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**PRESIDENTIAL ADDRESS OF THE HON'BLE SRI JUSTICE S.R. NAYAK, JUDGE, HIGH COURT
OF A.P. AND THE PRESIDENT OF THE ANDHRA PRADESH JUDICIAL ACADEMY
AT THE INAUGURATION OF THE JUDICIAL COLLOQUIUM ON "GENDER AND LAW"
AT THE A.P. JUDICIAL ACADEMY ON 6-10-2001**

As the President of the Andhra Pradesh judicial Academy, I am very glad to be associated with this colloquium on "Gender and Law", a Project organized by National Judicial Academy in collaboration and partnership with Andhra Pradesh High Court, Andhra Pradesh Judicial Academy and the British Council, India. The Andhra Pradesh Judicial Academy, ever since its inception in the year 1991, has been very active and in the forefront in organizing various seminars, symposiums, workshops etc., on matters of contemporary relevance, significance and utility. The present colloquium on "Gender and Law" organized in partnership with the Andhra Pradesh Judicial Academy, is in the line of the activities carried on by the Academy, and intended to take stock of successes and failures of the laws, programmes and strategies intended for emancipation and empowerment of women, and to focus on the preventive as well as curative aspects of the problems.

Gender inequality is an international phenomenon. It knows no borders, no country and no political outfits who rule the countries. Gender inequality exists anywhere an everywhere throughout the globe. It exists in democracies, totalitarian regimes, monarchies, dictatorships and in every other form of governance. It exists in developed countries, developing countries and under-developed countries. Gender inequality, therefore, has emerged as a transactional problem and therefore this problem has to

be tackled and solved by participation and co-operation of all the countries at the international level.

Many cases of the present day society reflect gender inequality in their most ugly forms and therefore it has become an issue of grave concern and redressal. Women have been victims of cruel and reprehensible violence - domestic as well as societal. Despite several International Covenants, declarations at the international level and despite number of projects, programmes evolved at the national level to remove gender inequality and uplift the status of women to compete with men in equal terms, the progress made in that direction hitherto remains to be negligible only. Datas available show that despite the fact the Indian Parliament and State Legislatures, have enacted large number of women ameliorating and women related legislations, discrimination on grounds of sex instead of abating has been increasing. The situation is alarming. In that view of the matter, the colloquium now organized by the National judicial Academy in collaboration and partnership with Andhra Pradesh High Court, Andhra Pradesh Judicial Academy and the British Council, India is quite heartening and timely and on behalf of the Andhra Pradesh Judicial Academy I welcome this move and I congratulate all the concerned in organizing this three day colloquium on "Gender and Law". 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, there has been a marked shift in the approach to women's issues from welfare to development. In recent years, the empowerment of women has been recognized as a 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.

With the birth of Indian Republic came the grand fundamental document, Constitution of India, vibrant with new ideas, new philosophies and new rights. It brought about a sweep change and a radical social revolution. The Constitution was to foster the achievement of many goals, transcendent among them was that of social revolution. Through this revolution, would be fulfilled the basic need of the common man, and it was hoped, this revolution would bring about fundamental changes in the structure of Indian Society - a society with long and glorious cultural traditions, but greatly in need, Constitution Assembly members believed, of a powerful infusion of energy and nationalism. The scheme of social revolution runs throughout the proceedings

and documents of the Constituent Assembly. Indian Constitution is prominently a social document. It is goal oriented. This document puts women completely at par with men and fulfils the cherished goal of equality in matters of civil, political and economic rights. The political rights of franchise have also been given to Indian women under the provisions of the Constitution. Besides, they have been given right to vote and stand in election for any post.

Despite all these provisions of law and efforts in modern era, I am of the considered opinion that we are not in a position to accord and ensure a status to women, which they had held and enjoyed during Vedic period. When we look back at the Vedic period, it is seen that the women held a position of equality with men. The girls and boys were required to undergo *Upanayanam* ceremonies in Vedic studies. The education of women was given importance in the Atharva Veda by stating "the success of women in her married life depends upon her proper training during the *Brahmacharya*". During the Upanishad period there were the instances of women scholars like Gargi, Maitreyee. During Ashok period, name of Sanghamitra became prominent one. According to Jain tradition, Yayant, a princess remained unmarried and received *Diksha* from Mahavira. During Vedic time, matrimony was not compulsory for a woman and no limitation had been placed on the age of marriage. The Vedic woman being grown up and educated had a voice in the selection of their husbands. There were also love marriages - Gandharva Vivaha.

