

Gender Justice in India: Challenges and Perspective

Saranya. S

Assistant Professor, Mugil College of Law, Padanthalumoodu, Kanyakumari District, Tamil Nadu

Abstract

Social, Political and Economic equality for women is integral to the achievement of all millennium development goals. Until women and girls are liberated from poverty and injustice, all our goals-peace, security, sustainable development –stand in jeopardy.¹ In modern era, we have proved that the women both in efficiency and intellect they are at par with men. During the ancient time the women were lost all their status with men. All though In India most of the legislations not effective as they were ahead of the public opinion and willingness of the people to change the society and give the women the status of equality. Now the advent of the modern era judiciary also had been taken important role to implement the equality among the genders.

Keywords: Sustainable Development, Legislation, Judiciary, Equality

1. Introduction

Women have been deemed to as the second best of God on earth and praised and respected in literature and religion of Indian Society as Devi and Shakti. Currently their actual position is pathetic, while they are coming out in four walls of home. They are treated as second class citizenry. The human rights of women and of girl child are the inalienable, integral and indivisible part of human rights. Unfortunately, there exists a gap between rights and their enjoyment in reality Human Rights issues which affect women play an important role in maintaining peace in the Society. The world community has recognized Human Rights of women as an integral and indivisible part of universal Human Rights. Human Rights of women gained considerable visibility in recent years.

2. Concept of Gender Justice and Equality

Gender justice is often used with reference to an emancipate projects that promote women's rights through legal changes and women's interests in social and economic policy. Any concrete definition of gender justice is based on a specific political ideology, a set of convictions about what is 'right' and 'good' in human relationships, and how these desirable outcomes may be

Attained “Gender justice is about more than simply questioning the relationship between men and women. It involves crafting strategies for corrective action toward transforming society as a whole to make it more just and equal and it means 'a place in which women and men can be treated as fully human'. Moreover, it implies moving away from arbitrary to well-reasoned, justifiable and balanced-that is, fair-social relations.”

¹ Former United Nation Secretary-General Ban-ki-moon-June2010

Gender justice is to redress for inequalities between women and men that result in women's subordination to men. Seeing gender justice as outcome and as process helps differentiate between what is to be achieved and how it is to be achieved. As an ongoing process, gender justice brings an additional essential element: accountability, which implies the responsibility and answerability of precisely those social institutions set up to bestow justice.

3. International Perspective and Challenges on Women rights

Human rights for women came into sharp focus with the adoption of the Convention on Elimination of All Forms of Discrimination Against Women by the General Assembly of the United Nations on 18th December 1979. This is treated as the Magna Carta of women's human rights. State parties are required by convention to eliminate discrimination in the exercise and enjoyment of all cultural, civil, political, economic and social rights².

The charter of the United Nations Organization affirms faith in equal rights of men and women. The Universal Declaration of Human Rights, 1948, professes the principle of non-discrimination and proclaims that all human beings are born free and equal in dignity and rights, without any distinctions including that of sex.

The UN General Assembly unanimously adopted a Declaration of Eliminations of Discrimination against Women in 1967, resolving to abolish sex-discriminatory laws and practices, to grant women equal rights with men in matters of Civil law including absolute interest in property and free choice and consent in marriage.

The Second World Conference on Human Rights held at Vienna in 1993, called for full and equal participation of women in all aspects of public life and various sessions were held by United Nations General Assembly to assess the progress made by state parties in the implementation of their commitment on gender equality.

The International system has seen great strides towards gender equality and protection against violence in society, community and in the family. In addition, key human rights mechanisms of the United Nations have affirmed State obligation to ensure effective protection of all persons from discrimination based on sexual orientation or gender identity. However, the international response to human rights violation based on sexual orientation and gender identity has been fragmented and inconsistent³. Many states and societies impose gender and sex orientation norms on individuals through custom, law and violence and seek to control how they experience personal relationship and how they identify themselves. The policing of sexuality remains a major force behind continuing gender-based violence and gender inequality.

