

Perspective : **Gender Rights in Law and Policy**

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Received for publication : 22 Dec 2019 Peer review : 12 Jan. 2020 Accepted for publication : 16 Jan. 2020

Keywords :

Gender Justice, Rights, Law and Policy

Abstract :

It is unfortunate to say that women have been ill-treated in every society for ages in India. Women are treated as an object of male sexual enjoyment and reproduction of children. As per the observation, the reason of discrimination of women in the society is because of their gender and also due to grinding poverty. In our country where women are worshipped as “Shakti” the atrocities are committed against her in all sections of life. She is being looked down as commodity or as a slave, she is not only robbed of her dignity and pride outside her house but, also faces ill treatment and other atrocities within four walls of her house. Generally, it is seen that women are deprived of economic resources and are dependent on men for their living. A woman has to do all household works, which are many times not recognized and remain unpaid. Women works are often confined to domestic sphere. Any discussion on justice for women would be incomplete without relating it to the constitution of India. The preamble declares that one of the most fundamental provisions of the constitution is to secure social, economic and political justice for all its citizens. In modern times many women are coming out to work where she is employed and secondly she also has to do all the house hold works, moreover, she is last to be considered and first to be fired. In the society females are under the clutches of numerous evil acts as discriminations, oppressions, violence, within the family, at the work places and in society.

Objectives of the study :

1) To study the constitutional provisions to prevent gender injustice, inequality, bias and discriminations.

2) To analyse and explore the impact of gender injustice, inequality, bias and discrimination towards the female gender and the outcome of the same in the form of social evils and crime against them.

3) To analyse the facts related to the issues and relevant provisions of Indian Constitution. UN Charter on Human rights addressing gender discrimination, injustice, inequality and bias.

4) To analyse the role of Judiciary in achieving gender justice and gender equality by implementing the provisions enshrined in the constitution of India for protecting the rights of the women.

Introduction :

Gender Justice is a human right, every women and girl is entitled to live in a fearfree atmosphere and also entitled to have a dignity and freedom. Gender justice is indispensable for development, poverty reduction and is crucial to achieving human progress. Realizing it includes sharing of responsibility and power between men and women at home, in the workplace and in the wider national and international communities.

It is observed that, during the ancient period, despite tremendous progress in the society as well as country, women were still not treated equally and were not afforded same opportunities. Women are still at the peripheries of economics, political, social and cultural rights. Gender Justice is necessary for the growth of economics, sustainable food security and in some cases political stability. We believe that strengthening women's agency and space is an essential precursor to achieving gender equality as well as political, social, economic, cultural and environmental security. Gender inequality is primarily an issue of unequal power relations between men and women. It violates human rights constrain, choice and agency. It is necessary that we work together and use our influence to create just

and equitable relationships between men and women in order to achieve fair and sustainable communities. Unnecessary demands upon men and boys can also place gender inequality. Where economic and political power is concentrated among elite, where there is conflict and displacement of whole communities, where there are uncertain climate changes and the depletion of natural resources, it is increasingly hard for men to live unto the traditional gendered expectation that most societies place on them. Gender Justice to refer to a world where everybody, women and men, boys and girls are valued equally, and are able to share equitably in the distribution of power, knowledge and resources. The concept recognizes that women and men have different needs and power and that these differences should be identified and addressed in a manner that rectifies the imbalances between the sexes. This may include equal treatment, or treatment that is different but considered equivalent in terms of rights, benefits, obligations and opportunities. Though often used interchangeably, equality and equity are two very distinct concepts. While international human rights treaties refer to equality, in other sector the term equity is often used. Gender equity term sometimes has been used in a way that perpetuates stereotypes about women's role in society, suggesting that women should be treated fairly in accordance with the roles that they carry out. Gender inequality is the most serious and pervasive form of discrimination in the world. While this affects everyone, it is women and girls who face the most discrimination as a result of gender inequality. This is a key driver of poverty and a fundamental denial of women's rights. It is observed that women and girls living in poverty have fewer resources, less power and fewer influences in decision making when compared to men. Women and girls are exposed to various forms of violence and exploitation and experience further inequality because of their age, race, class, marital status, sexual orientation and disability. Women around the world

nevertheless regularly suffer violations of their rights throughout their lives. Realizing women's rights has not always been a priority. For achieving equality between women and men requires a comprehensive understanding of the ways in which women experience discrimination and are denied equality so as to develop appropriate strategies to such discrimination. United Nations has a long history of women's rights activities and much progress has been made in securing women's rights across the world in recent decades. Many groups of women face additional forms of discrimination based on their age, ethnicity, nationality, religion, health status, marital status, education, disability and socio-economic status, among other grounds. These intersecting forms of discrimination must be taken into account when developing measures and responses to combat discrimination against women.

