

GENDER INJUSTICE AND THE WOMEN : SOME ISSUES*By*

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The impoverished status of women is in sharp contrast to a rapid development and modernization process. The prevalent gender bias offends human dignity and human rights have emerged as a fundamental crisis globally. All forms of gender discrimination violate fundamental freedoms and human rights. Thus gender injustice and insensitiveness manifests itself a form of discrimination, crime and violence against women. In the contemporary Indian Scenario, the framers of the Constitution were aware of the sociology of the problem of emancipation of the female sex. They realize that it was necessary to promote education and economic interest of women in order to develop the nation and thus the equality of status between men and women guaranteed to protect women from exploitation and to provide social justice was the need of the hour then. Accordingly the Preamble of the Constitution resolved to secure to all its citizens (men and women) justice, social, economic and political; Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity and to promote among them Fraternity assuring the dignity of the individual and the unity of the Nation. To attain these ideals, the Constitution guarantees certain fundamental rights such as freedom of speech and expression and protection of life and personal liberty¹.

The D.P.S.P though are not justiciable are considered by the State as Policies and Laws *i.e.*, right to compulsory education, right to adequate means of livelihood for men and women, equal pay for equal work and maternity reliefs².

Though the Constitution prohibits discrimination on the basis of person's race, sex, religion, place of birth or social status, the Government authorities worked to enforce these provisions with varying degrees of success and failures.

The legislations had a propound impact on the women and children. Discrimination against women is the present day problem. The author wants to discuss the issues relating to status of women under different Acts

1. HINDU MARRIAGE ACT, 1955:

The texts of Hindu Law recognized the principle "let mutual fidelity continue until death", however the old Hindu Law stressed on the wife's obedience to her husband. The matrimonial law prescribes that one's spouse is entitled to the society and consortium of other spouse. If other spouse has withdrawn the society of the other without reasonable excuse, the Court may grant a decree for restitution of conjugal rights³.

The Supreme Court in *Sarojani v. Sudharsan Kumar Chadha*,⁴ had observed "the object of restitution decree is to bring about cohabitation between the estranged parties *i.e.*, so that they can live together the remedy of restitution aims at cohabitation and consortium but not merely sexual intercourse and in the privacy of home and married life neither Article 21 nor Article 14 has any place" and of course since this judgment is from Apex Court of India holding Section 9 as constitutionally valid, suppressed very right to privacy of the women and overlooked. The effect of the

1. Articles 14, 15, 16, 19 and 21 of the Indian Constitution.

2. Articles 21A, 39d and 39 of the Indian Constitution.

3. Section 9 of the Hindu Marriage Act.

4. AIR 1984 SC 1562.

decree of restitution of conjugal rights is to coerce the unwilling party to have sex and cohabitation against her free will and consent and thus allowing her body to be used as vehicle for another human being's procreation. I submit that with due respect to the Supreme Court of India a special protection to the women in this regard must be provided and her right to privacy must be safeguarded. Mention must be made herein that this remedy has been abolished in England⁵, as State coercion of this nature can neither prolong nor preserve the voluntary union of husband and wife in matrimony.

2. MEDICAL TERMINATION OF PREGNANCY ACT, 1971:

In the year 1971 the Parliament enacted the Medical Termination of Pregnancy Act, 1971 with a view to liberalize abortions and also minimized illegal abortions which have been taking place in India on a large scale, mostly by quacks. The Act, a small one with only eight sections, recognizes a woman's right to privacy, space and limit pregnancies and take decisions with respect to her own body. Encouragement to bring down population growth rate and permitting terminating unwanted pregnancy of a married woman because of failure of contraceptive device are other important features of the Act. The pregnancy can be terminated only by a registered medical practitioner where there is a risk of life of a pregnant woman, or risk of grave injury to her physical or mental health, are the pregnancy is caused by rape, or a substantial risk exists to the effect that if the child is born it would be severely handicapped because of physical or mental abnormalities, or where contraceptive method of a married woman has failed, or there exists a risk to her health because of her actual or reasonably forceable environment.

