

WE, THE WOMEN VS/Vs CONSTITUTIONALISM

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“Social justice is struggling to be born, constitutional organs must midwife it”

ABSTRACT:-The framers of the Indian constitution while framing the structure of our very constitution mention socio economic justice to common man. But the fruit of justice is not enjoyed by the women folk because of discrimination, male domination which prevailed in our so called society since time immemorial. Though in Bhagwat Gita, Purans, Upanishads, it is said that the women are the half of the men both are considered as two wheels of a vehicle, both side of a same coin and at the same time they are considered as goods or chattels. On the one hand we worship Durga or Kali in the name of “MAA” on the other hand there are Nirvaya case, Pipili rape case, Salasahi rape case, she needs empowerment to achieve social economic political, educational, justice which are her birth right. These can be possible by awareness, education, consciousness and by the strict implementation of laws which is most essential.

Key words: crime against women, discrimination, justice, Awareness, women Empowerment

INTRODUCTION

Man & Woman are two halves of humanity none of the two can reach its highest creative excellence without the co-operation of other. But in India male domination with a complementary suppression of women has been continuing since pre-historic times. Through the constitution of India which is the guiding polestar for the testing of the world's largest sovereign socialist secular democratic republic guarantees equal rights for men & women for still there has been discrimination between male & female child, between men & women. Women are considered as goods and chattels, they are considered as objects of sense gratification. Further they very permeable to the constitution of India declares that social, economic & political justice should accrue to all its citizens, which mean everybody both men & women should not be denied the fruits of justice. But in reality the history suppression of women is very long. They have suffered and are suffering discrimination in silence and yet they have been subjected to all inequalities, indignities, discrimination (Justice K Ramaswamy in Madhu Kisharvs. State of Bihar)¹

This discrimination de-powers because discrimination in any form affects the human capabilities. But still the enlightened women should light to bringing awakening in other women regarding their rights by bringing awareness about their status and the law which can be considered as the weapon to make them empowered by achieving equality, justice in every field without any discrimination. In the words of Justice Krishna Ayer when he says :- the fight is not for women is status but for human worth.

STATUS OF WOMEN IN SOCIETY

Status of women in different human societies of the world is different.

In Vedic period women participated in all the field like men took active part in every sphere of human life. During that period women enjoyed a fair amount of freedom and equality with. The great women like Ghosha, Apalla, Lopamudra, Visvar, Gargi & others had distinct qualities of art music, Dance & even in the battle are being in this period.

In the past Vedic period between 1500 BC 500 AD, the status of women suffered a setback when various restrictions were put on women rights & privileges by Manu. The role of women got restricted to the four walls of their home. In this period the upanayana rights for girls were completely abandoned.

In medieval period with the invasions of India by Alexander and Huns, the position of women was reduced to “war prison” from 500 AD to 1800 AD the existence of women was further degraded. This period saw the women being oppressed in the feudal social and patriarchal families.

Now in this modern period women are considered as the competitor of men, they occupy their position in every field but still they are considered as the puppet who dance according to the tune of the male

¹1996 5 scc 148.

members of the society, is it not ironical that when the mythology places women in a very high pedestal and they are worshipped as the goddess and the same time they are treated like drum rustics,shudras animals who deserves ,In this present ultra modern age through there is the presence of Mrs. Sonia Gandhi &Mrs. prativa patil at the same time there is also the presence of Jessica Lal,Arushi priya Patel and many more ,in order to bring equality the women should be empowered.

What is women empowerment

“Yatra Naaryastu poojyanti Ramante tatra Debata”

The welfare of the world require the maximum participation of women on equal terms with men in all fields. When women are empowered, Society with stability is assumed .Empowerment of women is essential as their thoughts and their volume systems lead the development of a good family,good society and ultimately a good nation. But here the term empowerment does not mean to putting as a word or gun in the hand of a women and tell her that she is now empowered to protect her rights and liberties rather the term empowerment means giving legal and moral power to an individual in all spheres of life such as :economical ,educational ,social ,political ,spiritual and psychological etc.

why women empowerment is needed

Today as we stand at the threshold of the 21st century, we are still unable to boost of a society where there is total gender equality or equity. until recently the question of gender equality or gender equity was merely a topic or theoretical discussion, through the ages we have placed women on a pedestal “mother of mankind”paradoxically/the most horrendous cruelties have been inflicted on her ,often without any reason and mostly without just cause .Though we have entered the new millennium,practically the status of women has not improved ,mainly due to the traditional bias and prejudices towards that discrimination against all these years, contemporaneous legislation. The alarming increase of suicides and dowry deaths of young innocent brides has always set shock waves to the civilized society but unfortunately the evil has continued unabated .A fight for women or for their rights is the crying need of the situation ,it should be fight against unjustified traditions and the male created LAXMAN REKHA which women are not supposed to cross, for this women empowerment should be created as a boundary to stop all the crimes against women which makes the women as mere furniture. So let’s see actually what are the crimes which forced the women to lead a poor life:-

