

GENDER JUSTICE- ITS VARIOUS FACETS

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Abstract:

The concept of gender justice indicates a comprehensive scheme of protecting the class of women. The Sub-ordinate gender is protected from exploitation and denials inflicted by dominant gender through gender justice. It nut-shell, it means participation of women in decision making process in all walks of life and sharing of opportunity with men. The Supremallex of India along with some other legislations contain a lot of provisions to bring and ensure gender justice in India. The Constitution in its preamble manifests the concept of justice, equality, dignity and fraternity. Other legislations like IPC, Dowry Prohibition Act, 1961, Protection of Women from Domestic Violence Act, 2005 etc. are very much found as a shield to protect rights of women and ensure gender justice in India. However, practically these laws have been proved to be inadequate to protect women from evils and vices practiced in society.

The author through the present article tries to analyze various provisions of law and legal system dealing with the issue of gender justice with an effective suggestion.

Introduction:

The status of women in society is largely affected by the social position they have in modern days. Although law, being an autonomous instrument touches intimate aspect of life and cultures of the people including women. The existence of two genders i.e. male and female in society itself has brought discrimination due to patriarchy prevailing in the society. So long as patriarchy rules, legal stance on practices of prostitution, pornography and sexual crimes or on matters of matrimonial, property and economic relations will continue to exhibit maleness of

law prevailing in India. The Age of enlightenment has brought to centre, the concepts of rationality, choice of individual and equal rights and opportunities. Though gender injustice is a multi-headed hydra that enters into all areas of human activity and manifests the rights and relations disfavoring women in India. Yet the Constitution and other related legislations have been trying its level best to bring and ensure gender justice in society through the chapters of fundamental rights, directive principles of state policy, prevention and protection from domestic violence against women etc.

Gender Justice is a generic word. It means no discrimination on the ground of one's gender (Sex). Some persons are very much kin to include gays within the umbrella of gender justice but is not the appropriate and correct view. In fact gays are discriminated on the ground of their sexual orientation and not because of their sex. They must be treated as minority and their rights should be regarded as ethnic rights rather than as issues of gender justice. But transsexuals transgendered and intersex are often discriminated because of their sexuality. Their rights may be counted within the scope of gender justice but this generic term is usually used and understood to mean justice for women and this sense is widely accepted in legal fraternity.

Patriarchal Society :

A Society working to the benefits of male has female in the back seat and patriarchy supports this type of social system. In this system male member is need of the family and female member is sub-ordinate to him. There are few matriarchal societies but almost all are patriarchal.

Constitution and other related provisions :

The constitution of India prohibits discrimination on the basis of sex [Art.-15 (1)] but permits the state to make some special provision for women and children [Article-15(3)] . The 73rd& 74th constitution (Amendment) Acts have made provisions for reserving 1/3rdseats for women in elections in local self- government Article 243- D and 243 -T. The Consumer

Protection Act provides one women member in the forum and under Family Court Act, preference is to be given to women for appointment [Sec-4(4) (b)].

Convention on Elimination of Discrimination Against Women (CEDAW) was ratified by U.N. in 1979. India has also ratified CEDAW except Articles 5(a), 16(1), 16(2) and 29. The courts in India have taken general guidance from CEDAW while interpreting statutes (Article 51). Many statutes have been enacted so far to bring equality but is gender equality really achieved, is an unanswered question. Now facets under different branches of law would be analyzed to know the real picture of equality or gender justice in India. s

Personal Laws and Gender Justice :

Gender injustice or Gender inequality is very much visible and apparent in personal laws. The best way to remove it is have Uniform Civil Code but the constitution framers have included it under Article 44 of directives principles of state policy. It is not enforceable in courts of law. It is to mention that directive principles are fundamentals in the governance of the country and are considered as goals while fundamental rights are means to achieve them. Though DPSPs are not enforceable but the courts take guidance from them while interpreting fundamental rights under Articles, 14, 19 and 21 of the constitution.

The courts made some progress in this regard in *Surla Mudgal Vs. Union of India* (1995) 3 SCC 635 and *Madhu Kishwar Vs. State of Bihar* (1996) 5 SCC 125 but subsequently the Supreme Court dismissed the writ petition in *Ahmedabad women Action Group (AWAG) Vs. Union of India* (1997) 3 SCC 573. The court held that the arguments involve issues of state policies with which the court will not ordinarily have any concern. The remedy lies somewhere else and not by knocking at the door of the courts.

Thus the decisions regarding personal laws indicate that the courts are reluctant to intervene in this regard or to declare them ultravires the constitution. Nevertheless, they are willing to liberally consume different provisions in favour of women often by reading them down or restraining their natural meaning.

Matrimonial Courts- other properties:

Sec-27 of the Hindu Marriage Act, 1955 is similar to section 42 of the Parsi Marriage and Divorce Act. Both of them provide that matrimonial courts have power to deal with the property presented at or about the time of marriage. The High Courts disagree whether the courts are entitled to deal with exclusive property of the parties or not. The Delhi High Court, Orissa High Court, Jammu and Kashmir High Court and Punjab and Haryana High Court have held that exclusive property of the parties can not be dealt by the matrimonial courts under Section 27 of the Act and they should seek remedy before regular civil courts.