From the woman's point of view, abortion is a matter concerned with her right of privacy. The two different aspects of the privacy interests are the right to make decision that affects the spheres of family, marriage and procreation and the right to control one's own body. Decisions relating to these aspects are belonging to the rights to make personal decisions. The right to control what takes place in one's body is regarded by woman as her citadel, responsibility, mental, emotional and physical being. On the other hand, the State's interest is to protect potential life. Apart from its interest in an unborn, it is also interested in the protection of the woman's life, because an abortion in the late stages of pregnancy may be fatal. The abortion statutes, in one way or other, balance these conflicting interests.

In India, Article 21 of the Constitution provides for the right to life and liberty to every person. The privacy rights are accepted under the concept of personal liberty. Weighing the decisions in *Smt. Satya v. Siri. Ram*,⁶ and *Sh. Sushil Kumar Verma v. Smt Usha*,⁷ against the provisions of the MTPA,⁸ permitting free choice to the woman without husband's consent except in case when she is minor or a lunatic, in matter of terminating pregnancy, the holding of the Court is uncomfortable to the married users of MTP as the decisions do not cause for the right to personal liberty and human dignity of women. To hold that it is cruelty on the part of the woman to refuse to give birth to a child while her husband wants it, is to undermine her free choice whether, when and how her body is to become the vehicle for the procreation of another human species. After all, it is the woman who suffers the hazards of pregnancy before it culminates into the pangs of childbirth. Since the ground is invoked by the respondent

5. Section 20 of the Matrimonial Proceedings Act, 1970.

6. AIR 1983 (P&H) 252

7. AIR 1987 Del. 86

8. Medical Termination of Pregnancy Act 1971.

in such cases for seeking a decree of civil force, it is likely to be abused by the male spouses. Also equally significant is the caution that if a divorce is greater cruelty within the law towards the wife who is punished for doing a legal thing under the MTPA and practising right to life or right to privacy in matters of procreation.

The implementation of the MTPA has negative and positive aspects. The act permits the doctor to perform abortion when the pregnancy is the result of rape. It may be pointed out that the term “rape” is a legal concept for which the doctors are not competent to make judgment. Thus the Act has conferred almost immunity to the unscrupulous professional medical abortionists because of the ineffectiveness of the law to detect its abuse.

In theory, law recognizes the right, as the medical practitioner has to consider only the woman’s environment. The matter is thus purely between the doctors and the women. Under the law, even the consent of the husband becomes unnecessary. In reality however, a woman’s right to abortion is very restricted, and in most instances it is invariably the family’s decision. However, legally, even though the woman has an unrestricted right under the statute, various decisions have held that aborting a foetus without the consent of the husband would amount to cruelty under Section 13(1)(a) of the Hindu Marriage Act and hence a ground for divorce.

Abortion is thus perfectly legal in India

and the legislation does not raise any moral or religious issues. The MTPA with its exceptions does recognize the right of the woman over her body, at least in theory. No doubt abortion should be sought as a last resort. But to restrict this right of the woman by various judicial pronouncements can be counterproductive. Despite legislation, illegal abortions continue due to various socio-economic factors. The absolute right of abortion also throws up issue of sex determination tests and female foeticide, which are of serious concern. But a strict interpretation of the law may only strengthen the gender bias against women today.

3. *THE DOMESTIC VIOLENCE ACT, 2005.*

This Act provides protection from violence against women. The object is to ensure a wider social commitment to educate women of their rights and the men to respect and recognize the basic human values and to have collective consciousness. In this regard the observation in *S. Gopal Reddy v. State of A.P.*,⁹ worth to mention that “the harassment, torture, abetted suicides and a dowry death of young innocent brides has always sent shock waves to the civilized society”.

FINALE

There are so many progressive legislations recognizing rights of women, still the implementation is very poor. Law can do little unless present social and cultural perceptions have to change.

9. AIR 1996 SC 2184