



GENDER DISCRIMINATION AND HUMAN RIGHTS OF WOMEN

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ABSTRACT:

Every day, in India and worldwide, women are confronted by discrimination and inequality. They face violence, abuse and unequal treatment at home, at work and in their wider communities. They are denied opportunities to learn, to earn and to lead. Gender justice and empowerment are significant, concern to women equality with men. It is commonly understood that women empowerment is limited to giving women the freedom to vote, study, and work and become self-sufficient. While gender equality is often taken for considering women equal to men and providing them with the same rights as men. The United Nations sets as a basic goal to reaffirm faith in fundamental human rights in the dignity and worth of the human person, in the equal rights of men and women. The Constitution of India has also recognized the equal right of women and articulates provision for special legislation for women and children. In India variety of legislations are recognizing women's rights. However its effective implementation is depend on the government and existing authorities.

Keywords: Gender, Equality, Justice, Women, Empowerment, Discrimination, Human Rights

INTRODUCTION:

“I measure the progress of a community by the degree of progress which women have achieved.”-Dr. B.R. Ambedkar

The Universal Declaration of Human Rights had affirmed the principle of the; inadmissibility of discrimination and proclaimed that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex. However, there continued to exist considerable discrimination against women primarily because women and girls face a multitude of constraints imposed by society, not by law, It violated the principle of equality of rights and respect for human rights. Women are entitled, additional means for protecting the human rights of women were seen as necessary because the mere fact of their 'humanity' has not been sufficient to guarantee women the protection of their rights. The Preamble to the Convention on the Elimination against Women explains that, despite the existence of other instruments, women still do not have equal rights with men. Discrimination

against women continues to exist in every society. The Convention under **Article 1** defines the term "discrimination against women" as any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field

Discrimination on the basis of sexual orientation or **gender** identity includes any distinction, exclusion, restriction or preference based on sexual orientation or **gender** identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms. **Discrimination** based on sexual orientation or **gender** identity may be, and commonly is, compounded by **discrimination** on other grounds including **gender**, race, age, religion, disability, health and economic status.¹

OBJECTIVE:

1. To study the rights of women under various legislation.
2. To analysis the provision under the Constitution of India and United Nation declaration which recognized the rights of women
3. To study the various judicial pronouncements of High Court and Supreme Court, through these equal status to women are recognized
4. To inspect the existing problem and hurdles this put off equality of status and justice to women.

HYPOTHESIS:

1. Gender discrimination is persisting even today in the society.
2. Women are facing problem of discrimination even after the various legislation.
3. Judiciary pointed out on discriminatory treatment and gender bias.

METHODOLOGY

The study has been primarily doctrinal and not empirical. But empirical data have been used to critically evaluate the concepts. It employs descriptive method of research with critical analysis and evaluation of judicial decisions, legislations and government policies. In the course of analysis original sources such as judicial decisions of the Supreme Court of India and other courts in India, statutes, reports of both National and State Commissions for

¹ In National Legal Ser. Auth vs. Union of India & Ors15 April 2014

women and other high powered commissions are consulted for the purpose knowing and understanding act of gender discrimination and bias attitude towards women.

GENDER DISCRIMINATION AND RIGHTS OF WOMEN

Women have been referred to as the second-best God or God of intellectual on earth and praised and honored in literature and religion of Indian Society as Devi and Shakti. Paradoxically their actual position is pathetic, while they are coming out in open (out of house). They are the victims of violence, exploitation and discrimination. They are treated as second class citizenry. In spite of the constitutional, legislative and judicial efforts, there still exists a wide gap between the ideal goals and situational realities. 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. The term women's Rights typically refers to freedoms inherently possessed by women and girls of all ages, which may be institutionalized or ignored and / or illegitimately suppressed by law or custom in a particular society.

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.² 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 rights.

