

6. *Property Rights* :

In India only five States, A.P, Karnataka, Tamilnadu, Maharashtra, Kerala made State law making daughters equal coparceners along with son in H.U.F.

Muslims :—There is no legislation to give equal shares in property to widow and daughter along with sons.

Christians :—They have equal inheritance rights along with male.

Conclusion :

The analysis of various decisions given by Supreme Court reveals that there is no uniformity in decisions of Supreme Court dealing with Personal Laws. It appears that there is a clash between human rights of women and protection of minority right both being fundamental rights. When an individual

member of a minority community seeks protection from the State in opposition to her group's laws or customs she is effectively being forced to choose between her rights and her community¹⁰.

When India submitted its first report on CEDAW at UN on 22nd Session at New York the committee questioned Indian representative regarding gender bias in personal laws the Indian representative could not give a satisfactory reply because in India religion is blended with laws.

Law is subjected to change since ancient times. Under modern legislation a traditional norms have been replaced and modified but still certain social practices still count and have greater hold on individuals rather than law. Therefore the social and legal reforms must move together to ban social evils and to uphold women's human rights.

10. Madhavi Sunder, *Piercing the veil*, 112 *yale L.J* 1399, 1461 (2003).

GENDER IN INEQUALITY AND THE HUMANITARIAN LAW

By

—M. CHAKRAVARTHY, L.L.M.,
Faculty of Law

“Devi Bhagavatham”¹ and “Devi Puranam”² which are the integral parts of Indian Philosophy enunciates that the cosmic energy pervading this Universe says:

- i. I am the inception and conception and conclusion of this Universe.
- ii. I am both active and passive.

- iii. My existence ranges from micro-lecithin eggs³ to macro-celestial⁴ bodies.
- iv. Without my commandment, not even a sub-atomic particle undergoes displacement.

Philosophy says, woman is the half of the man without whom a man cannot found

1. DEVI BHAGAVATHAM = The book that deals with origin, administration, destruction of Universe in Philosophy.
2. DEVI PURANAM = One of the text in 18 puranas in Indian Philosophy.

3. Micro-lecithin eggs = Eggs that can be viewed under electron microscope.
4. macro-celestial bodies = Stars, planets, meteors, comets and sati lights can be viewed with telescope.

a family. The progeny receives instruction from mother and protection from father.

The equality of woman with man is not only a human right, but it is a parameter for social justice. It is a primary need for growth. Tranquility and equality which was the summary of IV women conference of U.N.O held in BEIJING which is considered as the main task towards emancipation⁵ of women in the world.

The ratio of girls has been decreasing in developing countries to third world countries which are marching towards progress. It is a retrogressive metamorphosis⁶ that has drawn attention in the space age pertaining to the decline of births of female off-springs in all countries of the world. The statistical data collected across the world in 2010-2011 on the number of woman revealed bitter results. The communist China is experiencing bitter results after propagating "One child enough OR no child" by strict implementation of family planning programme. The scarcity of girls is gradually increasing in China due to which the grown-up boys cannot match a beautiful girl of marriage age unless they spend large amount of money. India is going to meet the very fate in the near future as revealed by the statistical data.

The number of families which are becoming complacent with one or two children are proliferating. Moreover the families with one or two male progeny are becoming more pleasing in Indian society. The number of females exceeded males in 11 States and union territories in the year 1951 *i.e.*, in the early year of Independent India. Now, Kerala and Pondicherry are standing ahead in excess of female over

males as far as the gender determination of boys below 6 years is concerned. This ratio is declining in many States. The awareness of fluctuations in market economy, expenditure on family maintenance, family planning programmes has its grave impact on sex-ratio. The planning commission has set out good objectives before the implementation of Eleventh Five-year Plan, the objectives of which are not satisfactory. The experts in sociology, Anthropology, Medical Science, Economics suggested for the bridging the gap between male and female ratio, change of economic attitude of parents who are inclining for the male progeny which is also one of the objectives of awakening the people by our five-year plans. The birth of female infants decreased in the preceding decade in Jammu and Kashmir, Gujarath, Bihar States. "The WORLD ECONOMIC FORUM" made a scathing attack on India in the report released in November last year pertaining to the humiliated status of India not only in giving birth to female infants, but also in providing resources and opportunities to women. The report⁵ was after deep investigation by taking into consideration of mainly resources available to women and opportunities for women. Economic factors like salaries, employment opportunities and the opportunities in higher levels of organizational hierarchy which require advanced technical and managerial skills is the primary factor. Health of woman average lifespan, sex-ratio are the secondary factors besides representation in politics and opportunities in legislation policy implementation which are the tertiary factors and education which is considered as the fourth factor.

India occupied 113th place in the ranks given to 135 countries on the basis of the above four factors. The rulers have to hold accountability for the displacement of India from 98th rank in 2006 to 113th rank in 2012. Latest studies and statistics revealed

5. emancipation = Liberation of women from suppression and oppression from darkness to light, from bondage to liberty.

