

Problem of Gender Discrimination against Women in India in the Patriarchal Family System

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Abstract

Women belong to the vulnerable group. Women have always been exploited in all the human societies. The root of the exploitation of women can be traced to the pattern of the gender system in patriarchal family system which exists in almost all the societies of the globe. In the regime of the international law and in the municipal laws of the progressive democracies like India adequate protection exists for the protection of the rights of women and for the elimination of gender discrimination. But still violation of the rights of women and gender discrimination against them is going on. Therefore, it is necessary to find out the root cause of the infliction of atrocities against women and solution of this problem.

Keywords: Women, vulnerable group, gender discrimination, patriarchal family pattern, provisions in international law for the protection of rights of women, Indian legal system on elimination of gender discrimination, solution of the problem.

The Concept of the Gender in Human Culture

The gender is an important unit which exists in all the societies of the world defining the role to be played by men and women. The unit of the gender exist in all classes of the society may it be rich and poor, educated and uneducated, elite and backward. This unit of the gender has put the women in disadvantages position in comparison to the men. The gender has always been attached to the human being right from his birth till death. The gender determines the attitude, behaviour of individual and of the entire society towards the person on him it has been attributed.

The Gender System in Indian Society

The parameter of the gender has defined the role of male and female in Indian families. And same has strictly been implemented in Indian society from thousands of years. Unfavorable conditions to the females in the family and society in comparison of the males is the feature of the gender pattern which exists in India. Patriarchal family pattern in India has given the upper position to the males and inferior position to the females in families and in society. The upbringing of the male takes place in Indian family / society in such a manner trying to enable him to play significant role in future in the affairs of family and society. Where as in case of the

female child in the process of upbringing it has been contemplated that she will be playing only supportive role in the family and in society.

In Indian patriarchal family system, all important functions are meant to be performed by males only. The males are the persons in charge of the family resources and the persons responsible for increasing the family earning. The females are expected to perform the functions like child nurturing, taking care of sick, old age, infirm people of the family. In Indian family and society no independent recognition exists in favor of the female. She has always been identified as the daughter of the father, sister of the brother, wife of the husband, mother of the son and widow of the deceased husband.

The values, ethics, morals of males and females are different in Indian families and in society. The ideal code of conduct specified for the men consist of many exceptions in favour of males. However, in case of the women ideal code of conduct within the family and in the society has always been implemented in the strict, meticulous manner without any exception. If man is living the immoral life, he can exploit lot of exceptions in his favour for example alleged incapability of the wife to take care of the sexual urges of her husband. At the same time women living unchaste life in a society is a sin and a social stigma for everyone and in the homogeneous legal system barbaric punishments were prescribed against such women only for it.

The factor of gender differentiates and influences the socialization process of a person right from the birth. Both boys and girls grow up with the knowledge of their respective sexes and genders. Under the influence of gender, they become used to about the pattern of clothes, food, the particular behaviour of the members of the family and society, restrictions in the family and society, kind of education given to them. It ultimately results into feeling of low self-worth, inferiority complex, self-depreciation and low self-esteem of the females.

The Effects of the Gender Discrimination against Women

The pattern of the gender discrimination which exist in Indian society right from thousands of years in the patriarchal family system ultimately has resulted into following evils /effects of the gender discrimination.

- 1 Discrimination towards women in the family and in society.
- 2 Exploitation of the women in family and in society.
- 3 Killing of the potential of half of the population (women) of the society.
- 4 Discrimination and exploitation of the women results into backwardness of the society and nation.
- 5 Problem of female feticide
- 6 Destruction of the social and national health because of the disparity between the male and female ratio.
- 7 Problem of increasing offences against women.

Existing Legal Framework in India for the Elimination of the Gender Discrimination against Women

a) International Law on Human Rights.

Universal Declaration on Human Rights 1948, International Convention on Civil and Political Rights 1966 and International Convention on Economical, Social and Cultural Rights 1966: These international declarations and conventions do form the base of international human right jurisprudence. India is party to these international instruments which have secured the implementation of the protection and promotion of the human rights of individuals, of both females and males on the basis of the concept of equality.

b) International Law for the Protection of Women and for Elimination of the Gender Discrimination against Women.

Declaration on the Elimination of Discrimination against Women 1967, Convention on the Elimination of all forms of Discrimination against Women 1979, Optional Protocol to the 1979's Convention adopted in 1999 and the Resolutions adopted in the International Conferences held after regular intervals:

These international declarations and conventions are material to lay down the foundation of international law for the protection of the women. India is party to these international conventions and declarations it shows Indian commitment for the implementation of rights of the women in Indian legal system assured in said conventions.

c) Provisions under Indian Constitution for the Protection and Promotion of the Rights of the Women and Elimination of the Gender Discrimination against Women.

The Fundamental Right to Equality in Favour of the Women: Article 14, Article 15 Clause (1), Article 15 Clause (3), Article 16: Under these Articles fundamental right to equality has been assured to the Indian women. The concept of equality before law and equal protection of laws under Article 14 of the Constitution has also casted the mandate on the state to undertake special affirmative actions for protection of the rights of the women and elimination of discrimination against women. 33% reservation in favour of the women in educational institutions and in Government job is one of the major steps taken by the state under Article 15 clause (3).

Right to Life and Personal Liberty under Article 21 of the Constitution: The expressions rights to life and personal liberty have been time to time liberally construed by High Courts and Supreme Court of India securing the implementation of the various facets of human rights in favour of the citizens including women.

Article 39 clause A, Article 39 clause C of the Constitution: Under these Articles which have been placed in directive principles of the state policy state is duty-bound to protect the health and strength of the women being the vulnerable class of Indian society.

