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LAW AND JUSTICE IN A GLOBALIZING WORLD

TOPIC:

**GENDER JUSTICE AMONG LABOURER FROM
LEGISLATIVE AND JUDICIAL APPROACH**

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Gender Justice and Indian Labour: A Critical Analysis

Abstract

Gender Justice in the spirit of social 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.”

Under the Industrial laws the women have been bestowed the special position in the view of their unique characteristics, physically, mentally and biologically. Some of the Acts related to employment were enacted during British period as well as after independence. These Acts not only regulated the hours of work but also contained provisions of health, safety and welfare of women workers and guarantee equality before law and equal treatment to women workers.

Most of these laws have been inspired by the conventions and recommendations adopted by the international labour organization.

“Man for the field and women for the hearth,

Man for word and for needle she,

Man with the head and women with the heart,

Man to command and women to obey,

All else confusion”¹

Women constitute half the population of the society and it is presumed that best creation belong to the women. But it is a harsh reality that women have been ill-treated in every society for ages and India is no exception. From tribal to agricultural to industrial societies to organised states, the division of labour has primarily stemmed

¹ Alfred Lord Tennyson

from physiological differences between the sexes, leading to the power resting with the men, resulting in the established gender hierarchies. We have been gifted with a history of discrimination, subjugation and suppression.

In India, it is believed that women enjoyed an equal status as men in the Vedic Period. The Upanishads and the Vedas have cited women sages and seers. But the condition declined considerably afterwards. Historical practices such as Sati and child marriage are a few traditions reflective of the gender imbalance in Indian Society. Though these practices are largely defunct now, due to legal reform, the

essence of the dysfunctional gender equity still is rampant and manifested today through domestic violence, trafficking, dowry deaths, female infanticide, female foeticide, sexual objectification, violence and sexual harassment at work place.

Women are deprived of economic resources and are dependent on men for their living. Women works are often confined to domestic sphere, she had to do all house hold works, which are not recognized and unpaid. In modern times many women are coming out to work but have to shoulder the double responsibility. Moreover, she is last to be considered and first to be fired as she is considered to be less productive than her counterpart. Her general status in the family and in the society has been low and unrecognized.

Technological progress in agriculture and the shift from subsistence to a market economy have had a dramatic negative impact on women, cutting them out of employment as many women are unskilled and lack education. Child labour among girls and unequal wages for women for similar work are common. Working women of all segments of society face various forms of discrimination.

From the cradle to grave, females are under the clutches of numerous evils such as discriminations, oppressions, violence, within the family, at the work places and in the society. In order to ameliorate the condition of women in India, Legislature enacted the large volume of enactments and many of these legislations were enacted in colonial period like: Abolition of Sati Act, 1829; Widow Remarriage Act, 1856; Child `Marriage Restraint Act, 1929; Dowry Prohibition Act, 1961; etc.

Apart from these laws there are some enactments pertaining to industry or work which contain special provisions for women such as: The Workmen Compensation Act, 1923; Payment of Wages Act, 1936; Factories Act, 1948; Maternity Benefit Act, 1961; Minimum Wages Act, 1948; Employees State Insurance Act 1948 and Pensions Act, 1987; etc.

Gender injustice is a problem that is seen all over the world. But unless there are certain attitudinal changes, women will continue to get a raw deal.

Meaning of Gender Justice

It is said that "justice" is primarily a problem of discovering the right course of action. Since ancient times, political thinkers have been trying to formulate the concept of justice. With the rise

and growth of modern world and modern consciousness, especially under the effective influence of the principles of democracy and socialism, this very concept has been thoroughly transformed.

“Gender justice” is often used with reference to emancipator projects that advance women’s rights through legal change, or promote women’s interests in social and economic policy. However, the term is rarely given a precise definition and is often used interchangeably with notions of gender equality, gender equity, women’s empowerment, and women’s rights. Gender justice in the spirit of social 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”.