Though in the Rig-Veda the life of widow was not characterized by restrictions, remarriage was allowed. Dharmashastra allowed divorce. As regards Sati, the Rig Veda never mentioned anywhere the practice of the burning of widows with their dead husbands. According to Vedic hymns both

husbands and wives were joint owners of the property. This had references in Baudhayana, Gautam and Vasistha Dharmashastra. Rig Veda recognized the right of inheritance of an unmarried daughter from the property of her father and the right of the married daughter to get share from the property of the father. So far as widow's right of inheritance is concerned, the widow was entitled to maintenance from the joint family property, though she could not claim partition and a separate share. In its origin, Stridhan was vitally connected with the custom of the bride-price. Bride used to receive some wedding gifts known as parinaya and Vedic texts declare that the wife was to be their owner. However, in course of time, after 300 BC, there led to the curtailment of the freedom of women. The education of women slowly began to be neglected. The exalted status of Indian women in Vedic and ancient time suffered a set back in the medieval period. Social, economic and political factors played a major role in the suppression. Social inhibitions and discriminatory practices against them continued to exist during the 'enlightened' and 'civilized' imperial rule. In the development of society, woman has become a weaker section of human population. Her functions relegated to the performance of household affairs and procreation. The term "ardhangini, sahadharmini, bharya, apart, she has become the worst target of social and economic exploitation. Even in the era of equality of sexes, equality of law and equal protection of laws, it is ironical that cruelty to women and problem of battered wives have become a crucial phenomenon. Though the Constitution has provided equality of both the sexes, man and woman, biological conditions of the female and developed sense of subordination demand extra protection for them. The reason is that "woman's physical structure and the performance of certain functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of

public interest and care in order to preserve the strength and vigour of the human race. Thus the law and justice demands additional privileges and safeguards for maintaining proper-socio-legal status of women in the society.

Prior to independence and enactment of the Indian Constitution, the shastric, quranic and ecclesiastical laws of marriage, succession, adoption and guardianship etc., were heavily biased in favour of the male and against the female, and in favour of the husband and against the wife. In the matrimonial home they were subjected to the state of subjugation and domination by distorting and departing from the most rational and equitable principles that governed the relationship of man and woman during the Vedic period. However, after independence in the case of Hindus, most of inequalities, mostly in respect of marital rights of the women have been done away through legislative measures on dowry, marriage, succession, guardianship *etc.* When Constitution was drafted the problem of women was very much felt by the framers of the Constitution. The Constitution contains specific provisions for protective discrimination in favour of women. Despite the constitutional guarantee of equality of sex and constitutional mandates for social justice, it is seen rampant discrimination and exploitation of woman continues in every walk of life. The instances of bride burning, women battering, molestation and ill-treatment of women are on the increase. Their discrimination and exploitation in father's house, in-law's abode and workplace are still the order of the day. 'Choli ke piche' culture has now become an indecent culture of male dominated society today. Woman's figures and posters are found in lable wrappers, advertisements and documents and even in razor blades as if women are purchasable commodities. In modern capitalist society, money has gained strength and power to purchase anything

including woman's honour and decency. It is true that after independence numerous commissions and committees have been established on woman's problems. Many laudable reports have been submitted. Indian nation does not lack in ideas to improve the dignity, honour and material environment of women folk. The criminal lapse one finds is in the sphere of implementation of the constitutional provisions and the numerous statutes enacted by the Indian Parliament and State Legislatures to improve the conditions of women in the society and to achieve parity with men. It is for the scholars and learned like you to investigate whether this serious lapse has taken place and is taking place because of the fact that the constitutional provisions and these statutes have to be implemented mainly through the bureaucracy and the judiciary dominated by males or this lapse is attributable to some other cause. The efficacy of law alone does not serve anything unless it is properly supported and supplemented by progressive and matching equitable psyche of the people in general and the males in particular. Therefore, the question is whether there is change of heart and mind among men to respect and foster the equality guaranteed to women under the Indian Constitution and numerous laws enacted by the Parliament and the State Legislatures. At the same time, women should not be contented with achieving the tactical or technical parity. What is utmost necessary is that both the sexes created by the Almighty should realize the importance and significance of their existence on earth and of the difference between the sexes and should strive to nurture and promote the other sex with mutual respect and aid for the benefit of mankind without wasting energy in avoidable conflict of emotion and 'alarm'. I am one who always thought that the high ideals that guided the relationship of man and woman, and the husband and wife during Vedic period should be the creed of modern men and women.