Gender inequality and discrimination still exists in India within the households, workplaces and in larger society. As per 2011 data, effective literacy rates (age 7 and above) were 82.14% for men and 65.46% for women. In certain developing nations like India, gender inequality starts manifesting itself very early, a girl child starts facing discrimination right from the womb and it ends in Female feticide Female child is treated inferior to male child and this is deeply engraved in the mind of the female child. This is more predominant in India as well as other lesser developed countries. A male child is considered a blessing and his birth is celebrated as opposed to a female child where her birth is not celebrated and is

².CEDAW, 1979, Adopted by United Nation General Assembly on December 18, 1979.

considered more of a burden. The 2011 Indian census shows that there are 940 females per 1000 boys.³

Across India gender inequality results in unequal opportunities, and while it impacts on the lives of both genders, statistically it is girls that are the most disadvantaged. Globally a girl have higher survival rates at birth, are more likely to be developmentally on track, and just as likely to participate in preschool, but India is **the only large country where more girls die than boys**. Girls are also more likely to drop out of school. In India girls and boys experience adolescence differently. While boys tend to experience greater freedom, girls tend to face extensive limitations on their ability to move freely and to make decisions affecting their work, education, marriage and social relationships.⁴

JUDICIAL VIEW ON GENDER DISCRIMINATION

In various judicial verdicts Hon'ble Court observed that, the Gender Discrimination at work places are regularly found and it is a violation of women human rights. In case of **Dr. Asha Singh v. Central Reserve Police Force**⁵ the issues before Court was whether **gender discrimination** would amount to Human Rights Violation. Whether in case it does so amount, the information sought by appellant Dr. Asha Singh in the present case amounts to information on allegations of Human Rights Violation? There was a consensus in the hearing that **gender discrimination** would amount to Human Rights Violation. However, it was submitted that in the present case the issue is only one of transfer against which Dr. Asha Singh has represented and is, therefore, a purely administrative matter, with no ramification of **gender discrimination** and consequently violation of human rights.

The General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights⁶. Under **Article 2 of the Universal Declaration of Human Rights** men & women are to be treated as equal. This Article reads: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such

³ <https://www.snehakarma.org/our-causes/gender-inequality/?gclid=>

⁴ <https://www.unicef.org/india/what-we-do/gender-equality>

⁵ 3 July 2008

⁶ December 10, 1948

as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

Article 23 of Universal Declaration of Human Rights, moreover declares as follows:

1. Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection This issue, therefore, falls squarely within the definition of Human Rights. This is at any rate undisputed by all parties.

In **G Gunavathy vs. The State of Tamil Nadu**⁷ the Hon’ble Court affirmed that, The battle for **gender justice** has been a long-drawn struggle. **Gender-based discrimination** reveals ugly face of the society which is prohibited under the Constitution of India. **Article 14** of the Constitution mandates that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Clauses (1) and (2) of **Article 15** prohibit the State from discriminating any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. **Article 16** which contains the fundamental right of equality of opportunity in matters of public employment.

In **Santosh Kumar Upadhyay vs State Of U.P. and 2 Others**⁸, the State Government has taken a policy decision to grant a horizontal reservation of 2% to the descendants of freedom fighters. While doing so, the State Government has qualified the condition of eligibility by stipulating that a son or a daughter would be entitled to the benefit of the reservation. However, it has been stated in the relevant condition that the law department had opined that this benefit can be extended only to an unmarried daughter of a freedom fighter. Consequently, whereas the son's son would be eligible to apply for admission, the children of a daughter stand excluded. Exclusion of a granddaughter is plainly an act of hostile discrimination which is violative of the fundamental right guaranteed under Articles 14 and 15 of the Constitution.

⁷ 2 March 2010

⁸ 14 January, 2016

In **C.Masilamani Mudaliar Vs. Idol Of Sri Swaminathaswami Swaminathaswami Thirukoil**⁹ Wherein A Three Judge Bench Of The Honourable Apex Court has held that, **Article 21** of the Constitution of India reinforces "right to life". Equality, dignity of person and right to development are inherent rights in every human being. Life in its expanded horizon includes all that give meaning to a person's life including culture, heritage and tradition with dignity of person. The fulfillment of that heritage in full measure would encompass the right to life. For its meaningfulness and purpose every woman is entitled to elimination of obstacles and **discrimination** based on **gender** for human development. Women are entitled to enjoy economic, social, cultural and political rights without **discrimination** and on a footing of equality. Equally in order to effectuate fundamental duty to develop scientific temper, humanism and the spirit of enquiry and to strive towards excellence in all spheres of individual and collective activities as enjoined in Articles 51-A(h) and (j) of the Constitution of India, facilities and opportunities not only are to be provided for, but also all forms of **gender-based discrimination** should be eliminated. It is a mandate to the State to do these acts. Property is one of the important endowments or natural assets to accord opportunity, source to develop personality, to be independent, right to equal status and dignity of person. Therefore, the State should create conditions and facilities conducive for women to realise the right to economic development including social and cultural rights."