Gender Justice and Constitution

The framers of the constitution bestowed sufficient thought on the position of women in Indian social order, which is quite evident from the provisions of the constitution. The Constitution of India which is regarded as the supreme law of the land, gives special protection to women’s such as Article 15 guarantees the right against discrimination. The prejudice and bias against women is rampant an issue to be countered by the right to equality, hence the right against discrimination. Article 15(3) talks about the special protection for women. Article 16 provides the right to equal opportunity in terms of public employment irrespective of the sex of the person. This provision aids women to start participating in elections and the decision making process. In this regard it is important to mention the 74th amendment, made for the reservation for women in Panchayats. Article 19 guarantees freedom of speech and expression, to assemble peaceably and without arms, to form associations and unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India; to practise any profession, or to carry on any occupation, trade or business. This fosters the right to equality, by providing the necessary freedoms needed to live in society. Without the right to equality, the purpose of gender justice cannot be achieved. Article 39 talks about the certain principles of policy that need to be followed by the state which are securing adequate means of livelihood equally for men and women, equal pay for equal work among men and women, and the health and strength of workers, men and women are not abused. Article 42 requires the state to make provision for securing humane conditions of work and maternity relief.

In **C.B. Muthamma v. Union of India**² the validity of the Indian Foreign Service (Conduct a discipline) Rules of 1961 was challenged which provided that a female employee to obtain a written permission of the Government in writing before her marriage is solemnized and at any time after a marriage a women member of the service may be required to resign from service. The Supreme Court held that such provision is discriminatory against women and hence unconstitutional.

² [1979 AIR 1868:1979 SCC (4) 260]

In **Vishakha and others v. State of Rajasthan**³, the Supreme Court held that sexual harassment of working women at her place of an employment amounts to violation of rights of gender equality and right to life and liberty which is clear violation of Article 14, 15 and 21 of the Indian Constitution. The Court further observed that the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse.

Gender Justice and Labour Law

Under the Industrial laws the women have been bestowed the special position in the view of their unique characteristics, physically, mentally and biologically. Some of the Acts related to employment were enacted during British period as well as after independence. These Acts not only regulated the hours of work but also contained provisions of health, safety and welfare of women workers and guarantees equality before law and equal treatment to women workers. Most of these laws have been inspired by the Conventions and recommendations adopted by the International labour Organization. The main objectives for passing these laws are to enable the women to increase their efficiency, to increase their participation in useful services, to ensure their infant welfare and to provide equal pay for equal work. The important labour legislations covering the women are:

The Factories Act, 1948

The Factories Act is a part of labour welfare legislations wherein measures have been laid down to be adopted for the health, safety, welfare, working hours, leave and employment of young persons and women. Exclusive provisions for women have also been incorporated in the Act keeping in view their soft and tender personalities.

Provisions for welfare of women:

- Prohibition of employment of women during night hours
- Prohibition of work in hazardous occupations.
- Prohibition of employment of women in pressing cotton where a cotton opener is at work
- Fixation of daily hours of work at nine.
- Fixation of maximum permissible load.
- Provision for creche

In every factory where more than 30 women workers are ordinarily employed, there shall be a suitable room for the use of children under the age of six years of such women.

- Provision for washing and bathing facilities- The Act provides for separate and adequately screened washing and bathing facilities for women.

³ [1997 (6) SCC 241]

- Provisions for toilets- The factories Act must make it obligatory for any factory owner to maintain an adequate number of latrine and urinals separate for women.
- Provisions for rest rooms and canteens.
- Provisions for mandatory benefits.

All the above provisions are simultaneously provided under The Plantations labour Act 1951, The Mines Act 1952, The Beedi and Cigar workers (conditions of Employment) Act 1966, The Contract Labour (Regulation and Abolition) Act 1970 and The Interstate Migrant Workmen (Regulation of Employment and condition of services) Act 1979.

