

ON THE QUESTION OF GENDER JUSTICE

In every era of history of social development the question of women and the question of gender justice remained on board. It remained on board in every era for the reason as rightly pointed out by famous theoretician Fredric Engeles in his classical writing "Origin" of family, private property and the State" that "woman was the first human being that tasted bondage. woman was a slave before slave existed".

The truth about women is an issue as old as the issue of truth of life. In old days Sant Jarusthru while on the way of searching truth of life asked an old lady about truth of women. The old lady replied, "I do not know but if you are going to her then have a hunter with you to tackle her". The statement of lady is enough to show the attitude of the society towards woman even in the early days of social development.

In India, we had different views with regard to the position of women in society. The Goddess of learning is "Saraswati", the Goddess of power is "Parwati", the Goddess of prosperity is "Laxmi", Gargi and Maytre are considered to be learned women of their days in Indian mythology. we feel elevated by saying

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"यत्र नार्यस्तु पूज्यन्ते, रमन्ते तत्र देवता:"

Is it a reality? Is it a truth of our society? In reality we consider women as a weak being, a slave, a person not fit for system.

"पिता रक्षति कौमारे भर्तार रक्षति यौवने

रक्षति स्थविरे पुत्राः नस्मी स्वातंच्यमर्हति"

"Father protects when she is young,
husband protects during her youth,
children protect her in old age.
woman is never fit for freedom".

In this background of the history of social development in our part of earth we had a great crusader for gender justice the "Lord Krishna", a great lover of Radha, a wonderful friend of Krishnaa (Draupadi), a concern husband of Rukmani and Satyabhama and a generous ruler who provided shelter to 16000 exploited women of Mathura.

In modern times father of nation Mahatma Gandhi led the movement of Indian social development in every field beside his political activities. In fact the political movement of Mahatma was covering each and every aspect of social and human development, it was a fight against imperialism, it was a fight for social reforms and it was also a fight for equality among human beings. Mahatma Gandhi was having absolute faith in inherent power of women, he emphasized it by saying-

“complete emancipation of women and her equality with man is the final goal of our social development, whose realization no power on earth can prevent”.

The Constitution of India, a great document, is a great contribution of the generation just one or two steps ahead to us in democratic social building of our country and society. The Constitution of India embodies a “Sankalp” for equality of status and of opportunity. Articles 14, 15 and 16 provide equality as a fundamental right of every citizen irrespective of sex, caste, religion and place of birth. The directive principles enshrined under Article 39 of the Constitution of India makes it essential for the State to direct its policies towards equality among all its citizens, men and women, with regard to remuneration.

A fundamental duty for every citizen to renounce practice derogatory to the dignity of women is emphasized under Article 51-A of the Constitution. Another important provision in our Constitution which empowers parliament to make any law for implementing international treaty agreement convention and the decisions made at any international conference association or every body is provided under Article 253 of the Constitution. We are marching equally with entire world on various issues of human rights including the issue of gender justice because of the laws enacted being empowered by the provisions of Article 253 of the Constitution. Our parliament has enacted number of laws to implement resolutions, treaties and agreements agreed at international level to appraise human dignity in totality.

Gender justice has been the current of all the world conferences on women since the first conference in 1978 at Maxico City, yet gender violations both physical and psychological continued unabated. With increasing participation of women in public life, economic, social or political, violence against women is acquiring new dimensions. Beside the psychological exploitations and physical assaults in various forms like domestic violence, molestation, rape, the new methods of women exploitations emerging are work place violence, cyber crimes and use of women as a commodity of pleasure through the misuse of

information technology.

Hon'ble Supreme Court of our country dealt with the issue of gender justice with great caution and with substantial application of human rights. Supreme Court while adjudicating the issues pertaining to women and gender justice kept in vision the values and determination enlightened in preamble of our Constitution.