Article 51 clause A and clause (i) (e) of the Constitution: These are fundamental duties of the Indian citizen i.e. respecting the women and not harboring, practicing the gender discrimination against women.

Indian higher judiciary has also correlated in the positive manner the rights guaranteed under international conventions and declarations for the upliftment of the women with the above-mentioned constitutional provisions. Judiciary has opined that the rights assured under international law in favour of the women even if specifically have not been enumerated in the Indian Constitution but if the nature of those rights are such that they are integral part of the rights assured under Constitution then rights under those conventions are enforceable in India.

d) Important Civil Laws for the Protection and Promotion of the Rights of the Women and Elimination of the Gender Discrimination against Women.

1. The Maternity Benefit Act 1961 was enacted to recognize the importance of the act of childbearing and delivery of the child by women by making special provision of paid leave of six-month in favour of the women employees.
2. Equal Remuneration Act 1976 has made the provision of the equal remuneration at par with the men in favour of women employees based on the concept of equality.
3. The Labour Welfare Legislations: The relevant provisions have been made under the Factory Acts 1948, Minimum Wages Act 1948, the Employees State Insurance Act 1948 and in the Employee's Compensation Act 1923 and in the Bonded Labour System Act 1976 for the protection of the rights of the women and elimination of the gender discrimination against women which was in existence in industrial establishments.
4. The Family Laws: The Hindu law has been codified in form of Hindu Marriage Act 1955, Hindu Adoption and Maintenance Act 1956, Hindu Minority and Guardianship Act 1956 and Hindu Succession Act 1956. In the process of the codification of the personal Hindu law the concept of equality in favour of the women has been promoted in the field of family law. However, some discriminatory provisions were in existence in the law relating to adoption and succession denying equal rights for the women. Now by virtue of 2005 Amendment Act in the Hindu Succession Act and 2010's Amendment Act in Hindu Adoption and Maintenance Act the equal right of succession and adoption of a child respectively has been conferred on the Hindu women.

The personal law of the Christians, Parsis have been codified where now Christian and Parsi women are enjoying the matrimonial rights based on the concept of equality. Certain inequalities in the Christian personal law now have been eliminated.

Muslim personal law is uncodified. Muslim women do not enjoy the matrimonial rights regarding succession, maintenance, divorce, marriage at par with the men based on the concept of equality. However, the process of initiation of the concept of equality in personal law of the Muslim has been commenced. Judiciary and the state are playing the positive role regarding it. Extending the right of maintenance under Section 125 of the Code of Criminal Procedure in favour of the Muslim woman, criminalizing the practice of triple *talak* are the examples of it. Judiciary has also time to time reiterated the need and significance of the uniform civil code.

e) Important Criminal Laws for the Protection and Promotion of the Rights of the Women and Elimination of the Gender Discrimination against Women.

1. Provisions under the Indian Penal Code and The Code of Criminal Procedure: Under IPC and CRPC adequate provisions have been made to discourage commission of any kind of offence against women. Criminal Law Amendment act 2006, 2009 and 2013 are the classic examples whereby the provisions under IPC and CRPC have been strengthened for the protection of women. These amendments are vital to provide better protection and environment in the legal system in favour of the women who are the victims of the offence whereby relevant organs of the system like police, prosecution judiciary etc. are duty bound to protect their interest.
2. The Indecent Representation of Women Prohibition Act 1986 has made the provision for the protection of the women against any kind of the exploitation of the bodily exposure against her wishes.
3. Prevention of the Commission of *Sati* Act 1987 has prohibited the practice of *sati* and it has been declared as this substantive offence punishable under law.
4. Prevention of the Devdasi System Acts: These Acts have abolished the practice of *Devdasi* where exploitation of the women used to take place. Now practice of *Devdasi* is a substantive offence punishable by law.
5. Pre-Conception and Pre-Natal Diagnostic Techniques Act (PCPNDT) 1994 has banned and made the provision of punish for the prenatal sex screening and female feticide. It is currently illegal in India to determine or disclose sex of the fetus to anyone.
6. The Child Marriage Restraint Act 1967 has forbidden the practice of the child marriage and same is punishable by law.
7. The Prevention of Immoral Traffic Act 1956 has banned the practice of women trafficking, women prostitution and same is punishable by law.
8. The Dowry Prohibition Act 1961 has declared that giving and taking of the dowry is forbidden and same is punishable by law.

On Ground Reality Regarding Protection and Promotion of the Rights of Women and Problem of Gender Discrimination against Women

As discussed above there is enough legal framework which exist in Indian legal system for protection of rights of women against gender discrimination. But despite of that adequate progress regarding it has not been made. Reason for same is the practice of patriarchal family

pattern in India which has perpetuated the system of violation of the rights of women and infliction of gender discrimination against women.

Discarding the patriarchal family pattern may not be the solution on this problem. We have accepted the policy of equality among men and women through Constitution as a part of public policy. Therefore, we are duty bound to implement the concept of equality in family and in society as assured in the Constitution. While implementing this policy wherever there will be requirement to discard the patriarchal family custom giving upper hand to the males and treating the females as inferior entity, we the Indian are duty bound to do so being unconstitutional practice. It is also necessary to undertake the awareness campaign among all the sections of the society pertaining protection and promotion of the rights of the women and their protection against gender discrimination. The acceleration of the process of industrialization particularly the generalization of the education in Indian society will also be helpful for the removal of the old fitters of the patriarchal mindset of Indian society securing emancipation of the women from the problem of the gender discrimination and exploitation

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