The Employees' State Insurance Act, 1948

The Employees' State Insurance Act, one of the most important social legislation in India, it has been enacted to provide for various benefits in different contingencies. Under this Act, insured women workers get sickness benefit, disablement benefit, medical benefit and funeral expenses along with insured men workers. However, in addition to these benefits, insured women workers also get maternity benefit in case of certain contingencies arising out of pregnancy, confinement, miscarriage, sickness arising out of pregnancy, premature birth of child or miscarriage and death. The duration of maternity benefit available to insured women in case of confinement is 12 weeks, of which not more than 6 weeks shall precede the expected date of confinement. The maternity benefit is paid subject to the condition that the insured women do not work for remuneration on the days in respect of which the benefit is paid, In the event of the death of an insured woman, the maternity benefit is payable to her nominee or legal representative for the whole period if the child survives, and if the child also dies, until the death of the child.

The Employees' State Insurance Act, 1948 provides a scheme under which the employer and the employee must contribute a certain percentage of the monthly wage to the Insurance Corporation that runs dispensaries and hospitals in working class localities. It facilitates both outpatient and inpatient care and freely dispenses medicines and covers hospitalization needs and costs. Leave certificates for health reasons are forwarded to the employer who is obliged to honour them. Employment injury, including occupational disease is compensated according to a schedule of rates proportionate to the extent of injury and loss of earning capacity. Payment, unlike in the Workmen's Compensation Act, is monthly. Despite the existence of tripartite bodies to supervise the running of the scheme, the entire project has fallen into disrepute due to corruption and inefficiency. Workers in need of genuine medical attention rarely approach this facility though they use it quite liberally to obtain medical leave. There are interesting cases where workers have gone to court seeking exemption from the scheme in order to avail of better facilities available through collective bargaining.

The Maternity Benefit Act, 1961

Economic dependence of women is what gives rise to their subordination in society today. Hence to remove such subordination and lay the foundation of equality women too must be made

economically independent and must take an active role in all sectors of business today. Problem faced by women in the economic sphere of life are mostly relating to unequal wages and discrimination resulting from their biological role in nature of childbearing. To curb such problems and protect the economic rights of women the legislature introduced the Equal Remuneration Act, 1976 and Maternity Benefit Act, 1961.

A maternity benefit is one that every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit, which is the amount payable to her at the rate of average daily wages for the period of her actual absence. The Maternity Benefit Act aims to regulate of employment of women in certain establishment for certain periods before and after childbirth and provides for maternity and certain benefits.

Women can claim benefits under the act everywhere except in factories and the other establishment where the Employee's State Insurance Act is applicable. Women who are employed, whether directly or through a contractor, have actually worked in the establishment for a period of at least 80 days during the 12 months are eligible to claim the benefits under this act. Cash benefits to women who are absent from work during the maternity leave, are not be less than two-thirds of her previous earnings.

Discharge or dismissal during maternity leave is considered to be void. When pregnant women absent herself from work in accordance with the provision of this act, it shall be unlawful for her employer to discharge or dismiss her during, or on account of, such absence, or give notice of discharge or dismissal in such a day that notice will expire during such absence or vary to her disadvantage any of the conditions of her services. Dismissal or discharge of a pregnant woman shall not disentitle her to the maternity benefit or medical bonus allowable under the act except if it was on some other ground.

Failure to pay maternity benefits or discharge or unemployment of woman due to maternity will result in imprisonment of the employer for not less than three months which may extend to one year and a fine of rupees two hundred which may extend to five thousand.

In the **B. Shah v. P.O.**⁴ case it was held that 100% wages were to be provided for all days of leave as well as benefits such as Sundays and rest days as wages were being for actual number of working days missed.

In **Air India v. Nargesh Mirza**⁵, the Supreme Court struck down the provision of rules which stipulated termination of service of an air hostess on her first pregnancy as it arbitrary and abhorrent to the notions of a civilized society.

The ongoing argument in some circles is that the wage differential between women and men is caused by the need to compensate the higher labour costs employers incur by hiring women, in accordance with special laws to protect maternity. Employers prefer to hire a male instead of female, without the burden of these additional monetary costs. This is however not enough as many employers do not hire married women or dismiss them before pregnancy. The act provides some

⁴ [AIR 1978 SC 12; 1977(4) SCC 334]

⁵ [AIR 1981 SC 1829; 1981 (4) SCC 335]

protection to women economically especially today in an age where single mothers are becoming more prevalent it gives them stability in their lives to have their wages and the security of returning to a steady job. My personal views are that this act is not enough to guarantee women equality and economic security but it is definitely a starting step and though there are several bridges to cross.

