



HUMAN RIGHTS OF WOMEN: GLOBAL EFFORTS AND APPLICATION IN INDIA

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The Human race has equal human rights. Every human has got a group of Human Rights. But vulnerable groups have certain extra and specific human rights. As far as the rights of women are concerned, the doctrine of gender justice is widely accepted globally. Gender has always shaped the legal and cultural landscapes of all countries. Women though numerically equal are a minority group in terms of power and influence. No country can progress if half of its population is behind – socially, economically and politically. If equality and freedom evade women, it is offensive to human dignity, rights and development also. In India feminine glory was at its zenith in the Vedic period, later it suffered a decline. After independence, Indian Constitution enshrined noble principles of equality, liberty and social justice.

The aim of this paper is to present the Indian reality regarding women rights. How far our laws are gender sensitized and compatible for practicing gender equality in India as required in International and national laws. To achieve this aim first of all this research is focused on concept of gender justice and the rights of women as a human being. Thereafter it provides a general idea of International instruments which protect women's rights globally or universally. Secondly it will provide a brief examination of legislative efforts for protection of women in India. Further it highlights discrimination, violence, atrocities and crime against women in India also. Moreover as India is being a signatory of globally accepted challenges it is necessary to examine its efficiency towards 'to respect, to protect and to fulfill gender equality through affirmative action taken by its legislative, executive and judiciary. At last but not the least, as due to scientific and technological development, society is moving gradually to modern changes, therefore it proposes some suggestions for protecting women against social discrimination, violence and atrocities prevailing in Indian society.



Conception

The concept of gender enables us to state that sex is one thing but gender is quite another. Everyone is born male and female. The criterion for being male and female can universally be judged by biological evidences but people are masculine or feminine cannot universally be judged in the same manner. Gender equality traverses every facet of the position of a woman in a society. At a basic level, gender equality postulates protection of women against all those practices which invade upon the dignity of being and the privacy of the person. All forms of discrimination on grounds of gender are, thus violative of fundamental freedom and human rights. Gender injustice and insensitiveness manifests itself in the form of discrimination, crime and violence against women.

Gender justice denotes 'equality of sexes', whereas human rights includes 'rights of man and women both' which they have because of being human. "*Gender inequities throughout the world are among the most pervasive, though deceptively subtle forms of inequality. Gender equality concerns each and every member of the society and forms the very basis of a just society. Human rights issues, which affect women in particular, play a vital role in maintaining the peace and prosperity of a just society.*"¹

Global Efforts and Women's Rights

There are several Covenants which have universally accepted Women's Rights as Human Rights. The United Nations Charter 1945, Universal Declaration of Human Rights 1948, International Covenants on Economic, Social and Cultural Rights, 1966; International Covenant on Civil and Political Rights, 1966; Convention on the Elimination of All Forms of Discrimination against Women, 1979² all recognizes these principles. '*Human rights*

¹ "Women Empowerment - the key to achieving the Millennium Development Goals" Keynote address by Hon'ble Justice A.S. Anand, Chairperson, NHRC at UN Information Centre on 7 March 2003

² hereinafter The UN Charter, UDHR, ICESCR, ICCPR, CEDAW respectively



*instruments and mechanism provide avenues for challenging the systematic abuse of women and governments can be made to take gender-based violations more seriously by being held accountable for the implementation of laws against them...*³ At the International level, prohibition against sex discrimination was first articulated in the **UN Charter** and later reiterated in the **UDHR**. Since then, virtually all human rights instruments have reinforced and extended protections against discrimination. The **ICCPR** guarantees equal protection of the law to both sexes. The **ICESCR** promises women *equality of status*.