In **M. Sameeha Barvin vs The Joint Secretary**¹⁰, the Hon'ble Court observed that, the petitioner is a disabled person with loss of hearing to the extent of 90% and she has also lost her speech ability at the age of six. With such disability, she excelled herself in the sports events by participating in the long jump and high jump in National and State levels. She has several first to her credit. She had so far won 13 medals viz., 11 gold, 1 silver and 1 bronze in National and State Level competitions. When the petitioner participated in the National selection test conducted at New Delhi on 22nd July 2021 by the third respondent, among the 12 participants, she excelled herself in jumping a distance of 5.5 meters in the long jump, surpassing the eligible parameter of 4.25 meters which is the requirement to get selected. In spite of such performance, she was not selected to participate in the World Deaf Athletics Championship. The petitioner came to know that out of the 12 candidate's viz., 10 male and 2

⁹ (1996) 8 Scc 525

¹⁰ on 20 December, 2021

female candidates, in the female category, she secured the first in the selection list. When she sought the reason for her non-selection, it was disclosed that the selection authorities were not inclined to send a lone female member to the event and therefore, they have preferred male members for the event. This, according to the petitioner, is a discrimination based on gender and thereby her achievement in jumping 5.5 meters over and above the required 4.25 meters has been ignored. Therefore, the petitioner has filed the present writ petition seeking a mandamus, directing the third respondent to include her name in the final selection list and send her to participate in the Fourth World Deaf Athletics Championship, which was scheduled to be held at Lublin, Poland from 23.08.2021 to 28.08.2021. On 13.08.2021, when the writ petition was taken up for admission, this court has directed the petitioner to appear before the third respondent and on such appearance, the third respondent was directed to declare her as selected and permit her to participate in the 4th World Deaf Athletics Championship held at Poland under the women category. Accordingly, she was permitted to participate in the said event and upon her performance; she is now eligible to participate in the World Deaf Olympic Championship 2022 as well as Paralympics' 2023.¹¹

CONCLUSION :

The Constitution of India and Universal Declaration of Human Rights both are significant to give dignified life to men and women equally. Due to the old custom, tradition and usages women were not treated with equality; she was subjected to cruel and inhuman treatment. After the Constitution of India, fundamental rights protected her from any type discrimination. Article 15 says no discrimination on the basis of sex etc. so also Article 15(3) provides the special protection from the discrimination to women. Despite the supreme legislation of the land i.e. Constitution of India women are discriminate. They are not getting equal status at many places. Maker of the Constitution of India Dr. B.R. Ambedkar stated that, "However good a Constitution may be, it is sure to turn out bad because those who are called to work it, happen to a bad lot. However bad a Constitution may be, it may turn out to be good if those who are called to work it, happen to be a good lot." From this quotation I have to point out that the Constitution of India gives equal rights to men and women, still she is discriminated treated her to inequality.

India will not fully develop unless both girls and boys are equally treated and supported to reach their full potential. There are risks, violations and vulnerabilities girls

¹¹ <https://www.mhc.tn.gov.in/judis> WP No. 16953 of 2021

face just because they are girls. Most of these risks are directly linked to the economic, political, social and cultural disadvantages girls deal with in their daily lives. This becomes acute during crisis and disasters. With the prevalence of gender discrimination, and social norms and practices, girls become exposed to the possibility of child marriage, teenage pregnancy, child domestic work, poor education and health, sexual abuse, exploitation and violence. Many of these manifestations will not change unless girls are valued more.

SUGGESTION:

1. Strict implementations of the fundamental rights of women are required to protect women from sex based discrimination.
2. Stringent action is required against those who give discriminatory treatment to women.
3. It is very necessary to maintain equal ratio in every field to give her justice.
4. A law which gives special protection to women that needs to be implemented strictly.
5. Awareness about the rights and law of women should make obligatory to each department.
6. If any women are victim of discrimination she should be compensated by the person due to whom she suffered discrimination.