Independent India, wedded to the goal of economic growth coupled with social justice, has made a steady progress in social security measures. The Indian Constitution guarantees equal rights to both the sexes and does not discriminate on the basis of caste, colour, creed and sex. The concept of social security is essentially related to the high ideals of human dignity and social justice. The Indian Parliament and the State Legislatures have passed numerous enactments for the benefit and empowerment of women.

In order to eradicate discrimination and to provide human rights, it was necessary to promote social and economic status of women and protect them from neglect and injustice. The Constitution of India, in order to achieve social and economic emancipation of women has prohibited discrimination on the ground of sex, made provisions empowering the State to make special provisions for women and to enable the State to take special care of women in the light of their physiological, biological, socio-economic conditions.

The Fundamental Rights, Directive Principles of State Policy and Fundamental Duties enshrined in the Indian Constitution aim at securing for the women status equal to men and there cannot be any discrimination on any ground whatsoever. Though right of equality between man and woman is guaranteed by the Constitution, still in Indian Society, the idea that women are inferior to men is prevailing among the women themselves from medieval period. Still the women are giving great weight and value to the age old customs and traditions, which are distortions of practices of Vedic period thinking that tradition is truth, and therefore, they are not in a position to utilize the laws for their benefit and emancipation. Many men in the country proclaim from the house top that they respect their wives; they call them their better

halves. However, it is indisputable fact that the women do not have so many rights as the men enjoy. Indian Society is male dominated. India is a secular country where people belong to various religions. Among Hindus, wife is decoratively called 'Kul Dharm Patni' (a dutiful wife); or 'Grih Laxmi' or 'Ardhangini' etc. Hinduism ordains that the wife must serve the husband even though he is a cruel or bad character. It ordains that husband and wife are two wheels of a chariot but the fact remains that only one wheel moves and second does not move and chariot moves according to the wishes of one wheel. The woman's status in other religions is not on better footing. In every religion husband is the Supreme Master of the body, wealth and even life of woman. Life of a widow is still worse and so is the case of a divorcee. Several laws have been enacted for the betterment and equality and for full justice to women. But still they are not effective as the women are not availing their right and getting any benefit of the laws. Therefore, to eradicate inequalities, it is essential that laws enacted are effectively implemented in all spheres and the measures are to be adopted which are necessary for the eradication of inequalities so as to reach the goal of equality to turn the *dejure* equality into *de facto* equality.

Women's freedom has to be judged in the context of the progressive ideals of modern society and not on old ideals of historical importance only. Now-a-days on the assumption that Government have prepared policies for providing equal opportunities or access to facilities, women have come forward to translate such lofty

ideals into reality contrary to the riddled dominance by men. However, there is yawning gap between the Government's much flaunted policies for female emancipation and the existing bottlenecks at the ground level. Therefore, it is necessary to raise awareness as to how gender issue plays a key role in the social and economic activities and for attracting more and more women to sensitize the new perspective of globalization and liberalization as against traditional bias under the changing scenario.

In the course of these three days colloquium, you are going to deliberate on topics like promotion of gender awareness, Criminal Justice System *vis-a-vis* violence and offence against women, Family Law touching property rights, Inheritance, Maintenance etc. Friends, I expect this Judicial Colloquium will discuss the laws, the problems and the strategies in the field of emancipation of women. It will also aid in halting and reversing pernicious trends which presently prevail in the society and which tend to degrade women further and will help foster the right values and right strategies in the field of emancipation of women. I do hope that its deliberations for three days will contribute to the enhancement of the efficacy of the State's resources to evolve and apply appropriate preventive and remedial measures in this problem area and help in evolving a policy to bring about the advancement, development and empowerment of women creating a conducive environment through positive economic and social policies for full development of women to enable them to realize their full potential. I wish the colloquium all the success.