Hon'ble Supreme Court in the case of Daily Domestic Working Women Association v. Union of India, (1995)1 SCC 14, inducted broad parameters for investigating and prosecuting agencies and also for the courts in assisting the rape victims. In the same case National Commission for Women was directed to evolve such a scheme which may wipe out the tears of unfortunate rape victims.

In famous case of State of Maharashtra v. Madhukar Narain Mardikar (1991) SCC 57, the Apex Court of this country while setting aside a judgment of Bombay High Court held that merely for the reason that women is of easy virtue, her evidence cannot be thrown. In the same case Supreme Court observed that even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate

her person. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to protection of law as enshrined under Article 14 of the Constitution.

In an another known case i.e. of State of Punjab v. Gurmeet Singh, 1996(2) SCC 384, Hon'ble Supreme Court observed its anguish for indifferent attitude of society towards the honour of women. In this case Supreme Court also emphasized that the courts shoulder a great responsibility while trying an accused on charge of rape. The courts, according to the Supreme Court, must deal such cases with utmost sensitivity.

In the case of Vishakha v. State of Rajasthan, Supreme Court considered various international legal documents and the provisions of Indian Constitution and laid down guidelines and norms for due observance by all at the work place in the country. These guidelines were issued with reference to definition of human rights given in Section 2(d) of the Protection of Human Rights Act, 1993.

Our Apex Court dealt with issues of women by keeping the principles of gender justice as paramount consideration, be that may be of violence against her or with regard to her status in society, the question of marriage, adultery, or her service in public

employment. Supreme Court dealt with issue of marriage and motherhood in the case of Nargis Mirza by keeping status of women at par with men in constitutional framework. In most of the cases the Court dealt with male chauvinism due to feudal violence or of criminal attitude, but the challenges in this regard are more complex in present days and shall be more pervasive in coming years.

A new culture is at our door steps with a new fashion waive-cum-discovery of new individual self and a new interpretation of liberty which emphasizing liberty of individual on higher pedestal vis-a-vis freedom and openness of the society. This new culture is much more concerned with luxury than usual prosperity in all spheres. Being a party to the rat race of luxury and acquiring it through the best of investments in the new way of living, the means by which they achieve it is not the concern. In this new culture, it is the globe and not an individual nation or state is the limit, the entire world is being gravitated into this new economic orbit i.e. globalisation and that is not an administrative invasion, but, it is an economic penetration and cultural subjugation. It locate itself in the psycho social settings of a nation under the pretext of development and modern community. It destroys the indigenous life system. Our value based people centered cultural heritage is best becoming oblivious

under the pressure of globalisation. Every human being specially women becomes continuously a commodified under globally operated economicoss. Human mind, body, behaviour, desire, relationship and even psyche becomes available in market in exchange of few coins. The media driven campaign for commodities moulds the mind itself and it takes society towards consumer worship. The concept of human rights and human dignity remains a misnomer. It is a step towards the dehumanization.

This international consumerism is giving a complex view to the woman issue, a totally new complex version of the problem. In earlier system woman was suffering feudal violence. Now she is to suffer commercial value. The real need to uplift dignity of the women i.e. the democratic value, is absent from the scenario of the social development. The traders of era are ready to trade for flash at international level virtually as well as factually.

In this new scenario our present judicial system is required to equip itself with new means to penetrate effectively in the social system to diagnose and kill new infecting viruses. The judiciary is required to shoulder much more tedious tasks to keep the ideals of our Constitution at top while dealing with every question of gender bias. The Courts are required to be more sensitive and vigilant than the

earlier. The Courts are required to be more technically sound and also more culturally aware. The Courts have to keep pace with new system as in coming times women shall be the biggest victims of consumerism. Forces are ready to use it as salable commodity, so we are required to take a definite stance in favour of women and the values which permit women to be a human being instead of a commodity.

Justice Govind Mathur,
Judge, Rajasthan High Court,.
JODHPUR

(Before Women Empowerment Cell, Mohanlal Sukhadia
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