Gender Equality and Human Rights in India

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Gender equality between women and men refers to the equal rights, responsibilities and opportunities for women and men and girls and boys. Gender equality implies that the interests, needs and priorities of both women and men are taken into consideration recognizing the diversity of different groups of women and men. Gender equity that provides a level playing field for men & women so that they have a fair chance to realize equal outcomes are a pre-condition for ensuring gender equality and human rights. The ultimate goal in gender equality is to ensure that women and men have equitable access to, and benefit from society’s resources, opportunities and rewards. And, as part of this, women need to have equal participation in defining what is valued and how this can be achieved. Equity is a means. Equality is the result. Gender equity denotes an element of interpretation of social justice, usually based on tradition, custom, religion or culture, which is most often to the detriment to women. The Convention on the Elimination of All Forms of Discrimination against Women, also known as the Women’s Bill of Rights, declares that countries should: Act to eliminate violations of women’s rights, whether by private persons, groups or organizations. Endeavour to modify social and cultural patterns of conduct that stereotype either gender or put women in an inferior position. Ensure that women have equal rights in education and equal access to information. Eliminate discrimination against women in their access to health care. End discrimination against women in all matters relating to marriage and family relations.

Fundamental Rights ensure empowerment of women through Article 14 - equal rights and opportunities for men and women in the political, economic and social sphere; Article 15 - prohibition of discrimination on the grounds of sex, religion, caste etc; Article 15(3) - empowers the State to take affirmative measures for women. Article 16- provides for equality of opportunities in the matter of public appointments. The directive Principals ensure empowerment of women through' Article 39- enjoins the state to provide an adequate means of livelihood to men and women and Equal pay for equal work. Article 42- State to ensure the provision for just and humane condition of work and maternity relief. Article 51v (A) (e) - fundamental duty on every citizen to renounce the practices derogatory to the dignity of women.

Women’s Movement and Legal Reforms

When the government of India signed the UN charter on Equality, Development and Peace in 1975, the process of gender audit in the governance got an official stamp (Patel, 2002). In 1976, the Equal Remuneration Act was enacted to provide equal opportunities, equal treatment and equal wages for work of similar nature. Women’s groups have been consistently doing public scrutiny of Maternity Benefit Act, 1961 and specific provisions for women in general labour laws, The Factories Act, 1948 – Section 34 provides that the State Government can lay down rules prescribing weights that may be carried by men and women, the Contract Labour (Abolition and Regulation) Act and Rules- that separate provision of utilities for women and fixed working hours. Women’s access to legal service largely remains inadequate in spite of the legal service Act, 1987.

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The Labour Laws for Empowerment of Women:

The labour laws for empowerment of women are based on principle of gender justice. They are as follows:

Equal Remuneration Act, 1976 ensures equal opportunity, equal treatment and equal wages.

Maternity Benefit Act, 1961 provides 90 days paid leave for working women

The Factories Act, 1948 – Section 34 provides that the State government can lay down rules prescribing weights that may be carried by men and women.

The Contract Labour (Abolition and Regulation) Act and Rules- separate provision of utilities for women and fixed working hours.


In the formal or organized sector, there are industrial legislations and other protective legislations for workers. Most of these legislative provisions, unfortunately, seem to be working against the interests of workers, lack implementation and need reform. Government regulated minimum wages ensure only the bare essentials of survival but even that basic level is denied to workers in the informal sector. Factory inspectors usually avoid reporting as employers complain of low profitability, threaten closure and bribe them to keep quiet. At present crèches are provided in industries that employ more than 30 women employees and there too, ways and means are used to avoid this facility by the employers. There is no provision for providing crèches in the service sector and for both men and women working in shifts.

In India, the Equal Remuneration Act, 1976, enacted pursuant to Article 39 (d) of the Constitution of India provides for the payment of equal remuneration to men and women workers, for providing equal opportunities to women and men and for the prevention of discrimination on the grounds of sex against women in the matter of employment. The task of ensuring that there is no discrimination is very difficult, as there is no effective way of implementing the limited findings of the advisory committee. Secondly, the definition and evaluation of the same work or work of similar nature leave much to be desired. Even the courts have used different expressions relating to valuation of identical work. This is one of the least invoked legislations.

