

Gender Equality : Is It A Myth Or A Reality

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Abstract

In India a crime is committed against a woman every seven minutes. Every fifty four minutes somewhere in India a woman is raped, Every twenty six minutes molestation takes place, Every forty three minutes a woman is kidnapped and every one hundred two minutes a dowry death occurs. This shows that in India, woman does not enjoy an equal status. The fairer sex is considered to be weaker sex and is subjected to the male dominance in the family and society'. India is a male dominant society; the birth of a girl child is considered as a liability whereas a son born is an asset to the family. It is surprising to note that as compared to today's time, the Indian women used to enjoy a much better status in Vedic times. Women along with men received education, participated in popular assemblies, observed brahmcharya and upanayan was performed for them. During Vedic times women could own property and remarry. Marriage was a sacrament and monogamy was a general rule. Child Marriage and Sati were not known. The wife was given a place of honour and participated with her husband in religious ceremonies, But at the same time, history itself is the witness to the fact that time and again injustice has been done to woman. The two glaring examples can be found in the Hindu epics: Ramayana and Mahabharata themselves where in the

former Goddess Sita was left by Lord Rama and in the latter, Princess Draupadi was put on stake by the Pandavas, while gambling. Later on, her modesty was outraged in front of her husbands by the Kauravas. Hence, from the time immemorial woman is at the mercy of men.

Keywords : Molestation, Male dominance, Girl child, Marriage, Monogamy, Religious ceremonies

Introduction

With the advent of Muslim Rule in India, the condition of woman became more deplorable. She was considered as an object of pleasure for men. Pardah system was introduced, polygamy became the rule and the liberty of woman was clipped. She used to remain in the four walls of the house and was deprived of education. This infused an inferiority complex in the fairer sex, to be a woman and having a female child, which in consequence lead to the social evil of female feticide or female infanticide in the society. Dowry was introduced as giving of gifts by the brides family to bridegroom's family largely prevalent in rich families but with the passage of time it became a regular and compulsory practice in each Indian marriage. The poor people started taking loans to get their daughter married. The ones who were unable, either their daughters didn't get married or if they happened to then they were tortured, beaten and murdered in the in-laws house. This became another reason (even in the educated class) not to have a female child. Majority of Indian masses are illiterate, they need a son so that to continue their family lineage. In early times, among Hindus the institution of son-ship was regarded as important as the institution of marriage. To have a son was considered a

'must' for every Hindu. The institution of 'adoption' was the result of it i.e. the one that did not or could not have natural born son, could adopt a son. Thus, initially the institution of adoption was limited to the adoption of a son of the crimes committed against women, rape continues to be the most degrading and humiliating. It gives both mental and physical injury to a woman. The rape victim is further victimized by society as she faces social boycott and nobody willingly accepts her not even her own family.

Thus, a woman in India is vulnerable to so many social evils. However, not only in India but world over, there is discrimination against woman. Domestic violence against women is a widespread phenomenon, both in developed and developing nations. The most comprehensive and scientific study on the topic has confirmed this. In interviews with nearly 25,000 women at 15 sites in 10 countries, researchers from the World Health Organization (WHO) found that rates of partner violence ranged from a low of 15% in Yokohama, Japan, to a high of 71% in rural Ethiopia. At six of the sites, at least 50% of women said that they had been subjected to moderate or severe violence in the home at some point. At 13 sites, more than a quarter of all women said they had suffered such violence in the past one year. Advancement of the rights of women has been the concern of world community since the end of Second World War.

United Nation's Concern for the advancement of rights of women

The preamble to the Charter of the United Nations mentions the determination of the people of the United Nations "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women" The principle of equal rights for men and women has been incorporated in the Universal Declaration of Human Rights. It clearly provides that without any discrimination all fundamental rights and freedoms incorporated in the Universal Declaration of human Rights are equally

available to both men and women². The principle of 'Gender Equality' is considered to be the most important in the growth and progress of a civilization, thus the equality provisions available in the Universal Declaration of Human rights are as such incorporated in both the International Covenants i.e. the International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights. Even after incorporation of various provisions providing for 'gender equality', not many efforts were taken by the international agencies and State parties to improve the status of 'women folk'. Thus, another declaration was unanimously adopted by General Assembly on 7th November, 1967 which aimed at 'Elimination of Discrimination against Women'. The Declaration, on one hand, restates and consolidates a number of principles incorporated in various earlier instruction and sets forth, on the other hand, new principles which did not find mention in the earlier treaties and recommendations. The declaration contains principles! articles and the General Assembly requested tile members States, the specialized agencies and the Non-Governmental Organizations (NGOs) to give wide publicity to the principles contained in the declaration and to send report to the Secretary General regarding the action taken by them for the implementation of those principles.

