

WOMEN AND GENDER EQUALITY: AN ILLUSION OR REALITY

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ABSTRACT

“There is no chance of the advancement and welfare of the world unless the situation of women is improved.”

Swami Vivekananda.

All through the history of women gender disparity was a part of the commanded society. The prime problems faced by the women around the world are primarily the problem of the whole countries. The vast majority of the politicians considered as the well-wishers of the public never felt an opportunity to talk about the concern and responsibility in giving priority to the empowerment of women. This article highlights the need to have gender equality and is concerned with the recent two happenings. The first deals with the landmark verdict of the Supreme Court where Court granted permanent Commission to women in armed forces after very long battle in the court room. The Second deals with crisis of COVID-19 which has deteriorated the conditions of women and made them to face intimate terrorism during COVID-19 crisis.

INTRODUCTION

“To call women a weaker sex is libel; it is man’s injustice to every woman. If by strength is meant brute strength then indeed is woman less brute than man. If by strength is meant moral power then woman is immeasurably man’s superior. Has she got greater institution is she not more self-sacrificing, has she not greater power of endurance has she got greater courage? Without her man could not be there. If non-violence is the law of our being the future is with woman. Who can make a more effective appeal to the heart of man?” - Mahatma Gandhijiⁱ

Women are considered as the real architects of the society and a rising phoenix of the modern world. A woman is the beautiful gift of God in the form mother, daughter, wife, teacher and friend. The world can never be complete without a woman. Even the Supreme Court of India in its three landmark judgements have recognised the dynamic role that is being played by women in the civilised society. A three Judge bench of the Supreme Court in *Lata Wadha v State of Bihar*ⁱⁱ

10. *“So far as the deceased housewives are concerned in the absence of any data and as the housewives were not earning any income, attempt has been made to determine the compensation on the basis of service rendered by them to the house. On the basis of the age group of the housewives, appropriate multiplier has been applied.”*

In *Arun Kumar Agarwal v National Insurance Company Limited*ⁱⁱⁱ, Supreme Court held as follows

“26. In India the courts have recognised that the contribution made by the wife to the house is invaluable and cannot be computed in terms of money. The gratuitous service rendered by the wife with true love and affection to the children and husband and managing the household affairs cannot be equated with the services rendered by others. A wife or mother does not work by clock. She is in the constant attendance of the family throughout the day and night unless she is employed and is required to attend the employer’s work for particular hours. She takes all the requirements of her husband and children including cooking of food, washing clothes etc. She teaches small children and provides invaluable guidance to them for their future life. A

housekeeper/maidservant can do the household work but she can never be a substitute for mother/wife who renders selfless service to her husband and children.”

A three Judge Bench in the case of *Kirti v Oriental insurance Company Ltd.*^{iv} while dealing with one of the most important issues that house makers do not add economic value to the household observed that, “*Women on average spent 16.9 and 2.6 percent of their day on unpaid domestic services and unpaid care giving services for household members respectively while men spent 1.7 and 0.8 percent.*” The court further observed that there is a need for fixing national income for a homemaker therefore serves important functions:

“It is a recognition of the multitude of women who are engaged in this activity, whether by choice or as a result of social/cultural norms. It signals to society at large that the law and the courts of the land believe in the value of the labour services and sacrifices of homemakers. It is an acceptance of the idea that these activities contribute in a very real way to the economic conditions of the family and to the economy of the nation, regardless of the fact that it may have been traditionally excluded from economic analyses. It is a reflection of changing attitudes and mindsets and of our international law obligations and most importantly it is step towards the Constitutional vision of social equality and ensuring dignity of life to all individuals.”

Indian society has always been considered as male dominating societies which deliberately has been suppressed women and are given mental, physical and emotional sufferings to remain weak. Women are not allowed to raise their voice for their civil rights. They are not provided with education, livelihood, care and support. They are not permitted to work and go out of home without permission and wear clothes according to their will. The difference between the upbringing of a boy child and a girl child leads to discrimination. In India, the social stratification of women leaves them as second rate citizen. Dr. Bhim Rao Ambedkar while making the closing speech of the Assembly debate said that, “*we will enter a life of full of contradictions. We will have equality in politics social and economic life and we will have inequalities too.*” Since the beginning women have been a vulnerable part of the society and the position of women in country like India has been fluctuating more or less towards progressive yet challenging developments. The current status of women has not been at best but it is getting worse at the same time in several areas. In the 21st century of the world where