The Equal Remuneration Act, 1976

Equal pay for equal work for women and men is a vital subject of great concern to society in general and employees in particular. There was a common belief that women are physically weak and should be paid less than their male counter parts for the same piece of work. Women all over the world, had till recently been very much in articulate and were prepared to accept lower wages even when they were employed on the same jobs as men. Even in the economically and socially advanced countries where remarkable progress has been made, discrimination still exists. In India, in the initial stages when legislation for the protection of workers was hardly thought of, factory owners taking advantage of the backwardness and poverty, recruited women on a large scale at lower wages and made them work under inhuman condition. International Labour Organization has evolved several conventions to provide protection to employed women. A number of ILO conventions have been ratified by India and some of these though not ratified have been accepted in principle. The principle of ILO has been incorporated in the constitution of India in the form of Article 39, which directs the states to secure equal pay for equal work for both men and women. To give effect to this constitutional provision the parliament enacted the Equal Remuneration Act, 1975.

In addition to the Maternity Benefit Act, almost all the major central labour laws are applicable to women workers. The Equal Remuneration Act was passed in 1976, providing for the payment of equal remuneration to men and women workers for same or similar nature of work. Under this law, no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by the law. The situation regarding enforcement of the provisions of this law is regularly monitored by the Central Ministry of Labour and the Central Advisory Committee.

Judiciary has played an active role in enforcing and strengthening the constitutional goal of “equal pay for equal work”. In respect of occupational hazards concerning the safety of women at workplaces, in 1997 the Supreme Court of India in the case of **Vishakha v. State of Rajasthan**⁶ held that sexual harassment of working women amounts to violation of rights of gender equality. As a logical consequence it also amounts to violation of the right to practice any profession, occupation, and trade. The judgment also laid down the definition of sexual harassment, the preventive steps, the complaint mechanism, and the need for creating awareness of the rights of women workers. Implementation of these guidelines has already begun by employers by amending the rules under the Industrial Employment (Standing Orders) Act, 1946.

There are various reasons why the employment of women has not been up to the mark, in a developing country like India. Due to labour surplus the unemployment and underemployment

⁶ [1997 (6) SCC 241]

problems many men are available, hence the problem of participation of women, in economic activity become serious. The economic reason involving additional cost is an impediment to women employment. There is statutory obligation on the employer to pay maternity benefit and it is considered as burden by the employer and affects the employment of women. Some employers recruit only married women on condition to resign their post on getting married. This has been discriminatory, unfair and unjust. Prohibition of night work of women also affects the employment of women.

The Workmen Compensation Act, 1923

In any industrial society the problem of labour management relations becomes so important that some sort of social insurance becomes necessary to provide adequate protection from losses caused to the labourers by accidents. With a view to improve the condition of the workmen some social insurance legislations have been enacted. The Workmen's Compensation Act 1923 is one of the earliest pieces of labour legislation, adopted to benefit the labourers. It covers all cases of accident 'arising out of and in the course of employment' and the rate of compensation to be paid in a lump sum, is determined by a schedule proportionate to the extent of injury and the loss of earning capacity. The younger the worker and the higher the wage, the greater is the compensation subject to a limit. The amount of compensation payable depends in case of death on the average monthly wages of the deceased workman and in case of an injured workman both on the average monthly wages and the nature of disablement. The Act intended to ensure the rehabilitation of the workman himself or of his dependent. The dependent can claim compensation in both cases i.e. death or injury. This law applies to the unorganised sectors and to those in the organised sectors who are not covered by the Employees State Insurance Act, 1948 which is conceptually considered to be superior to the Workmen's Compensation Act.