Crime Against Women-

“Being born female is dangerous for one’s health, wealth, and life also”

This above quoted line is proved as truth,by the violence against women in this male dominated society in every 10 minutes Rape for a women is death less shame must be dealt with as a gravest against human dignity .it is violation with violation on the private person of a women ,the offence of rape is defined under section 375 of IPC. In Tukaram V/s State of Maharashtra²the court held that Custodial rape is was made more punish able than rape committed by other person not having any custody on the women, this based on the theory that “agar bad hi khet ko khaye to usko kaon bachaye”. Rupal Bajaj³ case is also a land mark judgement against the crime of sexually abusing a woman.

Empowerment of women through law.

The women is only waiting for her empowerment with patienceful eyes either by the international or by any other statutes or by any law. So now let’s have a look how law can be proved as a sword to protect the women from all social evils by empowering them.

International provisions :-

(1)Charter of UNO 1945

The United Nations shall place no restrictions on the eligibility of men and women to participate in any capacity and under conditions of equality in its principle and subsidiary organs.

(2) Universal declaration of human rights ,1948

This declaration took drastic steps to bring reformation in society or to achieve social justice which is the need of the time by implementing rights, dignity, protection etc.

(3)Convention on political rights of women,1954

(a)Right to vote(art-1),(b)Eligibility for election (art-11),(c)Right to hold public office

² Air 1979 sc 185

³1995 sc c(6)194

(4)International convention on civil & political.rights,1966:-

Right to marriage and have a family (art-23)Right to citizen (art-25), equal protection of the law .(art-26)

(5)International conversion on economic , social and cultural rights ,1966.

(6)The declarations of Mexico on the equality of women ,1975 :-

(7)The convention on the elimination of all forms of discrimination against women, 1981 (CEDAW)

(b).constitutional provisions :-

Rights to equality (art 14 to 18)

It prohibits any discrimination on the grounds of religion, race,caste,sex or place of birth.But nothing in this article shall prevent the state from taking any special provisions for women .the govt can make special provisions for reservation of seats for women in educational institutions. In Air India v/s Nargesh Mirza⁴the Hon'ble Supreme Court held Air India Regulation unconstitutional as being discriminative against women .IN pursuance of art-15 (3) Government of India has enacted 73rd and 74th constitutional Amendment Act. Providing 33% reservation of seats in each of the panchayats .It shows that nearly one million women are elected to those local bodies. Right to life includes the right to have a dignified life, right over her body control over her sexuality and reproductive functions to give or not to give birth to a child. This article is the bunch of rights and heart of the constitution where blood is pumped by art 32.

Protection against immoral trafficking :-

Equal pay for equal work (art 39)

Equal justice and free legal aid(art 39A)

Uniform civil code for the citizen (Art 44)

a) Provisions under criminal law :-

According to section 416 of Cr.P.C, a pregnant woman cannot executed with death sentence.

Rape under section 376, unnatural offence under section 377 of IPC empowers women. According to these sections the act of man is punishable but, similar act of women is not punishable. Compensation is also given to the victim for their rehabilitation. The Hon'ble Supreme Court directed the police not to arrest a lady without the presence of a lady constable and also prohibited the arrest of lady after sunset and before sunrise under any circumstances. In the case of Rajkumar v/s S.H.O.Noida⁵.The legislative has enacted special law on prohibition of dowry in India with effect from 1st July, 1961. Offences under this Act are cognizable for certain purposes and to be non-bail able and non-compoundable.

(b)Provisions under civil laws

National commission for women act-1990

The protection of women from domestic violence act, 2005

The Hindu marriage act,1955

Suggestions

- (1)** There should be the CHANGE OF ATTITUDE, MOTIVATION, and AWARENESS (CAMA) of the society as the essence of ensuring gender justice.
- (2)** Women literacy should give primary importance.
- (3)** Implementation of different provisions and acts should be in real sense.

conclusion

Women empowerment is proved as the only weapon through which women can fight for justice or equality in this so called patriarchal society. It is a fight against proverbial Lakshman Rekha which is different for men and different for women. Awakening of the collective consciousness is the need of the day. The crime against women sends shock waves to the society. The women empowerment should be used as a effective weapon in the armoury of law for delivering social justice.

⁴(1981) 4 scc 335

⁵(Air 2003 sc 4693)

Why does she have to wait head bowed by the road side waiting with tired, patience, hoping for a miracle in the marrow?

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