humans have invented technologies and reached to Mars but is unable to put a complete stop button on crimes against women in the society. In the present scenario of modern world of science and technologies, the violence and increasing crime against women has been witnessed by everyone across the world. This situation has given rise to the enormity and pensiveness of the monstrosity that has penetrated against women since centuries. The crusade for the decimation of violence against women is a proof of fact of such situation of cauldron of depressed anger. Women is subjected to criminal hardships in different forms such as eve-teasing, molestation, bigamy, fraudulent marriage, rape, kidnapping, abduction, enticement to married woman, stalking, child abuse, harassment at working places. Almost every woman has gained tolerance towards and has experienced the feeling of mistreated, trivialised, kept out, ignored, assaulted, laughed or discriminated against because of her gender. One of the most vulnerable categories of woman is who are prone to become the victim of crime is the single woman working who reach out of the world have to met with such crimes at working places. The changes in the living standard and lifestyles have change the social ethos and meagre concern of the moral values has contributed to the vicious outlook towards women due to which there has been increased crime against women. Crimes against women are matter of grave and utmost concern so that women around the world could live with dignity, respect, honour, liberty and in the atmosphere of peace and harmony free from degeneration, atrocities and heinous crimes. There are many legal provisions which punish the culprits of wrongs for committing such wrongs. The Indian Penal Code though provides for the provisions for women as victim of many crimes such as murder, rape, assault, kidnapping etc. With the need of an hour many new socio-economic offences had been now committing against women across the world. The Criminal Amendment Act 2013, or Nirbhaya Act or Anti Rape Law, was passed by the parliament in the wake of barbaric rape of an intern at night, the incident shook the country and in the wake of widespread protest the government has passed this legislation to stringent the rape laws and laws related to the sexual offences with harsher punishment. Today, we celebrate International Women's Day, we talk about women empowerment, women equality, feminism but the truth of fact that in spite of all women are mistreated physically, emotionally, sexually, economically and psychologically. Women are deprived of their constitutional rights and freedom guaranteed under part III of the Indian Constitution, self-respect, dignity and security. Undoubtedly women have played a very important role in the development of the country by

actively participating in the national freedom struggle but her position has been an endless process of ups and downs.

If someone sketches only a rosy picture of women in India it will be infuriated by the simple reason because the truth of matter is that the bleak visuals that are splashed across the newspaper and social media which proved the existence of crippling poverty in the country, far from espousing the cause of feminism and equality, the common educated urban who is habituated to the prevailing complacencies was stumped in a trance of speechless when she felt the helplessness that the average Indian is struggling in the big cities to build a respectable livelihood to straddle back afoot their journey to their hometown.

GRANT OF PERMANENT COMMISSION IN ARMED FORCES

“A woman feels as keenly thinks as clearly as a man. She in her sphere does work as useful as man does in his. She has much right to her freedom in order to develop her personality to the full as that of a man. When she marries, she does not become the husband’s servant but his equal partner with equal rights and responsibility. If his work is more important in life of the community, she is more important of the family. Neither can do without the other. Neither is above or under to each other. They both are equals.”- Lord Denning

In the year 2020 the Supreme Court of India came out with one of its Landmark Judgement in Secretary, Ministry of defence v Babita Puniya^v where Supreme Court granted permanent Commission to the women in the armed forces. The Judgement was delivered by Honourable Justice D.Y Chandrachud and Honourable Justice Hemant Gupta.^{vi}

A. Background of the case

The claim of the Indian women with the right to serve in the armed forces has always been a matter of controversy in India. The quest for the equality of opportunity for women seeking Permanent Commission in the Indian Army forms the basis of these appeals. The denial of such right is still a case of gender equality. Public Interest litigation was filed under Article 226 of the Constitution of India before the Honourable High Court of Delhi for issuing the Union of India and the Indian army the writ of mandamus so as to allow female candidates to be recruited

in Indian Territorial Army at par with the man. Earlier to this petition the Territorial Indian Army allows only male citizens of India who are medically fit to apply for the Territorial Army as per the recruitment rules of the Indian army leaving no scope for the Ex- Service female officers. Thus, this eligibility criterion was a clear case of gender inequality as service in the Territorial Army was only offered to males but was denied to women. This denial of recruitment is against the principle of equality guaranteed by the Constitution of India under Article 14 which talks about the equality.^{vii}