The Minimum Wages Act, 1948

The minimum wages Act was passed for the welfare of labours. This Act has been enacted to secure the welfare of the workers in a competitive market by providing for a minimum limit of wages in certain employments. The Act provides for fixation by the central government of minimum wages for employments detailed in the schedule of the Act and carried on by or under the authority of the central government, by railway administrative or in relation to a mine, oilfield or major port, or any corporation established by a central Act, and by the state government for other employments covered by the schedule of the Act. The object of this Act is to prevent exploitation of the workers and for this purpose it aims at fixation of minimum wages which employer must pay.

The Act contemplates that minimum wages rates must ensure not only the mere physical need of the worker which would keep him just above starvation but must ensure for him not only his subsistence and that of his family but also preserve his efficiency as a worker. It would therefore, provide not merely for the bare subsistence of his life but the preservation of the workers and so must provide for some measure of education, medical requirements and amenities.

National Rural Employment Guarantee Act, 2005

Recently, the Government of India enacted National Rural Employment Guarantee Act whereby anyone who is willing to provide manual unskilled labour will be offered wage employment for 100 days. This Act provides the enhancement of the livelihood security of the households in rural areas of the country by providing at least one hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work.

Priority is given to women in the allocation of work. Gender equality is one of the core elements of this poverty reduction plan which stipulates that at least one third of the labour force should be women with equal wages for both men and women. Various gender related objectives such as provision of hygienic work environments, safe drinking water, and childcare facilities at the work-site, distance of work-place not exceeding two miles from home, health care and nutrition are emphasized.

Women engaged in agricultural farming have to spend long hours under the hot sun but are invariably paid less than their male counterparts. Women's participation in the labour force with no wage discrimination and direct control of resources and assets can substantially enhance her health, child welfare and socioeconomic status. This employment policy if properly implemented can certainly bring momentous changes in the lives of women.

The employment scheme undoubtedly has a positive impact on gender equity and power equation within the household. An alternative model of development must focus on the enhancement of living standards of rural India where majority of the population resides.

Empirical Evidence Related to Female Work Participation

According to 2001 census, the total number of women in the country is 494.82 million out of the total population of 1, 025, 25 million. This means that women accounted for 48.26% of the total population. Out of the total women in the country, the work participation rate was only 25.67% while the work participation rate of men was 51.93% in the year 2001⁷. However there is rise in the percentage of women workers through the years.

According to another survey, in the year 2004, the total employed force in the public and private sector was 49.34 lakh. Women working in organized sector constitute only 10 percent whereas 90 percent are in unorganized sector.

In 2003, the number of women in central govt. employment was 7.51 percent. The percentage of educated women seeking employment has shown an upward trend from 68.7 percent of Indian population. Census of India, 2001 defined work as an economically gainful activity, and as a result of this, ninety percent of women are recorded as non-worker in the census report of Indian states.

⁷ 2001 Census

Eighty percent women population in rural areas is physically active but being poor and illiterate they face enormous problems in labour market.

Gender Justice and Employment

Sexual division of labour is highly prevalent in the society. But, there is nothing “natural” about the sexual division of labour. The fact that men and women perform different kinds of work both within the family and outside has little to do with biology. Only the actual process of pregnancy is biological, all the other work within the home that women must do-cooking, cleaning, looking after children and so on, can equally be done by men. Unfortunately this work is considered to be “women’s work”. This sexual division of labour is not limited to the home; it extends even to the “public” arena of paid work. Certain kinds of work are considered to be “women’s work”, and other kinds, men’s, but more important is the fact that whatever work that women do, gets lower wages and is less valued. For example, nursing and teaching, particularly at lower levels, are predominantly female professions and are also comparatively ill-paid in relation to other white collar jobs which the middle classes taken up.

Employment of women in the unorganized sector has still not ensured them support services like child care, health care, equal remuneration and most of all promotional avenues. Women predominate the lower hierarchies of employment and rarely move up to managerial and decision making positions. These are areas of concern.

Even for women employed in the organized sector, child care service is very conspicuous by its absence. Very scanty service is available in some urban areas. The reproductive role of women and the frequency of child bearing push them out of the labour market in a substantial part of their productive period. This hampers their economic contribution very significantly. The increasing awareness of family planning will be a measure of empowerment for women, releasing them for activities of their choice for a longer period of their lives.