Perhaps the most important conceptual advance in the international law of women's rights is the CEDAW, effective 1981, which provides that women be given rights equal to those of men on equal terms. Its Preamble maintains that "*the full and complete development of a country, the welfare of the world and the cause of peace require the maximum participation of women on equal terms with men in all fields.*"

The Preamble to *UN Charter* expresses the determination of the peoples of the United Nations "to reaffirm the faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of man and woman." **Article 1** provides one of the purposes of the UN that is to achieve international cooperation in solving international problems of an economic, social and cultural or humanitarian character and in promoting and encouraging respect of human rights and fundamental freedoms for all without discrimination as to race, sex, language and religion. **Article 8** declares that the "UN shall place no restrictions on the eligibility in its principal and subsidiary organs." **Article 13** states that it shall be the endeavour to promote international cooperation in the economic, social, cultural, educational and health fields and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion." In **Article 55** of the Charter, emphasis is laid upon "the promotion of universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion."

³ C. Bunch, *Transforming Human Rights from a Feminist Perspective*, 1995



In *UDHR* it is declared that both the parties to a marriage should give their full and free consent to the marriage. In this declaration a provision is also made for equal remuneration and for protection of maternity. In *ICESCR* it is provided that a female shall not be given any inferior work than her male counterpart. The *ICCPR* provides that a pregnant woman cannot be executed. It is also provided that both the parties to a marriage should have equal rights of divorce. It is prescribed in the Covenant that a woman has a right to participate in public activities without any discrimination. *The World Conference on Human Rights, 1993* was held in Vienna, to deliberate on the issue of elimination of discrimination on the ground of sex. *The Fourth World Conference on Women, 1995* held at Beijing brought us further forward by reaffirming gender equality as a fundamental pre-requisite for social justice. At an international level⁴, it is accepted that Women's Rights are Human Rights.

Legislative Efforts in India

The constitutional mandate was followed by the legislative intent being expressed in the form of various enactments which were passed to protect the rights and uphold the dignity of women. The Constitution of India also accepts the equality of male and female genders. This equality means that no one shall be discriminated against only on the ground of being a female. The Preamble refers to the promise of social justice. Not only that, but there is a directive in the *suprema lex* to enact legislation in favour of women and children also.

⁴ See also UN Millennium Declaration 2000, Declaration on the Elimination of violence against Women, 1993, Conventions on the Rights of Migrant Workers and member of their families GA Resolution 45/158, 18th Dec.1990 45th Session, Convention against Discrimination in Education, General Conference UNESCO, 14th Dec. 1960, Discrimination (Employment and Occupation) Convention General Conference of ILO, 42nd Session, 25th June, 1958, Convention on the Nationality of Married Women, GA Resolution 1040 (XII) 29th Jan.1957, Convention on the Political Rights of Women, GA Resolution 640 (VII) 20th Dec.1952, Equal Remuneration Convention General Conference of the ILO 34th Session 29th June 1951, Convention on the Suppression of the Trafficking Persons, GA Resolution 317, 2nd Dec. 1949, Declaration on the Protection of women and Children in Emergency Armed Conflict, The Slavery Convention 25th Sep. 1926



The right to gender equality is intrinsic to the right to life under Article 21 of the Constitution that comprehends the right to live with dignity. This also has a provision for affirmative action in favour of women. The pledge of equality between men and women was inherent in the provisions relating to fundamental rights that affirm equal opportunity for all its citizens. *Art 14 of the Constitution of India* has accepted the right to Equality and *Article 15* has clearly prescribed that no person shall be discriminated against by the State only on the ground of religion, caste race, place of birth and sex. Article 15(3) of the Constitution provides: ‘*Nothing in this Article shall prevent the State from making any special provision for women and children.*’⁵ Article 15(3) makes a special provision enabling the State to make affirmative discriminations in favour of women. Therefore all human rights are conferred by the *Constitution of India* on every person and are available to women also. Similarly, Article 16 provides for equality of opportunities in matter of public appointments for all citizens. Article 39(a) lies down that the State shall direct its policy towards securing all citizens, men and women, equally, the right to means of livelihood, while Article 39(c) ensures equal pay for equal work. Article 42 directs the State to make provision for ensuring just and humane conditions of work and maternity relief. Above all, the Constitution imposes a fundamental duty on every citizen through Article 51A (e) to renounce the practices derogatory to the dignity of women. Despite these Constitutional provisions, special laws enacted to promote gender justice; the status of women continues to be a cause of concern not only in our country but also in most countries of the world. The question, however, 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 a long way to go to achieve the goals enshrined in the Constitution.

