

to find solutions to our problems”, *Singh* said.

“The country is facing a number of social challenges and the Judiciary, Legislature Members of the Bar, legal academia and scholars must actively engage in finding meaningful and widely acceptable solutions” the PM said in a veiled indication towards a slew of issues in which the Judiciary and the Legislature have come to confront each other.

Starting from SC notices to Lok Sabha Speaker who had refused to accept or reply in the issue of expulsion of 11 MPs in the cash-for query issue, and from the demolition and sealing order on unauthorized construction which was responded to by the Government with a moratorium law, to the OBC reservation which is now pending in the apex Court, the Judiciary and the Legislature recently have hand conflicting views.

In an indirect reference to the OBC quota

issue the PM said “we must critically examine the devices of affirmative action that we have deployed in our country and their real impact on the evolving social order the opening up of the field of high education to private players and the changes it has brought about.”

However he hastened to add that the Supreme Court, through its judgments, “has from time-to-time, addressed critical problems and provided leadership to our society by coming up with highly original and innovative ideas”.

Singh stressed on “equity” especially in an “increasingly liberalized society” and called for “solutions through the engagement of Legislature and Judiciary”.

Chief Justice of India *Y.K. Sabharwal*, in his address, placed the ball in the Court of the Legislature by saying “lay should conform to the socio-economic requirements to meet the aspirations of the changing society”.

WOMEN RESERVATION AND CONSTITUTIONAL RIGHTS

By

—MIRZA AZMATULLAH BAIG, M.A., L.L.M.
Director Administration,
Sultan-ul-uloom College of Law,
Hyderabad

Article 14 of the Constitution deals with “equality before law” and it is based upon the natural justice. The equality clause in this Article requires that all persons subjected to any legislation should be treated alike under like circumstances and conditions. Equals have to be treated equally and unequal ought not to be treated equally. This cannot be destroyed even by the amendment under Article 368.

Article 15 deals with “prohibition of discrimination” on ground of religion, race,

caste, sex or place of birth or any of them. Article 14 is a general Article giving the equality to every citizen and non-citizen of India and the Article 15 is a particular right. The incorporation of Articles 14 and 15, the centuries ages slavery like life of women was thrown out and a new life of equal rights with men have been accorded. After the Constitution of India the women began to exercise equal rights with men. The Article simply say that women should be given equal rights. Further Article 15(3) empowers the

State to make any special provision for women and children.

In the eye of the law, there is no discrimination between man and woman. So far a post of a clerk to Prime Minister man or woman is competent person. There should be no discrimination between men and women on the basis of sex. In fact man is stronger than woman. Therefore keeping the weak physical position of women and children, the State is authorized by the Article 15(3) to make any special provisions for their benefit. It is called protective discrimination. The issue of reservation for women has become one of the most significant features of our Constitution. These developments have been attracting the serious attention of the feminists, scholars, jurists, social and human rights activists.

The above constitutional guarantees have been expanded and highlighted by the Supreme Court of India and other Courts in various decisions. The Supreme Court struck down in “*Air India v. Nargesh Mirza*”¹ as the Air India Regulations relating to retirement and pregnancy bar on the services of Air Hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary. While delivering the judgment the Supreme Court observed that Fundamental Right of equality of opportunity a technical pedantic or doctrinaire approach should not be made. If the facts or acts show any discrimination on ground of sex alone, then only such acts and acts would be treated as unconstitutional and against the Articles 15(1) and 16(2).

Inequality between women and men can appear in many different form and it has many faces. Gender disparity is, in fact, not one affixation but a multitude of problems. Sometimes the different asymmetries quite unrelated to each other. In deed, there may be no significant inequality in one sphere. But a great deal of inequality in another. For

example, Japan has no particular gender bias in nutrition or health care or school education. But men do seem to have considerable relative advantage in securing high **leadership positions in administration or business.**

However, in other cases, gender inequality of one type tends to encourage and sustain gender inequality of other kinds. Consequential **analysis** can then be critically important even within the large corpus of gender relations in general, in order to examine and scrutinize how the different aspects of gender inequality relate to each other. For a while gender inequality has many faces these are not independent (like those in austere image of Brahma in early Indian iconography). Rather they speak to each other and sometimes strongly encourage one and another. For example when women take decisional power within the family which amounts a deprivation of women’s” effective agency, this can also adversely affect their own well being. The two kinds of deprivation may not only move together – Be covariant – But they may be linked with each other through casual connections.²

National Policy for the employment of women.

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity, our laws, development policies, plans and programmes have aimed at women’s advancement in different spheres. From the Fifth Five Year Plan (1974-78) onwards has been a marked shift in the approach to women’s issues from welfare to development. In recent years, the empowerment of women

1. *Air India v. Nargesh Mirza*, AIR 1981 SC 1829

2. Essay by Sunanda Bhandare Memorial Lecture held at Delhi on November 14, 2001.

has been recognized as the central issue in determining the status of women. The National Commission for Women was set up by an Act of Parliament in 1990 to safeguard the rights and legal entitlements of women. The 73rd and 74th Amendments (1993) to the Constitution of India have provided for reservation of seats in the Local Bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision making at the local levels. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993.

