



Women- A Human Still Without Rights?

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Abstract:

Women are cradle of civilisation. They occupy an important and vital place in the society. They are part and parcel of every family. Women should be protected and honoured in the society. In short their role in shaping the family and moulding society cannot be minimised or underestimated.

The term “women’s rights” is perhaps better referred to as “the human rights of women” to emphasise the universality and individuality of all human rights and their full application to women as human beings. Women’s rights are integral to Human Rights, although the battle may vary depending on diversant realities. Traditional role of men as well as women in society and in the family is needed to achieve full equality between men and women.

The ancient scriptures like Vedas, Epics, Manu Smritis, Dharmashatras etc. refer to the position of women and restrictions on their rights and privileges in India. The Greek invasion (320 BC), the coming of Arabs and Turks (11th and 12th centuries) further reduced the position of women in society. The medieval period witnessed the heart burning social evils like sati, child marriage, female infanticide, dowry system, prohibition of widow remarriage etc and all these executed the pitiable position of women in society.

Above all the devdasi system and polygamy aggravated the women’s position to the background. The social religious movement in 19th century provided opportunities for the rehabilitation of women.

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1. History of Human Rights

Man lives for some values. Isolate these values and living becomes meaningless. Among the values which a man cherishes, the most important ones are rights, which he can enjoy as individual. Man has some natural rights which are because he is a human being. In the recorded history of mankind, man has fought for these rights whenever they have been challenged. He enjoyed these rights both in ancient Greece and in ancient India. In Greek city states, there was freedom of speech (I-so-goria) and equality before law (Isonomia). In ancient India, even a king was not considered to be above the law. The king was enjoined upon to look after the welfare of his people and guaranteed them some rights.

A clear concept of individuals enjoying some basic rights was introduced in England in the 17th century with the Bill of Rights of 1689. It guaranteed the right of trial by jury, freedom from civil and unusual punishment and restriction on excessive fine and excessive bail amounts. In 1690, John Lock championed the concept of the inherent rights of men. Since then, there has been increasing recognition of some natural and inalienable right of man which he cannot be arbitrarily denied of even in extreme times in this process has since continued.

The 20th century has witnessed two contradictory developments. On one hand there was mass deprivation of human values and rights in the Second World War and also in several local wars

thereafter. On the other hand there has been an upsurge of not only specific recognition of human rights within the domestic campus but also on international plane.

On the nation level, Indian leaders were committed to some basic rights for the people. The Swaraj Bill of India, 1895 spoke about freedom of speech, right to privacy and equality, right of franchise and punishment for specific offence only. It was also felt that human rights may not remain sacrosanct unless they are incorporated in the basic document of the country. The rights have, therefore, been inscribed in the constitution of all major countries in the world.

In India also, many basic rights have been incorporated in the Indian Constitution. The markers of the Indian Constitution had two alternatives- either to follow the British pattern wherein there is a system of auto-limitation of state powers or to follow the American pattern and include a number of human rights in dealing with Fundamental Rights. The incorporation of Bill of Rights in the constitution works as a dampener on the autocratic attitude of the ruling clique in a society. It was rightly said by Justice Jackson of the US supreme court that: "The purpose of a Bill of Rights to withdraw certain subjects from vicissitudes of political controversy, to place them beyond the reach of majorities and by the courts. One's right to life, liberty, property, to free speech, free press, freedom of worship and assembling and other fundamental rights may not be submitted to vote, they depend on the outcome of elections."¹

The fact remains that violation of human rights does take place in the Indian political fabric. Some such violations are sort to be remedied through judicial actions. Other violations are publicised so as to check them and to prevent their repetition. The main concern is violation.

2. Women and Human Rights

Many international documents rich with egalitarian rhetoric notwithstanding, what is the reality of the quantum and quality of women's human rights in Indiramma's India? I am unhappy I have to say hard things against the Indian establishments despite its constitution, because our sisters are right less and must thank Heavens if they are left alive in Bharat Bhumi! What a lurid contrast of pathos to read the international instruments of gender care and concern and national denial, de facto, of even the right to life, to dignity and to those components of freedom which make a woman human!