4. National Perspective on Women rights under the Constitution Provisions

The status of women is a benchmark of social process and is a very important part of the human development index in the human rights jurisprudence. The Fundamental Law of the land namely Constitution of India guarantees equality for women. It would be proper to refer some of the most important legislations pertaining to empowerment of women. The Constitution of India not only guarantees equality to women but also empowers the State to adopt measures to positive discrimination in favour of women.

² Manoj Kumar Sinha- Handbook of Legal Instruments on International Human Rights and Refugees Laws (Edition 2014) LexisNexis p.533.

³ *Ibid*

The principle of Gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles Article 14 of the Constitution of India guarantees equality before law. Article 15 prohibits discrimination on the grounds of sex. Article 16 states about equality of opportunity for all citizens in matters relating to employment. The 73rd and 74th amendments to the Constitution of India provided for reservation of seats (at least 1/3) in the local bodies of Panchayats and Municipalities for women. Another Constitution Amendment (84th Constitution amendment) reserving 33 per cent in parliament and State Legislature is in the pipeline Article 15 prohibits discrimination against any citizen on the grounds of religion, race, caste, sex, etc., Article 15(c) of the Indian Constitution allows the State to make any special provision for women and children. Article 39 (a) mentions that the State will direct its policies towards securing all citizens, men and women, the right to means of livelihood, while Article 39(c) ensures equal pay for equal work. Article 42 direct the State to ensure just and human working conditions.

The Constitution imposes fundamental duty on every citizen through Article 15 (A) (e) to renounce practices derogatory to the dignity of women. Article 243-D of the Constitution contains that not less than 1/3rd of the total number of seats to be filled in direct election in every Panchayat shall be reserved for women. The 73rd and 74th Amendments to the Constitution, effected in 1992, provide for reservations of seats to women in elections in the Panchayats and Municipalities. Same provisions have been made in Article 234-T for reservation of seats to women in the direct elections to every Municipality. Thus, there is a reservation of 33% seats for women in local bodies.

5. Modern Development through the judicial proceeding

The Supreme Court of India is taking several steps to progress the gender justice and equality through its decisions.

In *Valsamma Paul*⁴, it has been ruled that human rights for women comprehends gender equality and it is also traceable to the Convention for Elimination of All Forms of Discrimination against Women. Human rights for women, including girl child are inalienable, integral and an indivisible part of universal human rights. The full development of personality, fundamental freedoms and equal participation by women in political, social, economic and cultural life are held to be concomitants for national development. All forms of discrimination on grounds of gender are violation of fundamental freedoms and human rights. Conferment of equal status on women apart from being a constitutional right has been recognized as a human right.

In *Bodhisattwa Gautam*⁵, the Court observed that women have the right to be respected and treated as equal citizens. Accentuating on the concept, it proceeded to state thus: -

“Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. Women, in them, have many personalities combined. They are mother, daughter, sister and wife and not playthings for centre spreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and, of course, independence to live the roles assigned to them by nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of men anywhere and in every part of the world.”

⁴ (1996) 3 SCC 545

⁵ (1996) 1 SCC 490

In *Kharak Singh*⁶, the Court has recognized that a person has complete rights of control over his body organs and his 'person' under Article 21. It can also said to be including the complete right of a woman over her reproductive organs.

In *Chandrima Das*⁷, - it was case of gang-rape of a Bangladeshi national by the employees of the Indian Railway in a room at Yatriniwas at Howrah Station. These employees managed the Yatriniwas, the Government contended that it could not be held liable under the law of torts as the offence was not committed during the course of official duty. However, the Court did not accept this argument and stated that the employees of Union of India, who are deputed to run the railways and to manage the establishment, including the Railway Stations and Yatriniwas are essential components of the government machinery which carries on the commercial activity. If any such employee commits an act of tort, the Union Government of which they are the employees can, subject to other legal requirement being satisfied be held vicariously liable in damages to the person wronged by those employees. The victim was awarded by the Court with a compensation of Rs.10 lakhs for being gang raped in Yatriniwas of Railways. Since the right is available to non-citizens also, the reach of the right is very wide.

In *Vishakha*⁸, the Court took a serious note of the increasing menace of sexual harassment at workplace and elsewhere. Considering the inadequacy of legislation on the point, the Court defined sexual harassment and laid down instruction for the employers and thereafter the Court observed that "Each incident of sexual harassment of woman at workplace results in violation of fundamental rights of "Gender Equality" and the "Right to Life and Liberty".