Decision Making:

Women's equality in power sharing and active participation in decision making, including decision making in political process at all levels will be ensured for the achievement of the goals of empowerment. All measures will be taken to guarantee women equal access to and full participation in decision making bodies at every level, including the legislative, executive, judicial, corporate, statutory bodies, as also the Advisory Commissions, Committees, Boards, Trusts *etc.* Affirmative action such as reservations/quotas, including in higher legislative bodies, will be considered whenever necessary on a time bound basis. Women-friendly personnel policies will also be drawn upto encourage women to participate effectively in the developmental process.

Mainstreaming a Gender Perspective in the Development Process:

Policies, programmes and systems will be established to ensure mainstreaming of women's perspectives in all development processes as catalysts, participants and recipients. Wherever there are gaps in policies and programmes, women's specific interventions would be undertaken to bridge

these. Coordinating and monitoring mechanisms will also be devised to assess from time to time the progress of such mainstreaming mechanisms. Women's issues and concerns as a result will specially be addressed and reflected in all concerned laws, sectoral policies, plans and programmes of action.

In one case, "*T. Sudbakar Reddy v. Government of A.P.*";³ the Supreme Court has upheld the constitutional validity of proviso to Section 31(1)(a) of the A.P. Co-operative Societies Act, 1961 and of the Rules 22(c) and 22-A(3)(a) framed thereunder relying upon the mandate of Article 15 clause 3 the proviso read with the said rules provided for nomination of two women members by the Registrar to the Managing Committee of the Co-operative Societies with a right to vote and to take part in the meetings of the committee. The Court upheld the validity of these provisions on the ground that Article 15(3) of the Constitution permitted the making of special provisions for women.

In the above cases the Supreme Court and High Court decisions given are relating to women reservation and against gender discrimination. The ugly scenes and stalemate over tabling the Women's Reservation Bill in Parliament have had a very beneficial effect. They have finally brought the grim truth into sharper focus that politics has proven to be very inhospitable for women in independent India. What we are witnessing today is a worrisome phenomenon of further decline in the participation of women, not only in our Legislatures, but in many other of our political and public spaces.

The representation of women in the Lok Sabha has basically remained stagnant. The average representation in the Lok Sabha from 1952 to 2005 is 7% and likewise in the Rajya Sabha is 9%. These figures despite the fact

3. *T. Sudbakar Reddy v. Government of Andhra Pradesh*, 1993 Supp (4) Sec 439

that all major national parties in recent years have declared through their manifestos that they would implement a 33 per cent reservation for women in all Legislatures. There are so many merits in proposed Women Reservation Bill, unfortunately there has been no consensus on the issue and it will take some more time for the Parliament to approve the Bill. It is seen that each subsequent Government, is presenting the Bill in the Parliament, but it has not been approved and passed due to various political party ideologies. The issue is still pending before the parliamentarians.

The concept of reservation is inextricably lined to the socio-economic and legal conditions prevailing in the present society. The issue of reservations brings out several basic issues need to be handled with political

commitment and social strategy. These include the education, economical independence, employment, social development and women empowerment. The need for a new legal instrument with the political will is the need of the hour. The special consideration directly or indirectly providing reservations to the women are inadequate. The provisions of the Indian Constitution are helpful to the women in the terms of their protection.

The cardinal principle of social justice enunciated in the preamble, the bedrock of personal liberty under Article 21, the elements of Directive Principles of State Policy have to be realized to reach the grass root level of ordinary life of an Indian. In fact the Supreme Court and the High Courts have developed new jurisprudence under Article 15(3) of the Constitution.

WHAT IS RENT?

By

—D. SRINIVASA PATNAIK,
Asst., P.P. JFCM Court,
Parvathipuram

Population in cities is increasing and demand for houses is increasing leading to high rents. Long ago Government has proposed to brought NEW rent laws but not still come into force. The original intention of the Legislature is to protect the interest of both landlords and tenants. Exploitation on either side is not implementing the intention of the lawmakers in true letter and spirit of law. Prior to independence in our country, our country used to be governed by British Rules and the laws in England is in force, this is the reason still for existing shades of British thought process here. The war is the reason for passing of rent control laws in Great Britain. Hence this special enactment passed in Houses of England to check high rents.

We after perusing this law passed Rent Act to protect unreasonable evictions of farmers and tenants and providing right to landlords to get vacating buildings after assigning accurate reasons. There is no definition of rent in the present Act. It is a technical problem in Court trials to decide rent when disputed by both parties. Basically there are 3 types of cases in this matter.

1. Non depositing of rents
2. Tenancy holding over
3. Not vacating buildings after lease period.
(HOUSING PART ACTION IN U.S.A)

Procedure to determine rents:

Presently Courts are adopting the market