In India, women comprise about one third of the working force. The number of women workers employed in the unorganized sector is higher in rural areas than in urban areas, majority of them in the agriculture sector. In urban areas women are engaged in a variety of occupations such as vegetables sellers, flowers sellers, ironing, construction workers, domestic maids etc. Since most of the activities in the unorganized sector generally require less skill and education, and are of a traditional nature, a significant proportion of women workers in India are in this sector. In urban areas, over 80 per cent are working in the unorganized informal economy where earnings are extremely low, hours of work long, no paid leave, no medical insurance or pension or any other social security benefits.

Working in the informal economy often becomes hazardous for undernourished women workers. Working as home based workers in household industries, domestic workers, petty trades, services, construction sector, etc. women contribute significantly to the national economic growth as also to family welfare. Yet, their contribution is not adequately recognized; neither their gender specific problems adequately addressed. They remain largely unorganized, unheard, underpaid and under-represented.

Although today every panchayat has a significant number of women, yet it is true that many of them are timid, mere alibis for their husbands or brothers, the fact that their presence is required in a panchayat and they possess the power to decide on village concerns, have enabled the more articulate women actually to participate in the democratic process. It is possible that women's sense of themselves, their roles and functions may undergo a gradual transformation in the near future. The complexity, challenges, violence and extra requirements had convinced the women that they can never come up under the existing process of nominations and they needed some compulsion like quota and reservation.

Case laws

· In **Mrs. Neera Mathur vs. Life Insurance Corporation of India**⁸. Neera Mathur was a probationer in the Life Insurance Corporation (LIC). During probation she applied and was granted maternity leave. She was simply discharged from service after she returned. Her discharge was defended by the LIC on the ground that she had given false declaration at the stage of entering the service. The court held that 'the particulars to be furnished under columns (iii) to (viii) in the declaration are indeed embarrassing if not humiliating.' These columns were held unreasonable and discharge was set aside.

· In **Punjab National Bank by Chairman and another v. Astamija Dash**⁹, it was held that as per provision of the maternity benefit Act, 1961 a woman can avail leave during the period of six weeks from the day immediately following the day of her delivery, miscarriage or medical termination of pregnancy. If request is made by herself she would not be asked to work for the period specified as per section 4(4). She would be entitled to the benefits of section 6 and 9 of the Act.

· In **Ashok Kumar v. State of Rajasthan**¹⁰, the Supreme Court criticised the Session Court for ignoring the evidence, merely because it was given by a lady doctor in a case where victim was woman. The court said; 'we consider it necessary to record that the judge was uncharitable in discarding the testimony of Dr. Patrisia and doubting her truthfulness principally because she was a women.'

· In **Air India V Nargesh Mirza**¹¹, the first Air Hostess case, apart from other questions, the legality of regulation 46(c) was challenged. This regulation provided superannuation of an Air Hostess at the age of 35 years or on marriage if it takes place within four years of service or on first pregnancy, whichever is earlier. The court declared the provision for retirement on first pregnancy to be unreasonable and said, 'Whether the woman after bearing children would continue in service or would find it difficult to look after the children is her personal matter and a problem which affects the Air Hostess concerned and the Corporation has nothing to do with the same.'

⁸ [1992 AIR 392; 1992 SCC (1) 286]

⁹ [2008 III LLJ 58 (SC)]

¹⁰ [AIR 1990 SC 2134]

¹¹ [AIR 1981 SC 1829; 1981 (4) SCC 335]

· In **State of Rajasthan v. Ram Prasad and Another**¹², the workman died due to natural lightning while working at the site. It was held by the Supreme Court that in order that a workman may succeed in his claim for compensation it is no doubt true that the accident must have casual connection with the employment and arise out of it but if the workman is injured as a result of natural force of lightning though it in itself has no connection with employment of deceased Smt. Gita, the employer can still be held liable if the claimant shows that the employment exposed the deceased to such injury. In the present case the deceased was working on the site and would not have been exposed to such hazard of lightning had she not been working so. Therefore the appellant was held liable to pay compensation.