Analysing international law and international human rights law from a gender perspective is important because gender analysis helps us understand how men and women experience human rights violations differently as well as the influence of differences such as age, religion, culture and location. The right to equality between women and men in marriage and family life is also recognised in various human rights instalments, including the universal declaration of Human Rights, the International Covenant on Civil and political rights, the convention on the Nationality of married women, the convention on the elimination of all forms of discrimination against women, and the convention on consent to marriage, minimum age for marriage and registration of marriages. Though Indian constitution provides equality to all citizens irrespective of caste, creed, region and gender and also directs the state to take various, measures to remove different forms of domination and equality still the problem persist. It is common knowledge that despite constitutional safeguards, statutory provisions and very much of pronouncement to support the cause of equality of women changes in social attitudes and institutions have not significantly occurred. While enforcing the state's constitutional obligations, the court has been

fairly assertive about holding the Indian government to the international commitments it has made when ratifying numerous United Nation (UN) treaties. Including, the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICECR) and the convention on the Rights of the child (CRC).

In “Vishakha” case, it has been described by former Supreme Court Justice as “one of the most notable success of Judicial action in redressing violence against Women” and recognised by the CEDAW committee as a landmark Judgement in Indians tradition of public interest litigation. “The Vishaka Judgement protocol Gender Justice by directly applying the provisions of constitutional and international law to enact enforceable guidelines against sexual harassment in the workplace of a time when the public was mobilized to embrace a judicial solution to a significant void in domestic legislation. According to National Crimes Record Bureau registered rape cases in India have increased by 900 percent in past forty years. Crimes against women are broadly classified into categories under the Indian Penal Code as under:

1. Rape
2. Kidnapping and abduction for specified purposes.
3. For dowry, dowry deaths or their attempts.
4. Torture both mental and physical
5. Torture assault on women with intent to outrage her modesty.
6. Insult to the modesty of women
7. Importation of girl from foreign country.

Also the crimes under the special and local laws are:

1. Immoral traffic (Prevention) Act,
2. Dowry Prohibition Act
3. Indecent Representation of women (Prohibition) Act.

4. Commission of sati prevention Act.

The potential for promoting women's equality and gender justice is buttressed by the rich legal sources including & powerful constitution and major international treaties that obligate the Indian Government to respect and protect women's right.

The Constitution of India, which came into effect in 1950 and has since been “the conscience of the Nation and the cornerstone of the legal and judicial system” contains twenty two parts. The most relevant sections for purposes of rights based approach to gender Justice are part III fundamental rights, defining the basic human rights of all citizens that are enforceable in court, and part IV directive principle of state policy, listing non justiciable guidelines for the government to apply when framing law and policies.

The constitution of India not only grants equality to women but also empowers the state to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socioeconomic education and political disadvantages faced by them. Within the framework of a democratic policy, our laws, development policies, plans and programs have aimed at women's advancement in different spheres. Fundamental rights, among others, ensure equality before the law and equal protection of law prohibits discrimination against any citizen on grounds of religion, race, caste, place of birth and guarantees equality of opportunity to all citizens in matters relating to employment. Article 14, 15, 15(3), 16(3), 39(a), 39(b), 39(c) and 42 of the constitution are of specific importance in this regards.

Conclusion :

There is no sustainable development without gender equality from a development perspective. The world may miss accomplishable targets because of gender in equality. Gender equality is fundamental right which contributes to a healthy society filled with respectful relationship between one another. Furthering the above discussions into workable proposition is necessary. Legal philosophy needs to address the issues that are raised in the discussions.

Law should first start with removing the constraints imposed on men and women by the society. It is necessary to tackle individual cases of injustices, instead of laying down homogenised rules for men and women. As depicted earlier, law reforms directed towards bringing women at par with men has not yielded much success. Individual should be at the core of law reforms. Laws should enable the creation of social institutions and social conditions conducive for everyone to make autonomous choices. Raising the number of women members in parliament will help in reducing paternalistic laws and ensure autonomy to women in deciding for themselves. This will ensure women friendly laws.

Social engineering is required for the removal of social conditioning. Conscious measures need to be adopted to break-free of social-conditioning. Having gender neutral laws, promoting gender-neutral values and gender neutral institutions will go a long way in getting rid of gendered roles for men and women alike. During the past few decades the concept of human rights has assumed importance. Globally gender justice, simply put refers to equality between the sexes. Gender justice is a correlation of social, economic, political, environmental, cultural and education factors. These preconditions need to be satisfied for achieving gender justice. Globally, gender justice as a cause has gained in strength over the years, as it has been realized that no state

can truly progress if half of its population is held back. The National Human Rights Commission is working for the protection of human rights of women especially in the matters of domestic violence, rape, custodial deaths, cruelty, sexual harassment and other forms of disgrace and undignified way in male dominated society. There are various legislations that have been passed in India with a view to curb the imbalance in gender hierarchy and aid in women's empowerment. Without the right to equality, the purpose of gender justice cannot be achieved. In the context of gender justice and equality, the Judiciary has attempted to venture into the critical role of a social reformer by upholding the rights of women and especially of the victims of subordination, suppression, and subjugation, judiciary has played this role both as a court of Judicial restraint and as a progressive, dynamic, creative and proactive institution for social, economic and cultural transformation. The contribution made by the Judiciary to the improvement of status of women, protection of and access to fundamental rights of women and provision of conditions of dignity of life can be discerned from a number of decisions delivered while interpreting laws and constitution. It's also true to say that, the sensitization of society towards rights of women is needed, unless society especially the male members are sensitized the hectic planning, welfare measures, Judicial decisions and directions will go in vain.