Women, despite the printed rhetoric, suffer discrimination and indignity so damnable that dehumanisation is the gender reality of India. The World Human Order finds women's status high on agenda of change. "The United Nations is committed to the principle of equality of men and women, meaning equality in their dignity and worth as human beings as well as in their rights, opportunities and responsibilities. In its work for the advancement of women, the entire United Nations system has dedicated itself to ensuring the universal recognition, in law, of equality of rights between men and women, and to exploring ways to give women, in fact, equal opportunities with men to realize their human rights and fundamental freedoms."²

The UN instruments, with focus on women's emancipation, include the declaration of the Elimination of Discrimination against Women (1967). There are also a number of United Nations instruments which deal with problems that affect women adversely, including the convention for the suppression of Traffic in Persons and of the prostitution of others (1949), the Convention on the Political Rights of Women (1952), the Slave Trade, and Institutions and Practices similar to Slavery (1956).

Speaking of equality before law what is expected is not a mechanical or formal justice of non-discrimination where gender is no disability because of female sex. The UN Declaration on the elimination of Discrimination against Women is a protest against masculine cultural arrogance, voiced in the Preamble that: "Discrimination against women is incompatible with human dignity and with the

welfare of family and of the society, prevents their participation, on equal terms with men, in the political, social, economic and cultural life of their countries and is an obstacle to the full development of the potentialities of women in the services of their countries and of humanity.”³

Sati, the crime of murder by burning inflicted with fanatical heartlessness on wives who weep as their husbands lie dead, is practised by pushing, with religious fury, the victim wife into the funeral pyre as the flames consume the husbands corpse. The British banned it, Gandhi opposed it. Indian judges read into it abetment of homicide but the majesty of the state winked as this popular festival of burning a woman as a funeral ritual. No cases registered, few prosecutions and political party leaders permit temples and worship in honour of the publicly murdered martyr. A legislation was enacted when woman kind shrieked in protest, but when Swami Agnivesh believed the state and its new law and journey to Rajasthan with this messages he was arrested to prevent breakdown of ‘Law and Order’! Hypocrisy! Thy name is Indian republic! Women is equal under the law of course, but is non person in practise, Today held in by homicidal custom, womanhood dies in flames for her gender crime.

Sati is spiritualised murder but is first cousin to bridal murder dismissed as dowry death. How many brides are married to yama all over India so tortured and doused in kerosene that death is deliverance from the marital habitat! Laws are made with blood shot eyes to combat dowry, bride burning and hara-kiri as social slaves. But no damsels in distress are saved, few killers faced trails, fewer are punished and fewest finally sentenced. Judges invariably may not punish the hundred guilty men but the unknown innocent man shall be punished. In dowry cases, all men are presumed innocent! Why? In masculine legal system men have human rights but women have them writ in water. The police are men too! Their investigation bares gender bias; their custodial process betrays criminal manifestations. Even the prisons keep women insecure. For them the constitution is counterfeit until gender justice turns militant, strident and honest.

Trafficking in women is slavery compounded with criminal commerce in humans. And the yet that is common for the humbler women in primitive society. Do we dare to end the marketing of girls in weekly fairs in Madhya Pradesh and religious festivals at Yellamma in Karnataka? Who constitute bonded labour? Adivasis, most of whom are women and children. Article 23 commands that traffic in human beings and forms of forced labour are prohibited and punishable. Legislation exists to take care of these practices, but they flourish. The brokers know that judicial thunder need not be taken seriously. Such occasional noises are necessary to silence community conscience and for transnational consumption. Likewise the bonded labour cases made the Supreme Court bark but not bite. It is part of human rights game of hide and seek. Legislations against these horrendous evils are toothless because the legislators, the police and the courts and other agencies have patterned an unwitting conspiracy where the victims and villains remain where they are. Where the women are involved the legal dogs may bark but the criminal caravan will pass.

Gang rapes of girls by men, even policemen, are formally frowned upon by the new law, but if the law lies dead or the law is but lies, credibility dies. If episodes result in popular protest, belated but fruitless judicial enquiry may be the impotent end-product. They have no business to protest? And since the barbarity persists unabated, creative initiatives are needed to make the rule of the law run close to the rule of life for that gender which, from foeticide, infanticide, dowrycide, Saticide and suicide has homicide of human rights writ large on her life. Far too long has the law hidden the truth of its printed lies and human justice written off as a lost cause.

If gender degradation is a social depravity and massive manslaughter of the human rights of womanhood a daily reality, then is no need for any rules. Substantive law is dead if it loses its remedial potency. And it is no consolation to parade constitutional provisions and statute book pages if in real life the women are ever a victim. She is unjustly treated as unequal by society for the genetic sin of her discriminated sex. She suffers gender devaluation at home, at work, in literacy, in matrimony, in

inheritance and allied rights, in economic opportunity, public life and power process. If she demands a right to her own personality she is punished and expelled, branded as mental case and lodged with lunatics, married off or sold, divorced or driven into the streets, victimised for dowry or forced into suicide or Sati. Inside the lock-up or jail cell, or elsewhere in custody she is in sex peril, her peculiar needs ignored and family ties disowned. The system is the criminal; the woman bears the cross, the man the crown! The foeticidal, infanticidal, suicidal, lunatic and criminal syndromes accuse society of crime. What is the legal remedy for the gender malady?