6. Retrogressive metamorphosis = Evolutionary process in which adult is more degenerate than embryo *i.e.*, reversible.

the partisan attitude and gender discrimination meted out in female feticide and representation of grown-up girls in inadequate and sub-standard positions statistics of sex-ratio of children are recorded individually in every ten years which would anticipate the position of human resources in the next fifteen years.

The statistical data collected in the year 2011 revealed the decrease in females over males in the proceeding decade in 27 States and union territories and especially sex-ratio declined to the bottom in Jammu and Kashmir. Now the females this year are 859 for 1000 males as against 941 females for 1000 males in Jammu and Kashmir in the year 2001. The rulers are bound to hold accountability for reasons for the increase in States and union territories to 27 pertaining to decline in male, female sex-ratio. They are further bound to explain whether they are terminating the lives of female off springs or preserving the female progeny to maintain balance in the society. The Indian society is not only terminating the lives of female embryos, but also not providing opportunities to the grown-up women. Only 46.9% latrines are available to 24.66 crores of families surviving in this country. Nearly 28 crores women are facing difficulties in answering the nature's call and defecation. There are no attached bathrooms and latrines to 69% to 78% of families in many States of India as well as against the national average.

Case Laws:

Shahbano's case : It is a milestone in Indian legal history which shattered the minds of MULLAS, against SHARIAT and Muslim Personal Law Board

Only 46.6% of families in India's total population have accessibility to water supply and the remaining population have to draw and carry water in metal-vessels from outside and women are holding the responsibility

of carrying the water in many families in Indian culture. More than 30 crores women are in unavoidable circumstances to carry the water for domestic needs. The population census revealed and made scathing attack on rulers whose slogan "welfare of women..... our aim, our agenda" is a cock and bull story. The far-sighted statesmen of India are giving a deaf ear to the problems confronted by women who are crushing their limbs to satisfy their thirst by a sip of water.

India is getting into unconscious State with respect to ratio of women when compared with the neighbouring countries. Women are more than men even in Pakistan which is invaded by fundamentalism and the ratio and growth of women is more than men even in small country like Nepal. India should take a lesson from Nepal where females are 1014 over 1000 males; 1034 women over 1000 men in Srilanka.

The State should enact and implement the laws strictly to curtail the female feticide done by modern scanning which is a barbaric culture. The economic conditions like rise in cost of living, economic turbulence are causing the maintenance of family a big-burden. The discrimination between male and female children among parents would be deleted by rise in standard of living. The welfare schemes launched by the State should reach the targetted sections of society who are living from hand to mouth. The State should give economic support to girls till the completion of post-graduation with a condition to forego marriage till the completion of education and accommodation is employment. India is a welfare State and a part of Public International Law and *vice versa* since India is a sovereign nation having enacted Constitution. Parents are resorting to child marriages due to lack of support and economic assurance from the State by superseding Child-Marriages Restraint Act, 1926. Many social, economic, cultural factors are attributing to the growth of this barbarism.

The rising health problem of human is drawing attention who are becoming pregnant in their early ages which would affect the health of both mother and the child whose number runs into crores. The State should take remedial measures immediately without delay otherwise the human resources and health security would fall into jeopardy.

Conclusion :

The treatment of women on par with men would be possible only when empowerment of women, cultivation of

modern science, analytical study of human society is made with strict laws by abolishing the religion and fiction which retards the human body and mind. Especially in India, personal laws pertaining to marriage, succession, divorce, maintenance, adoption, are not uniform due to which the liberty of women is at peril, and the State is daring not for enactment of uniform civil code like uniform Criminal Procedure Code.

The State is secular and still it has apprehended the break down of Constitutional machinery in the event of enactment and implementation of Uniform Civil Code.

JUDICIAL REVIEW OF ORDINANCE MAKING POWER UNDER THE INDIAN CONSTITUTION – PARAMETERS AND PERSPECTIVES

By

—M. CHAKRAVARTHY, L.L.M.,
Faculty of Law

There are three important organs in a State. They are – Legislature, Executive and Judiciary. The function of the Legislature is to make laws. The function of the Executive is to implement the laws made by the Legislature. The function of the Judiciary is to interpret the laws and also exercise control over the Executive action.

Sometimes when the Legislature is not in session to make the laws, urgent situation may arise to pass some enactment or law. Under such circumstances, to meet such emergency situation, the President may issue ordinances. These ordinances have the force of law till the Legislature assembles and makes a regular law, the ordinance should be in force. The dictionary meaning of the word 'ordinance' is 'an official order'. It is derived from the French word 'ordenance'. This power of the President is in addition to the other powers which are vested in him under the Constitution of India. The

President is the Head of the Executive. This power which is provided to the President under the Constitution is also available to the Governor of the State. In other words, Governor can also issue ordinances.

The Constitution has conferred extensive Executive powers on the President. The Executive power of the Union of India is vested in him. He is the Head of the Indian Republic. All Executive functions are executed in the name of the President, authenticated in such manner as may be prescribed by rules to be made by the President¹.

Ordinance making power of the President under Article 123 of the Constitution of India :—The most important legislative power of the President is his Ordinance-making power. If at any time, where both Houses of the Parliament

1. Article 77.