· In **M/s Mackinnon Mackenzie and Co. Ltd. vs. Audrey D'costa and other**¹³. The Supreme Court applied the Equal Remuneration Act to grant same salary to the lady stenographers. The plea of the employer that only women are appointed as confidential stenographers and are in different class was negated. The court held, 'If only women are working as Confidential Stenographers it is because the management wants them there. Women are neither specially qualified to be Confidential Stenographer nor disqualified on account of sex to do the work assigned to the male Stenographers. Even if there is a practice in the establishment to appoint women as Confidential Stenographer such practice cannot be relied on to deny them equal remuneration due to them under the Act.'

· In **Tirath Kaur v. Kirpal Singh**¹⁴, at the instances of the husband the wife took up training and succeeded in obtaining a diploma in tailoring. Thereafter she got a job at a place which was at some distance from the husband's house. The parties cohabited, sometimes the husband went to the wife's place and lived with her and sometimes the wife went to husband's place and lived with him. In this manner parties continued to cohabit for some time. Then it seems that differences arose between them on some matter and the husband asked the wife to resign her job and join him at his house. On wife's refusal to do so, the husband filed the petition for restitution. The Court held that the refusal by a spouse to give up his/her job and live with the other does amount to 'withdrawal from the society of the other'.

Global view of Gender Justice

Gender Justice, simply put refers to equality between the sexes. Gender justice is a correlation of social, economic, political, environmental, cultural and educational factors; these preconditions need to be satisfied for achieving gender justice. In these days of globalization, the global picture of women is most ignorable and inequitable. Women constitute 50 per cent of the world's population, and account for 66 per cent of the work done, but they have only a share of 10 per cent

¹² [(2001) ILLJ 177(SC)]

¹³ [1987 AIR 1281; 1987 SCC (2) 469]

¹⁴ [1964 Punj 28]

in the world's income and own one per cent of the world's property. Globally, gender justice as a cause has gained in strength over the years, as it has been realised that no state can truly progress if half of its population is held back.

Globally, the United Nations has established a strong mandate for gender justice. The focus on gender equality and gender justice has been there since the inception of the UN. In 1946, a separate body was formed to work on the “advancement of women”. The Commission on the Status of Women worked from its inception to collect and compile data on women’s situation around the world, to promote women’s human rights and raise awareness of, and support for, their contribution to development. The Decade for Women (1976-1985) and four world conferences on women (between 1975 and 1995) contributed significantly to raising awareness and commitment to gender equality and gender justice. In 1995, the Beijing Declaration and Platform for Action had been framed for guiding work at national level. The human rights treaty on gender equality – The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) has been ratified by 185 states and the optional protocol by 90 states. Since 1995 and the adoption of gender mainstreaming as a critical strategy for achieving gender equality, intergovernmental bodies – such as the General Assembly, the ECOSOC and the Commission on the Status of Women - have worked to mainstream gender perspectives as an integral part of all policy areas.

At the 2005 World Summit, world leaders reiterated that “progress for women is progress for all”. The UNIFEM is another agency of the UN. It is the development fund for women at the United Nations. It provides technical and financial assistance to innovative programmes and strategies to foster women’s empowerment and gender equality. The UNDP¹⁵ also has the Gender Development Index (GDI). It is an indication of the standard of living in a country, developed by the UN. It aims to show the inequalities between men and women: long and healthy life, knowledge and decent standard of living. India is ranked 128th in the Gender Development Index, while USA is 12th and UK is 16th. The nineteenth amendment to the United States Constitution in 1920 giving women equal rights as men with respect to voting was the first constitutional recognition of gender rights.

Problems Faced By Women

- Female feticide, infanticide, child marriage, domestic violence, sexual violence, and sexual harassment at the work place to the treatment meted out to elderly women makes any thinking person to wonder at the nature of the society. Participation of women in the decision making bodies be they within the home, workplace or community is marginal, never reaching even 25% of the total population of women in India.
- Women are forced to change their jobs or seek transfers on account of Sexual Harassment.
- Most of the women’s work, inside the house goes unnoticed and unremunerated. Even outside the family they remain underpaid.