In order to give a boost to the efforts taken by the United Nation for the 'upliftment of women', the General Assembly decided to observe 1975 as 'International Women's Year'. The governmental and private agencies all over the world were urged by this august body to examine the extent to which women have been "integrated in the 'total development' of their countries".

Rules/Provisions for 'Gender Equality' or Non-Discrimination against Women under Indian Law

Indian society has been regarded as a 'Conservative Society' in the terms of 'liberty' granted to women and a 'male — dominating' society in the terms 'status' granted to women'. Post-independence, India was criticized for the inhuman and degraded treatment given to its women. It was felt that the law should come to the aid of women. The Constitution of India was in making at the time when universal declaration for human rights came into force. The said declaration inclined the makers of the constitution to provide the people of India with such similar rights and as a consequence the fundamental rights were adopted in the Part III of the constitution. The first and the foremost right guaranteed to the citizens of India was the "right to equality".

Article 14 provides the general rule i.e. the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. The associated Article 15 provides that the State shall not discriminate against any citizen on grounds of religion, race, caste sex or place of birth. Article 16 further elaborates the equality provision in the matters of public employment i.e. No citizen shall, on grounds only or religion, race, caste, sex, descent place of birth or any of them, be ineligible for or discriminated against in respect of any employment or office under the State. Looking at the social-political milieu, clause (3) was introduced in Article 15 which provided for "special provision for women and children'." Thus, the Constitution of India allows discrimination in the favour of women and not against women.

In **Government of Andhra Pradesh v. P.B. Vijay Kumar (1995)**, the Supreme Court explained the object of inserting clause (3) to Article 15, "The insertion of clause (3) to Article 15 in relation to women is recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It is in

order to eliminate this socio-economic backwardness of women and to empower women that clause (3) is placed in Article 15. Its object is to strengthen and improve the Status of women". hence article 15(3) is an enabling provision.

Prostitution or buying and selling of women are another vice in which many women are caught. The young girls from poor families are mostly found trapped in it. Article 23(1) of the Constitution provides, "Trafficking in human beings is prohibited and any contravention of this provision shall be an offence punishable in accordance with law"². The government of India considering the constitutional commitment of elevating the status of woman and to do away with various social evils which were posing hindrance in the growth of Indian Society, made various laws dealing with particular issues affecting the women.

The Hindu Succession Act, 1956 allowed the woman to inherit property as an absolute owner³. Under the Hindu Adoption and Maintenance Act, 1956, a woman can make an adoption and it also permits the adoption of a girl child. The constantly occurring of incidents related to 'dowry-demands' and 'burning of brides' made the legislature to enact 'Anti-Dowry Act i.e. Dowry Prohibition Act, 1961. Section 2 of the act defines 'Dowry'.

Definition of "Dowry"- In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

- (a) by one party to a marriage to the other party to the marriage; or
- (b) by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person at or before or any time after the marriage in connection with the marriage of said parties but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.

With the passing the act taking or giving of dowry or abetting to give dowry or abetting to take dowry was made punishable' and Sec. 304-B of the Indian Penal Code provided for the punishment for dowry-deaths.

The Hindu Widow Re-marriage Act was passed early in 1856, In 1861. a Widow Marriage Association was formed, In 1929, the Child Marriage Restraint Act (Sharda Bill) was passed rising the age of marriage for a girl to fourteen and for a boy to eighteen. The Hindu Marriage Act of 1955 puts the minimum age of marriage for a bride at fifteen and for a bridegroom at eighteen. This was raised later and today stands at eighteen and twenty- one respectively. Also the acts like Sati Prevention Act' (which prohibited the practice of Sati' i.e. burning of the female in the funeral pyre of her husband), the Maternity Benefits Act, 1976 were also passed. Section 376 provides punishment for the offence of 'Rape'. Under Section 376B graver punishment is provided if the offence of rape is committed by Police servants. Section 114-A of the Indian Evidence Act provides for the presumption in the favour of the women as to the absence of consent in case of rape'.