- I. Babita Puniya a practicing advocate in February 2003 filed a Writ Petition before the Honourable High Court of Delhi seeking Permanent Commission for females' officers recruited through Short Service Commission in the army at par with their male counterparts. Many other women officers separately filed a petition for the same and that were tagged together with Babita Puniya's petition.
- II. In the year 2006, a notification was issued from the Ministry of Defence which has allowed the women officer to serve for a maximum period of 14 years. Major Leena Gaurav filed a writ petition on dated 16th October 2006 to challenge the condition of service imposed by the circulars and for seeking permanent commission for women officers.
- III. In the year 2008, the centre decided to grant permanent commission to Short Service Commission women officers in some of the departments such as Judge Advocate General, Army Education Corps and corresponding branches in the Air Force and Navy. Many petitions were moved against this circular in the year 2008.
- IV. Finally in 2010, Honourable High Court of Delhi clubbed all petitions and directed Centre and State Ministry to provide for the permanent commission to the Short Service Commission women officers of the Air force and Army who had opted for it and not yet granted.
- V. After the order of the Delhi High Court, Secretary through Ministry of Defence made an appeal against the order of the Delhi High Court before the Honourable Supreme Court of India but the same of refused and the order of the Delhi High Court was affirmed and upheld in this case.

Judgement

“To cast aspersion on their abilities on the ground of gender is an affront not only to their dignity as women but to the dignity of the members of the Indian Army.”^{viii}

The Supreme Court Bench stated that they are entrenched with the stereotypical assumptions of ascribed gender roles for women. Moreover, the Honourable Bench observed that depriving women officers from the category of Permanent Commission in the armed forces is violation of their Fundamental rights guaranteed under Article 14 of the Indian Constitution.

COVID-19 LOCKDOWN: A SITUATION OF INTIMATE TERRORISM FOR THE VICTIMS OF DOMESTIC VIOLENCE

“A large number of world’s population are continuously becoming the subject to inhuman treatment which includes torture, terrorism, humiliation, starvation, mutilation and even murder because they are born as female.”^{ix} –Charlotte Bunch

“Women are the most vulnerable sections of the society, especially in the time of crisis. Pandemics are no exceptions. Rather they give rise to such an environment that due to pandemic fear the situation of conflict, post conflict and displacement may exacerbate existing violence.”^x Amidst in the time of COVID-19, where our nation is facing strange time battling against the mushrooming pandemic, the government on dated 24th March 2020 has imposed nationwide lockdown mandated to the strict observance of social distancing. *“The deadly pandemic COVID-19 has made an unprecedented wave of insecurity and fear of economic disruption all around the world. In the wake of such lockdown there has been an undeniable spike in the cases of domestic violence in many countries such as China, Spain, United Kingdom and India and this pandemic has been now referred as ‘Shadow Pandemic’ for the violence against women and girls in the time of Corona. The black lashing impact of staying at home has specifically loomed the cases of violence against women and girls.”^{xi}* As per the reports of World Health Organisation, one in every three women across the globe experience physical or sexual violence in their lifetime.^{xii} Domestic violence perpetrates all the socio-economic strata, whether it is rich, poor or middle class. With the imposition of sudden lockdown, women find themselves isolated, alone and vulnerable with no other options to

resort. This situation has left the conduct of abuser unchecked and therefore encourages more perpetration due lack of sanctions.

A. Covid-19 lockdown situation is exceptionally worse for women

“Due to lockdown, victims of domestic violence have been trapped at homes with their abusers and have no access to family, friends, public spaces, legal institutions, etc.” - Chief Justice Gita Mittal (Jammu & Kashmir High Court)^{xiii}