3. What can be done?

Women in their historical journey, were forced to naturalise and internalise male dominance and hence their marginalisation from the mainstream life. In the last two decades women have been demanding a legitimate autonomy in all matters that have a bearing on their empowerment. An empowered woman has a positive self image and takes an active part in decision making related to herself, her family and outside. Empowerment emerges in the form of awareness in women where she faces challenges boldly and overcome barriers in their life through which they increase their ability to shape their own lives and environment. A nation's march towards progress and prosperity will remain a dream, its aspirations unfulfilled and unrealised, till women actively participate in the development process. Women in India are not able to contribute their best to the development of the society as they are in backwardness in education, social, economic and political spheres. The high incidence of illiteracy among women constitutes as one of the greatest barriers to their development.

The role of women can be summed up in 4 M's – Match, Mother, Manager and Mover. The reason for women not joining the main stream of development include, lack of recognition of women's special needs for education, training, technology, communication and access to resources, lack of information about women's role, caste etc. All these stand as obstructions in integrating women into the mainstream programmes. All over the world women have been victims of oppression and male domination. This leads to powerlessness and prevents them access to public resources, legal redress and ability to fight for their rights.

Indian constitution provides equality before the law (Article 14) shall not discriminate any citizen on the grounds of sex (Article 15) equal opportunity for all (Article 16), equal justice (Article 38) equal pay for equal work for both men and woman (Article 39) property right (Article 300A) etc. Apart from these, there are also:-

- The Sati Prevention Act 1829, prohibit the custom burning hindu widows alive in the funeral pyre of her husband.
- Hindu Marriage Act 1955-Right to divorce of the women folk.
- Hindu Widow Remarriage Act 1856-stopping the social limitation faced by the Hindu widows.
- Dowry Prohibition Act 1961-Amendment in the section 304- B of IPC & Act 43 of 1983 prohibits giving or taking in any form.
- Hindu Woman's Right to Property Act 1937-Hindu Succession Act 1956-Recognized the widows right to property.
- Immoral Traffic (Prevention) Act (1956)
- Child Marriage restrain Act (1929)
- Hindu Adoption and Maintenance Act, 1956
- The Maternity Benefit Act, 1961
- Muslim Protection for right on Divorce Act, 1986

Still every morning, when we open our newspapers they are filled with heinous crimes against women. All the above will be mere solution of women's problem on paper, if they would not know how to

voice their concern. It's time that the women should stand up for their rights & this will come about only through empowerment. The means of empowerment are:

- a) Education
- b) Health and Nutrition
- c) Economic independence
- d) Legal Awareness
- e) Organisational support
- f) Intervention Programmes

Women represent half of the human capital of the nation and they should be given all chances of equal representation in all fields.

4. Conclusion

Where are women legislators and law drafters? Where are women judges and magistrates? Where are women police and prosecutors in numbers? Even if a few police women are found they are decorative pieces, not even armed? Only a single or perhaps a few police women are a match for men in crime and injustice. Judicial women only make cosmetic presence. So long as the law is a closed male shop, so long as the whole bureaucracy keeps the dice loaded against females, the fatal female destiny will not even be felt, let alone be reversed. Laws may be changed when noises are made, as in the case of penal rape provisions, equal remuneration statutes, anti-dowry, anti-sati enactments and so on. But tho' the constitution occupies commanding heights, law in action is what moulds the rule of life, shapes social justice and makes people feel that court and prisons are no paper tigers. Fifty years after Constitutional concern for women, expectations have only darkened into anxiety, anxiety into dread and dread into despair. Why?

We all have to remember- Truth will be out some day, but human resources have to be defended every day.

Foot Notes

1. West Virginia State Board Of Education V.S Barnett (1943) 319, United States Report 624 at p. 638.
2. The United Nations and Human Rights- United Nations, New York, 1984, p.148.
3. Pathak R.S, Human Rights in the Changing World, International Law Association, New Delhi, 1988.

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4. Desai, A.R. (1986). "Violation of Democratic Rights in India", Popular Prakashan, Bombay.
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