Maternity Benefit Act, 1961 provides for maternity benefit in case of childbirth, miscarriages, abortions, Medical Termination of Pregnancies (Maps) and tubectomy. Establishments employing less than ten persons are left out from the purview of the Maternity Benefit Act or the Employees State Insurance Act. Under the present Maternity Benefit Act, 1961 the eligibility for maternity leave is that the woman before availing the leave must have worked for eighty days in that establishment or organization. These eighty days include paid holidays and weekly holidays and the period for which she was laid off. In many organizations they are never allowed to complete the required number of days on record.

Violation of Basic Human Rights in Informal Sector

The informal sector as opposed to the formal sector is often loosely defined as one in which workers do not have recognition as workers and work without any social protection. In the informal sector, women workers are forced to work without contracts, without social security, with low wages under bad working conditions. In the absence of health insurance, income security, it is difficult for women workers in informal sector to place importance on
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their health. The lack of income security often has direct consequence on the access to education for the children of women workers in informal sector. They are not able to study and alleviate their poverty. Often children get absorbed into the informal sector themselves as adults due to lack of education or as children to help adults earn more (e.g. home based workers, vendors, self employed). Unorganised labour is usually perceived as ‘poor’ and as a beneficiary, consequently there are provisions in the national budgets to help them out of their poverty and vulnerability. They are treated as beneficiaries of anti-poverty programs. The main concern of informal sector workers is irregular employment (Patel & Karne, 2006).

Sexual Harassment at Workplace

In 1997 the Supreme Court passed the landmark judgment in the Vishakha case laying down guidelines to be followed by establishments in dealing with complaints of sexual harassment. The Court stated that these guidelines were to be implemented until legislation is passed to deal with the issue (Mathew, 2002). The Vishakha Guidelines provide clear-cut definition of sexual harassment at work place. The Supreme Court Directive, 1997 clearly and unambiguously provides an answer to the question, ‘What is Sexual Harassment?’ As defined in the Supreme Court guidelines (Vishakha Vs the State of Rajasthan, August 1997) sexual harassment includes such unwelcome sexually determined behaviour as:

- Physical contact, a demand or request for sexual favours, sexually coloured remarks, showing pornography and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature, e.g. leering, dirty jokes, sexual remark about a person’s body etc.

Pursuant to this, the Government of India requested the National Commission of Women (NCW) to draft the legislation. A number of issues were raised regarding the NCW draft produced, and ultimately a Drafting Committee was set up to make a fresh draft. A number of women’s organisations are part of this Committee, including, from Mumbai, Majlis. Majlis was asked to make the draft. Some women’s organisations and women lawyers associated with Trade Unions in Mumbai have collectively worked on the draft with Majlis. Particular concerns while drafting have been to include the unorganized sector and to incorporate provisions of labour law. The bill to be introduced in the parliament is known as The Sexual Harassment of Women at the Workplace (Prevention and Redressal) Bill, 2004.

The 73rd and 74th Amendments to the Constitution

The 73rd and 74th Amendments to the Constitution provides for 33% reservations of seats for women in Panchayats and Municipalities. As of now we have 1.2 million women elected representatives in gram panchayat, taluka panchayat, zilla panchayat, municipal councils and municipal corporations (Patel, 2002). The Recent amendments in Bihar and Maharashtra have ensured 50% reservation for women in local self government bodies. UNDP Report, 2001 reported, “The evidence on gender and decentralisation in India suggests that while women have played a positive role in addressing, or attempting to address, a range of practical gender needs. (Practical gender needs are identified keeping into consideration, gender based division of labour or women’s subordinate position in the economy. They are a response to immediate perceived necessity, identified within a specific context. They are practical in nature and often are concerned with inadequacies in living conditions such as provision of fuel, water, healthcare and employment); their impact on strategic gender needs (Strategic gender needs Strategic Gender Needs are different in different economic contexts and are determined by statutory provisions, affirmative action by the state,
Recent UN reports state that a pro-active role of the employers to enhance women’s position in the economy and social movements) is not remarkable.” (UNDP 2001).