The COVID-19 pandemic has affected everyone all over the world. But unfortunately, all crisis disproportionately impacts women. Mr. Antonio Guterres, the Secretary General of United Nations was of the opinion that, *“nearly 60% of women all around the world working in the informal economy, earning less, saving more are greater risk of poverty because of COVID-19.”*^{xiv} “At the same time as women are losing employment, women’s unpaid care work has enhanced exponentially. In the time of crisis of such pandemic domestic violence cases has been seen as blunt upheaval in the recent times. Such an increase is however not a new trend but women are subjected to greater risk during such pandemic and health disasters.”^{xv} The reason behind such inhuman behaviour is the economic hardships that people generally faces when they are confined and cramped in their homes during such pandemic. Phumzile Mlambo Ngcuka, the executive director of United Nations Women stated that, *“A shadow pandemic is growing crimes against women”* and Domestic Violence has become both a public and human right crisis.^{xvi} According to the report of United Nation Women, countries like China, Malaysia and Lebanon have witnessed approximately two to three folds of increased cases of violence against women in the time of COVID- 19. Thus, the looming fear of insecurity, precarity and unemployment are yet another cause for the violence against women and girls.^{xvii} Several leading lawyers of the matrimonial dispute and psychologists have raised concerns regarding the safety of women and children during the lockdown as confinement at home with the contrary partner has resulted in greater physical and emotional violence against women and girls with the disastrous consequences of their health wellbeing. Thus, the lockdown seems to provide a perfect opportunity to the abuser partner to practice intimate terrorism where he can dictate and control all actions and movement of women with unlimited violence where there is nobody to have a check over it.

DR. BHIM RAO AMBEDKAR AND SOCIAL JUSTICE FOR WOMEN

“The best thermometer in order to make the nation progressed and developed is its treatment of its women. There is no chance for the welfare of the world unless the condition of women is improved. Women has suffered from aeons and that has given them infinite patience and perseverance. The perfect independence can be achieved only when woman gets perfect womanhood. There is no hope for the rise of the family or a country where there is no respect for women or where women live in sadness.”

All through the history of women, gender disparity was a part of the commanded society. From the very ancient society women has been considered as and viewed as to be the substandard and subordinate to man. From the previous millenniums the position of women is liable to be changed in every era. The position of women was on the equal footing in the Vedic Era but from the post Vedic period the position of women started deteriorating and it was considered to be the most degraded during the Mughal rule in India. Dr. Bhim Rao Ambedkar was upset with the pitiable and pathetic conditions and low status of women in the Indian Society. He was of the opinion that women in India are tied up with the bandage of unrealistic beliefs and superstitions which they have to bear till death. She has been barely used as a machine for the procreation of children and a tool to bear the burden of the family, restricted to the role of bearing of children and fulfilling duties as mother and wife, thus it is whole aspect of the life of women in the Indian society. Women were supposed to face gender discrimination, which denied the women the concept of equality, debarred them from getting education which result in the non-availability of opportunities of women and finally all these circumstances lead to the poverty, illiterateness and degradation of the dignity of women in Indian Society. But it was the efforts of Dr. Bhim Rao Ambedkar and many social reformers that today we find a number of women empowerment programmes, equal participation of women in the field of political, social and economic affairs of the country.

“I measure the progress of the community by the degree of progress which women have achieved”- Bhim Rao Ambedkar

Constitution lays down exhaustive guidelines to make gender equality in a real sense. A country shall never be successful in its march towards progress if women are left behind. It would be the collective effort of all three branches of the government to assist in making this de jure

equality a de facto one. Thus, at last throwing light on the important judicial outlook which have realised women's right.

In Vishaka v State of Rajasthan^{xviii} the Supreme Court by way of broad interpretation of the Constitution held that sexual harassment was a clear violation of the rights provided under Article 14, 19 and 21 of the Constitution of India. Relying on the Convention on Elimination of All Forms of Discrimination Against Women the court laid down historic Vishaka Guidelines and these guidelines were converted into the creation of law i.e., Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act 2013.

In State v. Ram Singh & OR's^{xix} The barbaric and gruesome rape incident in the year 2012 has sparked hue and cry for the need for the establishment of stricter laws for the rape in the country. The Supreme Court Bench of three Judges unanimously upheld the death penalty of all the accused who exploited victim's dignity and identity. The crime was under the doctrine of rarest of rare cases and with regard to the issue of women rights the court observed that:

“Public at large in particular men are to be sensitized on gender justice. The battle for the gender justice can only be won through strict implementation of legislative provisions, sensitization of public, taking other proactive steps at all levels for combating violence against women and ensuring widespread attitudinal changes and comprehensive changes in the existing mind set. We hope that this incident will pave way for the same.”

In Laxmi v Union of India,^{xx} Supreme Court of India chalked out to issue directives for the prevention of such incidents by imposing restrictions on the sale of acids. The court instructed the governments at both levels to plan and prohibit the unauthorised sale of acids across the nation.