In order to achieve the object of Article 14, Women are given certain concessions by the Constitutions. The Indian Parliament has enacted numerous women-specific legislations⁶ to

⁵ Justice Hegde in *Syed Ahmed v. N. P. Taj Begum*, AIR 1958 , Mys. 128

⁶ The Sexual Harassment Women at Workplace (PREVENTION, PROHIBITION and REDRESSAL) Act, 2013, The Juvenile Justice (Care and Protection of Children) Act,2015, The Criminal law Amendment Act, 2013, The Protection of Women from domestic Violence Act, 2005, The Prohibition of Child Marriage Act, 2006, National Commission for Women Act, 1990, [Indian Penal Code,1860](#), Code of Criminal Procedure,1973, The Hindu Marriage Act,1955, The Hindu Adoptions and Maintenance Act,1956, The Hindu Succession Act,1956 alongwith its amendment Act 2005, The Hindu Minority and Guardianship Act,1956, The Immoral Traffic (Prevention) Act,1956,The Indecent Representation of Women (Prohibition) Act,1956, Compulsory



protect women against social discrimination, violence and atrocities and also to prevent social evils like child marriages, dowry, rape, practice of Sati, etc. Notwithstanding the enactment of the laws relating to dowry, rape, violence against women, the factual position is rather distressing. What is true at the national level is also a cause of concern at the global level.

At the beginning of the 21st century, we are still unable to boast of a society where there is total gender equality or gender equity. Until recently, the question of gender equality or gender equity was merely a topic of theoretical discussion. Things are changing but rather slowly. Even at the national level, there are several areas of deep concern.

Consider the following statistics:

- Sharp decline in juvenile sex ratio
- Continuing high maternal mortality rate and infant mortality rate
- High gender gap in literacy at all levels
- High rate of dropouts of girl students
- Increasing incidence of crime against women

In spite of Constitutional provisions of equality, Women's Human rights are being violated everywhere in India. The birth of a female child is an unwelcome event in traditional Indian society. Since birth there is discrimination in the bringing up of a female child. Women's Rights in the fields of education, marriage, divorce and succession are being violated or limited in comparison to those of their male counterparts. As these enactments are largely based upon

Registration of Marriages, Eve Teasing (New Legislations), The Dowry Prohibition Act,1961, The Commission of Sati (Prevention) Act,1987, The Muslim Women(Protection of Rights on Marriage) Act, 20 , The Guardians and Wards Act,1890, The Pre-Natal Diagnostic Technique (Regulation and prevention of Misuse) Act,1994, The Medical Termination of Pregnancy Test,1971(34 of 1971), Maternity Benefit Act,1961, The Minimum Wages Act, The Bonded Labour System (Abolition) Act,1976,The Equal Remuneration Act, 1976, The Special Marriage Act,1954, The Muslim Personal Law (Shariat)Application Act,1937,The Family Courts Act,1984, The Foreign Marriage Act,1969(33 of 1969), The Contract Labour (Regulation and Abolition) Act,1979, etc.



religion and its traditions, it reflects unequal balance between males and females. Atrocities and discrimination are the means to keep women under control and to give them a lower social status. Atrocities against women were restricted in the achievement of equality, development and peace. In each class and culture there are discriminatory treatment accorded to women in families and in societies in general. Because of the atrocities women could not enjoy the rights and liberties. These rights and freedoms are meaningless in the absence of such enjoyment.