In *Nargesh Meerza*⁹ the Air India and Indian Airlines Regulations were challenged as violative of Article 14. Regulation 47 empowered the Managing Director, at a time beyond the age of retirement, upto the age of 45 years, if an air hostess was found medically fit. The Court struck down the Regulation providing for retirement of the air hostess on her first pregnancy, as unconstitutional, void and violative of Article 14. Court also said that it was not only manifestly unreasonable and arbitrary but contained the equality of unfairness and exhibited naked despotism and was, therefore, clearly violative of Article 14.

6. Personal laws relating to Gender Equality

In *ThotaManikayamma*¹⁰ case the court, while interpreting section 14 of Hindu Succession Act,1956 converting the women's limited ownership of property into full ownership has observed "Article 15 (3) relieves from the rigour of Article 15(1) and charges the State to make special provision to accord to women socio-economic quality...As a fact Article 15(3) as a forerunner to common code does animate to make law to accord socio-economic equality to every citizen of India irrespective of religion, race, caste or religion".

The mother cannot be natural guardian of her children during the lifetime of her husband¹¹. When the matter relating to mother as natural guardian was questioned, the court held that relegation of mother to inferior position to act as natural guardian is violation of Articles 14 and 15.

⁶ AIR 1963 SC 1295

⁷ (2000) 2 SCC 465

⁸ AIR 1997 SC 301

⁹ AIR 1981 SC 1829

¹⁰ (1999)4 SCC312

¹¹ Sec 6, Hindu Minority and Guardianship Act, 1956

The guardianship right of women has undergone sea change by this interpretation by the Court in *Gita Hariharan*¹² case. Despite the codification there are some discriminatory provisions.

In maintenance gender and communal biasness exists, a non-Hindu wife cannot claim maintenance from her Hindu husband whereas a Hindu wife enjoys right to live separately from her husband on his conversion without forsaking her right of maintenance. The conversion of spouse furnishes ground for divorce to non-covert spouse only, thus treats the change of religion as matrimonial offence.¹³ The children born to convert Hindu are disqualified from inheriting property of their Hindu relative.¹⁴ A significant judgment of Supreme Court in *Sarla Mudgal*¹⁵ case and *Lily Tomas*¹⁶ case concerning polygamy of Hindu and Christian men respectively after conversion to Islam raised the debate of discrimination and demand of UCC.

The Muslim personal law had incorporated more rigid and unfair usages. The Muslim law permits polygamy (four wives at a time) to Muslim male but wife do not have same option. Though Supreme court has taken progressive step in *Shah Bano*¹⁷ case entitling women for maintenance under criminal code beyond *Iddat* period but the government of India for doing so called justice with male community passed Muslim Women (Protection of Rights on Divorce) Act 1986 (MWA, 1986) to nullify the effects of *Shah Bano* case.

Moreover, recently our apex court has taken yet another progressive step in *Shayara Bano*¹⁸ case triple talq is unconstitutional. It is violating the constitutional provisions.

7. Conclusion

It is general idea that despite constitutional safeguards, statutory provisions and plethora of pronouncements to support the cause of equality of women, changes in social attitudes and institutions have not significantly occurred. But, there has to be total optimism to achieve the requisite goal. It is necessary to accelerate this process of change by deliberate and planned efforts so that the pernicious social evil of gender inequality is buried deep in its grave. Laws written in black and white are not enough to combat the evil. So we want a common law to preserve, protect and promote gender justice and equality in the modern era.

¹² AIR 1999 SC 1149

¹³ Sec 13 (1)(ii) Hindu Marriage Act 1955

¹⁴ Sec 26, Hindu succession Act 1956

¹⁵ *Sarla Mudgal v. Union of India* (1995) 3 SCC 635

¹⁶ *Lily Thomas v. Union of India* SCC 2000 vol. 2, page 224

¹⁷ *Mohd. Ahmed Khan v. Shah Bano Begum* AIR 1985 SC 945

¹⁸ *Shayara Bano v. Union of India and others* Writ Petition (C) No. 118 of 2016