In Shayara Bano V Union of India^{xxi} the inhuman practice of talaq-e-biddat where men could irrevocably divorce their women by the pronouncements of talaq thrice. The five Judge Bench of the Supreme Court considered this practice unconstitutional and derogatory to the dignity and equality to the status of women as it violated Article 14, 21 and 25 of the Constitution of India.

CONCLUSION

“It is not just women who are paying an enormous price for this culture and religious prejudice. We all suffer when women and girls are abused and their needs are neglected. By denying them security and opportunity, we embedded unfairness in our society and fail to make most of the talents of half the population”

The women in India have to come in the open, confront gender bias against her openly and there has to be social revolution which leads to the improvement in her status and health in the society and curb the prevailing patriarchal mind set. The time has come to raise voice against crime against women and every woman irrespective of any discrimination deserves to have equality, liberty and freedom of speech and expression belief faith and worship and equality of opportunity.

Swami Vivekananda one of the pioneers of women empowerment has rightly said;

“Soul has no sex; it is neither male nor female. It is the only body that sex exists and the man who desires to reach the spirit cannot at the same time hold sex distinctions. There is no chance for the welfare of the world unless the condition of women is improved. Women have suffered for eons and that has given her infinite pains and infinite sufferings.”

ENDNOTES

ⁱ To the Women of India (Young India, Oct. 4, 1930).

ⁱⁱ (2001)8 SCC 197('Lata').

ⁱⁱⁱ (2010) 9 SCC 218 ('Arun').

^{iv} 2021 SCC Online SC 3 ('Kirti').

^v 2020 S.C.C. ONLINE 200 ('Secretary').

^{vi} Ibid

^{vii} Contributors," Women in the armed forces" The Economic Times, (February 17,2020 11:34 PM) <https://economictimes.indiatimes.com/news/defence/women-in-the-armed-forces-the-other-asymmetrical-war-won/articleshow/74181464.cms?from=mdr>

^{viii} Prachi Bhardwaj, "Grant Permanent Commission to all the women Officer in Army who opt for it" Supreme Court Cases February 17,2020 <https://www.scconline.com/blog/post/2020/02/17/grant-permanent-commission-to-all-women-officers-in-army-who-opt-for-it-within-3-months-sc-to-centre/>

^{ix} Shreyasi Singh, "Emerging Shadow Pandemic; During COVID-19: Domestic Violence" Live Law, (1st May 2020, 03:34 PM) <https://www.livelaw.in/columns/emerging-shadow-pandemic-during-covid-19-domestic-violence-156075>.

^x Dignath Raj Seghal, "Domestic Violence- The Shadow Pandemic" I-Pleaders Blog, (May 23, 2020) <https://blog.ipleaders.in/domestic-violence-shadow-pandemic/>

^{xi} United Nations Economic and Social Council, "Commission on the Status of women sixty fourth Session, 9th - 20th March 2020 <https://undocs.org/E/CN.6/2020/3>.

^{xii} World Health Organisation, " Global and regional estimates of violence against women", World Health Organisation catalogue, ISBN:9789241564625 https://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf?sequence=1

^{xiii} Re: Court on its own motion v. Union Territories of Jammu & Kashmir and Ladakh through Secretaries Social Welfare Department, Writ Petition (C) PIL No-/2020 decided on dated 16th April 2020.

^{xiv} United Nations News, " Put women and girls at centre of COVID-19 recovery-United Nations Secretary General" 9th April 2020, <https://news.un.org/en/story/2020/04/1061452>

^{xv} Daniel Schneider, Kristen Harknett, Sara McInahan, " Intimate partner violence in the great recession" HHS Publications, vol. 53,2 (2016): 471-505. doi:10.1007/s13524-016-0462-1 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4860387/>

^{xvi} United Nation Women, COVID-19 and Ending violence against women and girls" <https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2020/issue-brief-covid-19-and-ending-violence-against-women-and-girls-en.pdf?la=en&vs=5006>

^{xvii} Amanda Taub, *A New Covid-19 Crisis: Domestic Abuse Rises Worldwide*, NY times, May 8, 2020 1:10 AM <https://www.nytimes.com/2020/04/06/world/coronavirus-domestic-violence.html>

^{xviii} AIR 1997 SC 3011 ('Vishaka').

^{xix} (2017) 6 SCC 1 ('State').

^{xx}(2014) 4 SCC 427 ('Laxmi').

^{xxi} (2017) 9 S.C.C. 1('Shayara').