The wide spread evil of female foeticide led to decline of the number of women in Indian population. Thus, to curb it, the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act in 1994 was passed Sexual harassment at work places has also been noticed and keeping this in regard, the Supreme Court in **Vishaka v State of Rajasthan (1997)**, observed that sexual harassment of working women in work places would be violation of the victims fundamental right under Article 19 (1)(g) and right to life under article 21. The Court took serious note of the matter and issued binding directions for the prevention of such incidents. The directions are applicable to both public and private sector.

In **Apparel Export Promotion Council v. A.R. Chopra** (1999), the Apex Court held that sexual harassment at work place results in violation of the fundamental right to 'gender equality' and the Right to life and liberty, the two most precious fundamental rights guaranteed by the Constitution.

The passing of the various legislations in the favour of the women and with the wide spread of education, a change has been certainly noticeable. However, the effect of such change is limited to big cities and towns. Today, the woman has occupied a significant place in the job front also. They are hired in every Field, whether it's a matter of teaching in a school, handling corporate matters, or contesting cases in the Courts, she has proved herself time and again. Today's woman is capable enough to take her own decisions and can share the financial burden by earning for the family. The financial independence has infused confidence in her. Every year March 8 is celebrated as Woman's Day'- On this date at various platforms. the issues related to women are discussed and voiced for. There has been a Bill introduced which proposes 33% of reservation for women in Parliament. The idea of making a legal provision for reserving seats for women in the Parliament and State Assemblies came into being during Rajeev Gandhi's tenure as the Prime Minister of India when the Panchayati Raj Act, 1992 (73rd and 74th Constitutional Amendment) came into effect granting not less than 33% reservation to women in the Panchayati Raj Institutions or local bodies. Prime Minister H.D. Deve Gowda made the actual promise for reservation of seats for women in Parliament and State Assemblies in 1996. I.K. Gujaral proposed the present form and shape of the Bill during his term as the Prime Minister of India. Securing 33% reservation for women is opening the doors of opportunity for political empowerment to almost 50% of our population. It will not only serve the cause of democracy as the

Panchayati Raj Institutions are doing at the grassroots level but will also go a long way in ensuring political equality through active participation of woman from both urban and rural areas. However, the Bill is still pending in the parliament.

The above foregoing paragraphs may suggest that woman's agony has come to an end. But this is not true. Majority of India is still rural in its thinking. The image of the educated-women is type eased as insensitive, self-centered and uncaring. The economically independent woman is considered as domineering and ruthless. An ideal woman is the one who is submissive and acts as a supportive supplement to man. The like-Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act in 1994 has ,been of little help in preventing female feticide. The results of the census in the year 2001 indicated alarming decline of the number of women in India's population. The reason behind the skewed sex ratio is obviously the misuse of diagnostic procedures and tests. With the help of diagnostic techniques, the sex of the child can be determined. Usually, when the determined sex is female then it is aborted. The Medical Termination of Pregnancy Act, 1971, provides for 'abortion' but in specific cases only provided under Sec 31 of the Act. Similarly, the Pre - Natal diagnostic techniques shall be conducted in the case falls under section 4 (2) of the Act. However, both the determination and abortion are done with collusion between the parties and in privacy so most of the cases go unnoticed.

Child Marriage is prevalent even today in the rural areas and among the urban illiterate and poor people. Even today in rural areas sanction against widow re-marriage is quite strong although the Act providing for widow re-marriage came quite early. A United Nations report has pointed out that India has the highest number of custodial rapes by

men in position of power. Dowry is still prevalent in the Society. The dowry deaths cases are on the increase with each passing year.

Hence, the new provisions added in the Indian Penal Code for the dowry death (Section 304-B) and domestic violence Committed against women by her husband and his relatives (Section 498-A) have not improved the situation in any significant manner.

Suggestions

No doubt a good number of laws have been made by the government but these laws are still confined to statutory books because the enforcement machinery is inadequate. A long gap exists between law and its enforcement. The mobilization of public opinion to create the supporting environment for effective implementation is still required. For this, special emphasis should be given on education designed to make women aware of their rights and to make society at large conscious of its duty to respect the rights of women and girl children. In the last, I would quote the statement of Swami Vivekananda who said,

**“Country and Nation which do not respect women have
never become great nor will ever be in future.”**

References :

- Hindu Adoption and Maintenance Act 1956.
- Article 1 of Universal Declaration of Human Rights.
- Article 3 of International Covenant on civil and political rights.
- Article 15 (3) of the Indian constitution.
- Medical Termination of pregnancy Act 1971.
- Indian Penal Code 1860

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