union of India*¹¹ Section 497 of India Penal code which only punish man for adultery and exempts the woman from punishment even though she may be equally guilty as an abettor was held to be valid under clause (3) of article 15.

Article 23 declares, Traffic in human beings and other similar forms for forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. Traffic in human beings means to deal in men and women like goods such as to sell or let or otherwise dispose them of it would include traffic in women for immoral or other purpose.

The parliament enacted an Act namely, the Suppression of Immoral Traffic (Prevention) Act. 1956 with the aim of punishing acts which results in traffic in human beings. The issue of women empowerment is clearly linked to the problem of the right to development.

Conclusion and suggestion:-

Women themselves are agents for change because they play a key role in shaping the welfare of future generations. Public Policies cannot be effective without the participation of the target group, in this case, women, make up more than half of the world's population. Their view, therefore, must find place into the policy formulation.

Women constitute the largest group, to whom the social, economic, political and of course, legal changes have brought a passage for women empowerment. The consciousness about their rights and upliftment of their position in various countries- something which was witnessed in 19th and early part of the 20th century in Western world- has now been realized in different part of the globe. However, the issue is more related with their economic and social development rather than political right which have been guaranteed to everyone in the Constitutions adopted in the countries.

Women empowerment should be developed as a way of life and not mere as slogans. Human conscience should be developed towards gender justice. Discrimination in all its forms be eradicated not only by a good codification but also on the part of people in general along with their government. Whatever the constitution and other law may intone, whatever the universal instruments may inscribe, we have miles to go and promises to keep if women empowerment is not be mere dope but sure hope. Realization of Human Rights in actuality is an affordable task, if honest efforts are made. I just wish to forward this appeal to the residents of the planet that, If not here, then where? If not now, then when? And If not you, then who?"

The following suggestions may be taken into consideration:-

1. Women Rights Groups and Committees at schools, Colleges and Universities levels are required to be formulated to educate the student community and public about the maintenance of their rights.
2. Women Rights talk programmes are required to be made and organized by debates and cultural ways.
3. Women Rights Institutions and Organizations (G.O. and N.G.O.) are required to be made in each state to look after the violations and maintenance of human rights of women.
4. All acts, customs and regulations that go against women rights should be repelled and new actions, regulations and customs should be formulated if necessary.
5. It is necessary to study and keep under review the status of legislation, judicial decision and administrative arrangements for the promotion of women rights and to prepare and submit reports on these matters to the appropriate authority.
6. “Special Women Human Rights Forum” is required to be formulated for the protection and maintenance of human rights of the women.
7. Politically, there must be at least 50% representation of women in the parliament.
8. Leaving aside physical differences women are equally competent and intelligent. They are no weaker sex of the society. So, female need to be given training so as to improve their physical power and make them worldwide.

End Note:-

1. Section 6 of Amended The Hindu Succession Act. In 2005
2. A.I.R. 1997 S.C. 3011
3. A.I.R. 1991 SC 207
4. State of Punjab V. Gurmit Singh AIR 1996 SC 1393
5. AIR 2001 SC 3262
6. <https://www.indiatoday.in>
7. Prakash vs Phulwati (2016).
8. Danamma @ Suman Surpur & another V. Amar & others CIVIL APPEAL NOS. 188-189 OF 2018 [@SLP(C) Nos. 10638-10639 of 2013]

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9. <https://googleweblight.com>
10. AIR 1954 S.C. 321
11. AIR 1985 S.C. 1618