**Countering Violence against Women**

Violence against women (VAW) is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women. VAW is one of the crucial social mechanisms by which women are forced into a subordinate position compared to men. VAW constitutes a violation of the rights and fundamental freedoms of women and impairs or nullifies their enjoyment of those rights and freedoms. VAW prevents the full implementation of the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), a landmark international agreement that affirms principles of fundamental human rights and equality for women and girls initiated by the UN and adopted by the member countries. According CEDAW, the term gender-based violence “GBV” includes actual or threatened physical, sexual and psychological violence occurring in the family or community. VAW is understood as

I. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, widow burning, female infanticide, pre-birth elimination of girls, crimes against women and girls in the name of honour, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

II. Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution;

III. Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.

**The PCPNDT Act, 2002:**

Adverse child sex ratio due to pre-birth elimination of girls has posed a major threat to survival of girls and women in India (Patel, 2010). In this context strict implementation of Pre-conception and Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act (2002) is mandatory. Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act was enacted in 1994 by the Centre followed by similar Acts by several state governments and union territories of India during 1988 (after Maharashtra legislation to regulate prenatal sex determination tests), as a result of pressure created by Forum Against Sex-determination and Sex-preselection. But there was a gross violation of this central legislation.

As per the new guidelines declared by the Ministry of Health and Family Welfare, Government of India (2012) regarding IEC and publicity activities all citizens are requested to organize rallies and signature campaigns for ‘Save the Girl Child’. Communication media such as community radio, mass electronic and print media and internet for information dissemination must proactively educate public about PCPNDT Act as well as rights of girls and thro’ their channels give publicity to awareness program with the help of NGOs/ MNGOs etc like Public Melas (Fairs), public meetings, Jan Samvads (Public Dialogue), Jan Sunwa (Public Hearing). Youth campaign against sex selection and local awareness activities such as nukkad natak (Street Theatre), dramas, folk art, etc. are highlighted in the guidelines. Under Corporate Social Responsibility publicity and information material on “Save the Girl Child” must be developed in regional language and public messages on ‘Empowerment of girls’ in the public places like bus stands, railway stations, Airports, metro stations etc should be displayed. Involvement of print and electronic media to give wider publicity to the issue like advertisement on TV relating to
PNNDT Act and promotional Girl child schemes in the State is an important aspect of the directive.

The Protection of Women from Domestic Violence, 2005

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto. The bill on domestic Violence circulated in 2002 had generated heated debate around the issue, whether casual/occasional beating should be considered as “domestic violence”.

After massive signature campaign and lobbying, the Indian women managed to get THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE Act, 2005 to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence - physical (beating, slapping, hitting, kicking, pushing), sexual (forced intercourse, forcing her to look at pornography or any other obscene pictures or material and child sexual abuse), verbal (name-calling and insults), psychological and economic (preventing one’s wife from taking up a job or forcing her to leave job) and emotional abuse of any kind occurring within the family. Domestic violence under the act includes harassment by way of unlawful dowry demands to the women or her relatives. It empowers the women victim to stay in the matrimonial, shared household and/or parental home whether or not she has nay title in the household. Recently formulated rules of the Act also empower the protection officer, police, public hospital and the community to take proactive steps to stop the violence and provide services to the victim.

The scope of this legislation has been widened to include persons who have “shared households and are related by consanguinity, marriage or a relationship in the nature of marriage or adoption to relationship with family members - even those women who are sisters, widows, mothers, single women or living with the abuser entitled to get protection.”

As a result of the pressure of women’s groups, health activists and judicial activism, new legal provisions such as recognition of the right to residence of a woman in the parental or matrimonial homes, provision for the appointment of protection officers and the recognition of service providers, gender sensitisation trainings for Protection Officers and Judges with regard to criminal legal system-substantive law, procedural law, rules and infrastructure and budgetary allocation for strengthening the structures and mechanisms for implementation of laws have been provided (Jesani, 2011).

Conclusion

There is a need to provide public education through electronic media, community radio, seminars and public meetings on the laws having direct bearing on women. The Indian state has been pro-active so far as legal safeguards for women are concerned. The provision of protection of women is key intervention in the Twelfth Five Year Plan that highlights gender inclusive growth. Ministry of Women and Child Development, GoI has launched public education on laws concerning women. It has set out proactive, affirmative approaches and actions necessary for realizing the rights of women and providing equality of opportunity. Involvement of civil society groups, women’s groups, educational institutions and judicial activism can strengthen these efforts.
References