Domestic Violence Act :

The Principles relating to maintenance, residence and custody of children are modified with the enactment of the enforced of women from Domestic Violence Act, 2005. It has been enforced with effect from 17.10.2006 and was enacted in pursuance of CEDAW. It protects women from domestic violence of a person, with whom she is or has been in domestic relationship. The expression, 'domestic relationship' has been explained as relationship between two persons who live or have lived together in a shared household when they are related to consanguinity, marriage or through a relationship in the nature of marriage or adoption. It includes common law wife also. Apart from that, relationships with family members living together as a joint family are also included. Sisters, widows, mothers, single women living with the abuses are entitled to protection under the Domestic Violence Act.

The expression 'Domestic Violence' has also been explained. It includes actual abuse or threat or abuse that is physical sexual, verbal, emotional or economic. It also includes harassment by way of unlawful dowry demands on the women or her relatives. Section 17 of the Act provides right to residence in a shared house, where as section 19 empowers the magistrate to issue residence orders. Section-20 provides monetary relief including maintenance, whereas sec-22 empowers the magistrate to grant compensation. Section 21 empowers the magistrate to pass suitable orders regarding custody of children, section -18

empowers the magistrate to grant protection orders. Breach of the protection orders passed by the magistrate is punishable as an offence section 26 classifies that these relief may be claimed in any legal proceeding pending before civil family or criminal court if they were pending on the commencement of the Domestic Violence Act, 2005.

There are many provisions in Indian Penal Code viz Sec. 498 A, 304 B, 107 etc. which deal with dowry related offences. The Evidence Act, 1872 under Sec.113 A and 113 B also mention about such type of offence. The Code of Criminal Procedure 1973 in its Sec 174 contains the provision regarding conduct of inquiry into suspicious deaths by the magistrate. Sec. 198 A of Cr.P.C., mentions that no court shall take cognizance of an offence punishable under section 498 A of IPC except on a police report of facts which constitute such offence upon a complaint made by the person aggrieved by the offence or by her relative, with the leave of the court.

Thus a part from above laws, contained under IPC, Evidence Act, Cr.P.C., Domestic Violence Act has been brought into force to supplement Sec- 498 A, of IPC. The present Domestic Violence Act in its Section 3 defines the term domestic violence which covers all the aspects of household offences and hence makes almost impossible to find any lacune. According to this section, any act, omission, commission or conduct of the respondent constitutes domestic violence. However, one of the protection given under the Act is Explanation II which states that the overall facts and circumstances of the case shall be taken into consideration in order to ascertain whether domestic violence has been committed or not.

Main features of the Domestic Violence Act, 2005:

- (a) The term 'aggrieved person' has been defined having wider meaning and it covers not only wife but a woman who is daughter, mother, sister, child (male or female), widowed relative residing in the common household and is some way related to the respondent.
- (b) The definition of respondent includes any male, adult person who is, or has been, in a domestic relationship with the aggrieved person.

- (c) Any person other than the aggrieved one may knock the door of law to put it into motion but the person must have reason to believe about commission of domestic violence.
- (d) The provision of monetary relief as monthly payment of maintenance has been provided under the Act.
- (e) The respondent may be restrained from trying to communicate in any manner with the aggrieved person including, oral, written, telephonic or other electronic medium.
- (f) The provision of compensation and damages for injuries including mental torture and emotional disturbance has also been provided under the Act.
- (g) The Act ensures speedy justice to aggrieved person.
- (h) The provisions of protection officers, residential order, Welfare measures and training programmes for police officers have also been made.

If the Actual position of women is examined in modern time, it varies from area to area, from class to class and from community to community. There is huge cultural and educational gap between urban educated and rural uneducated women. A rural women, irrespective of caste creed or religion does not think or concern for status while her urban counterpart, being literate bothers much more about the same.

Conclusion :

Thus the Act has wide coverage of gender in justices like physical abuse, sexual abuse, verbal and emotional abuse, economic abuse etc. The primary object of the Act is to protect the wife or female live-in-partner from domestic violence at the hands of husband or, male live-in-partner or his relatives. The other important points to be mentioned are: (1) A male is guilty untill proven otherwise (2) The word uttered by woman to be truth and no proof is needed (3) The Apex court of India has to redefine some the parts of the Act because that have been drafted poorly.

It may be submitted that mere codification of statutes carries no meaning, unless efforts are made to translate the provisions of the law into practice at grass root level by law enforcement agencies. So the mental attitude of society too is required to be change to bring gender justice in real sence. So the concerted efforts of law making authorities, enforcement, agencies, judiciary, NGO, NCW, SWC and other educational and philanthropic institutions includes religious preachers in highly needed in co-operative manner to bring gender justice and sensitize proper in society.

Hence, today despite progress in direction of gender justice and gender equality much is still required to be done. Hence the future will answer whether there is complete gender justice or not.

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Keywords :

Gender Justice, Discrimination, Gender inequality, Domestic Violence, Trans-sexual, Patriarchal.