¹⁵ United Nations Development Programme

- In terms of horizontal segregation, women are concentrated in low –paying positions such as secretary, typist, beautician, nurse, caregiver and assembly – line worker. “Equal work but unequal pay” is still a common practice in India’s private sector.
- According to statistics from the United Nations “Women constitute 50% of the World population, do two third of the work, get 10% of the total income and own 1% of the total assets”. While this is a global fact, the picture is much more pathetic in India.
- Children living in this environment and witnessing the differential role pattern of the man and the woman learn the lessons of gender inequality right from their childhood and the pattern is bound to continue generation after generation.
- Women constitute a significant part of the workforce in India but they lag behind men in terms of work participation and quality of employment. According to Government sources, out of 407 million total workforce, 90 million are women workers, largely employed (about 87 percent) in the agricultural sector as labourers and cultivators. In urban areas, the employment of women in the organised sector in March 2000 constituted 17.6 percent of the total organised sector.
- The existence of discriminatory laws, the fact that the laws fail to take account of rural women's special situation, and the adherence to paternalistic and male-oriented customs which hinder the implementation of, or fill the gaps in, non-discriminatory legislation, have helped to keep rural women in a subordinate position.

Remedies

- > It is now empirically established that women's education is a single cure for a thousand societal ills.
- > Increasing women’s voice in decision-making; full participation of women in society, starting from autonomy in the household, to voice in all political processes at community, national and international levels.
- > Quotas have been shown to rapidly increase female representation in corporate decision-making, as well as politics.
- > Special rules governing women's reproductive work and aimed, in any event, at achieving equal working conditions for rural men and women should also be established.
- > Legislation should be passed entitling domestic workers to a minimum wage, social security and social services.
- > To ensure that the principle of non-discrimination is observed, express provision should be made for fines as a penalty for contravention of the rules, and monitoring and inspection bodies should be established to ensure compliance.

- > Legislation expressly stipulating that rural women be included in organizations and provided technical assistance and training should be introduced.
- > The State should guarantee women's access to formal and informal education, technical training and new technologies.
- > The big financial institutions find the small business of the poor to be too petty to justify their involvement. Many of their enterprises (particularly by women) are not recognised as productive enough to be creditworthy.

Analysis

Enacting gender just laws will not mean an end to the exploitation of and discrimination against women. Using law and the legal system can only be one of the many remedies to be used to change the unequal status of women. In spite of having so many enactments dealing with women and judgments of the Supreme Court protecting women the downtrodden and poor conditions of women has not been improved and she still faces all types of atrocities and legislature and judiciary somewhat fails to provide respect to women in society.

After independence the founder fathers of the nation, wanted to reform the society and were keen to establish an egalitarian society. To achieve this end they used law as an instrument to check the gender discrimination, number of laws, were enacted to meet this end but due to strong patriarchal mentality and unfavourable social environment they failed to accomplish their goal. The social engineering through law was not fully achieved, while some rights enshrined under the enactments were enjoyed and accepted by the society most of them remained only in papers due to lack of public support.

As it rightly said; by Wendell Phillips: “Law is nothing unless close behind it stands a warm living public opinion”

It is said that the law without the public opinion is nothing but a bundle of papers. The gap between the men and women cannot be bridged by just enacting laws without any public support as social engineering laws are different from penal laws which are just related to punishment and are deterrent in nature but social engineering laws enacted to uplift the norms of the society are progressive in nature and therefore it should be backed by the will of the people for whom it is enacted. It must be remembered that guaranteeing a right in law does not ensure the ability to access the right in reality.

Conclusion

“Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind.”¹⁶

Gender equity emphasizes that all human beings be it men or women are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles, political and other prejudices. Their different aspirations should be valued equally and they would be treated fairly according to their respective needs. But the law alone cannot do much. All sections of society have to work for this transformation and this is where NGOs, the media and the people’s representatives have to play a major role. Gender justice is genuine equality among human beings where neither man is superior nor is a woman inferior.s

Reference

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- Govt. of India, Indian Labour Year Book

¹⁶ Swami Vivekananda