In India, Dowry Deaths are taking place in every 7 minutes. In rape cases also, females are the victims. Compulsory termination of pregnancy, birth of an unwanted child, female foeticide, domestic violence, torture and sexual harassment to female members of the family violate human rights. It is a common experience of the women employee to be harassed at their work places. Sexual harassment is a violation of Human Rights. Some areas in Orissa, girls between 15 to 17 years age are dedicated to temples as 'Devdasis' and they are sexually exploited. In Metropolitan cities like Delhi, Mumbai, Surat, Chennai, Nagpur, school and college going girls are molested. For this reason buses and trains specially meant for ladies have been introduced in some cities like Chennai and Ahmedabad.

Judicial Exercise

The Judiciary has adopted its role of judicial construction that regard must be had to international Conventions and norms for construing domestic law when there is no inconsistency between both and there is a space in the domestic law. It was held⁷ that there is no reason why international Conventions and norms cannot be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embodied the basic concept of Gender Equality in all shares of human activity.

⁷ Nelabati Bahera v. State of Orissa, 1993, 2 SCC 146



The Supreme Court⁸ has prescribed certain guidelines in cases of sexual harassment and held that they will be treated as law unless and until Parliament enacts a law to that effect. It was directed in this case that in every case of sexual harassment, the employer would be held liable for failing to protect its female employees. The Supreme Court⁹ found all facets of gender equality including prevention of sexual harassment in the fundamental rights guaranteed under our Constitution. The Court noted “these international instruments ‘CEDAW, ICESCR and Beijing Declaration 1995’ cast an obligation on the Indian state to gender sensitise its laws and the courts are under an obligation to see that the message of the International Conventions and norms for construing domestic laws are respected and obeyed more so when there is no inconsistency between them and there is a void domestic law.” The applicability of the UDHR and principles thereof may have to be read, if need be, into the domestic jurisprudence.

In another dynamic judgement¹⁰ the relief was provided to a Bangladeshi woman who was raped. The Court observed that the word life as used in UDHR must get the same meaning as in Article 21, interpreted as a life worth living, meaningful and dignified. In Geeta Hariharan Case¹¹ the Court held the gender equality as one of the basic principles and considered the equal right of mother to act as a natural guardian during the lifetime of a father.

The Supreme Court upheld that the provisions of the Maternity Benefit Act, 1961 are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, especially Article 42. "A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work; they must be provided all the facilities to which they are entitled."¹²

⁸ In *Vishakha v. State of Rajasthan AIR 1997 SC 301*

⁹ In *Apparel Export promotion Council v. A. K. Chopra AIR 1999 SC 625*

¹⁰ *Chairman Railway Board v. Chandrima Das, AIR 2000 SC 988; 2000 (2) SCC 465*

¹¹ *Geetha Hariharan v. Reserve Bank of India, AIR 1999, SC1149*

¹² *Municipal Corporation Of Delhi v. Female Workers (Muster Roll) AIR2000 SC1274*



"The apex court, in CEHAT¹³ case, issued Guidelines to prevent female foeticide. It was further directed that information should be published by way of advertisements as well as on electronic media. The National Monitoring and Inspection Committee constituted by the Central Government for conducting a periodic inspection shall continue to function till the Act is effectively implemented. In *Anuj Garg v. Hotel Association of India*¹⁴ it was held that Instead of prohibiting women employment in the bars altogether the State should focus on factoring in ways through which unequal consequences of sex differences can be eliminated. It is the States duty to ensure circumstances of safety which inspires confidence in women to discharge duties freely in accordance to their professional requirements. Furthermore the Apex court¹⁵ regarded the reproductive rights of woman "The pregnancy cannot be terminated without the consent of the victim. The reproductive choice of the victim needs to be respected and she should be given the choice to go ahead and bear the child."

The court not only provided safeguard to the live-in partner¹⁶ through the umbrella of Domestic Violence Act 2005. But also to the children of the prostitutes¹⁷ recognizing their right to equality of opportunity, dignity, care, protection, and rehabilitation so they can be part of the mainstream of social life without any pre-stigma attached to them. The Roxann Sharma case¹⁸ exclusively specified the right of the mother to have custody of a child below five years of age provided that the mother is not unfit for the same. Hindu Marriage and Guardianship Act, 1956 protects the father's right as a guardian over the property but not over the child who is below five years of age. It was also stated that no provision of any law/act disqualifies the mother with custody of the child after five years of age.

The Supreme Court¹⁹ again emphasis the dignity of a woman irrespective of religion.

¹³ Centre for Enquiry into Health and Allied Themes (CEHAT) v. Union of India (2003)8 SCC 412

¹⁴ *Anuj Garg v. Hotel Association of India* 2008 (3) SCC 1

¹⁵ Suchita Srivastava & Anr. v. Chandigarh Administration (2009) 9SCC1

¹⁶ . D. Velusamy v. D. Patchaiammal (2010) 10 SCC 469

¹⁷ Gaurav Jain v. Union of India & Ors. (1997) 8 SCC 1914AIR 1997 SC 3021

¹⁸ Roxann Sharma v. Arun Sharma, 2015 8 SCC 318

¹⁹ Shamima Farooqui v. Shahid Khan AIR 2015 SC 2025



"The divorced Muslim women are covered under Section 125 of CrPC and maintenance is an absolute right of a woman, unless it is disqualified. The court also ruled that the quantum of maintenance to be paid by the ex-husband should be such that it allows the divorced women and her children if any to live with dignity." Recently Supreme Court declared the practice of Triple Talaq as unconstitutional and safe guard the equality between sexes.²⁰ Triple Talaq is manifestly arbitrary in the sense that the marital tie can be broken capriciously and whimsically by a Muslim man without any attempt at reconciliation so as to save it, must, therefore, be held to be violative of the fundamental right contained under Article 14 of the Constitution of India.

Conclusion and Suggestions

What follows from this is that the different status women and men enjoy in society is indeed socially and culturally determined; It is manmade, nature has very little to do with it. It is gender not sex which has determined that (almost) everywhere women as a group are considered inferior to man. Every society prescribes different norms for girls and boys, women and man that determine almost every aspect of their lives and their futures. They enjoy fewer rights, control, fewer resources, work longer hours than men but their work is either undervalued or underpaid. They paid systematic violence at the hands of men and society, and they have little decision making power in social, economic and political institutions.

There is a need for targeted efforts to ensure the rights of women in difficult circumstances who include women in extreme poverty, destitute women, women affected by natural calamities, women in conflict situations, women in less developed regions, the disabled, widows, elderly women, single women, women heading households, those displaced from employment, migrants, victims of marital violence and prostitutes etc.

²⁰ Shayara Bano vs Union Of India (2017) 9 SCC 1



With a view to convert the equality of women from *dejure* to *defacto*, educating the female would play an important role. So long as there is disparity between the male and female in education level, the difference between the position of men and women would continue to exist.

For the emancipation for women in every field, economic independence is of paramount importance. Along with economic independence, equal emphasis must also to be laid on the total development of women, creating awareness among them about their rights and responsibilities—the recognition of their vital role and the work they do at home.

Females are generally treated as an inferior citizen in India. This subordination is harmful not only for women and girls but also for man and boys and the entire society. Because of this discrimination since a woman's birth, enactments and judicial pronouncements cannot bring about a change. There must be a social environment conducive to it. In planning gender sensitivity implies making plans which will not only ignore and further marginalize women, but will take care of women's special needs and make efforts to involve and empower women. Patriarchal biases must be highlighted and laws, regulations and guidelines prepared to weed out sexism and make them reflect women's contribution, needs and aspirations. Women studies centers must prepare women and man who can conduct gender sensitive research to analyze social, economic and political issues from the perspective of women. Laws and procedure must be scrutinized and made more gender sensitive.

If necessary, a social system must evolve. The society must respond and change its attitude. The attitude of society and the thinking of the people towards a woman must be progressive rather than traditional. All issues-economic, cultural, social and political- are women's issue because women represent half the human race. If she is continuously brought up in the same traditional manner, there are very few chances of improvement in the conditions of Women's Human Rights.