

Human Rights of Women in India: A Reality or Myth

Abstract

Women were given high esteem in Indian culture. They were recognized as the first teacher of a child. She plays a role of mother, sister and daughter. Still her status in society is secondary to man. The importance of women's role in the development process and the need to intensify action to improve the status of women were recognized internationally in 1975, which was proclaimed by General Assembly as International Women's year. Further, human rights are those rights which should be available to every individual human being. Hence, human rights not only know no boundaries but also are non-discriminatory on the basis of sex.

Keywords: Human Rights, Physical Violence, Psychological Hostility, Financial Cruelty, Sexual Violence, Spiritual Exploitation

Introduction

Women were given high esteem in Indian culture. They were recognized as the first teacher of a child. She plays a role of mother, sister and daughter. Still her status in society is secondary to man. The importance of women's role in the development process and the need to intensify action to improve the status of women were recognized internationally in 1975, which was proclaimed by General Assembly as International Women's year. Further, human rights are those rights which should be available to every individual human being. Hence, human rights not only know no boundaries but also are non-discriminatory on the basis of sex¹. The present study aims to analyze human rights issues related to women working in unorganized sector. Further, the study attempted to find out the present state of working women in unorganized sector in work place and their families. The researcher searched the relevant literature on certain keywords which are able to fulfill the information requirements of the research project. Certain terms like Gender inequality, human rights, human rights of women, human rights of weaker sections, unorganized sector, etc. are searched to collect the secondary literature. To collect the relevant literature, the researcher searched Research Journals and other publications such as books in Sociology, Economics, Women's Studies².

Review of Literature

Muzumdar (1998) writes paper entitled "Women and Violence: A Human Rights Perspective", which attempts to state and analyze the various types of violence trampling her human rights beginning with the female foetus and going on till old age. The following rights have been discussed – the right to life, liberty and security of the person, right to education, right to work, the right to be free from torture and the right to knowledge. The paper is country-specific, written on the basis of working in the field in India. Panini (2001) published "Caste, Race and Human Rights" in „Economic & Political Weekly". The idea that _caste is race plus may prove effective in drawing world attention to bear on the practice of caste. The practice of caste cannot, however, be eradicated by strategies that merely legitimize caste and caste-based politics. Hence, if we are intent on gaining more than mere political mileage from the proceedings of the Durban conference, it is time to recognize that non-caste secular strategies need to be innovative to eliminate the social evils of caste. George Mathew (2003) in his paper "Panchayati Raj Institutions and Human Rights in India" published in "Economic & Political Weekly" stated that the institutionalization of Panchayati raj systems since the 1990s that has added greater momentum to the decentralization process has also had deeper implications for the human rights situation in India. Even as the democratic process has been extended, changes in traditional society have involved conflict. This article argues however that as isolation of villages is forever broken by inroads of media, technology and spatial mobility, the

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new Panchayati system will only help weave the village into the broader social fabric. It is with increasing democratization and intervention of civil society institutions that concern for human rights will assume its rightful place alongside a vibrant democracy.

Objectives of the Study

1. To analyse the provisions relating to Woman Human Rights under Indian Constitution.
2. To analyse the provisions relating to Woman Human Rights under Indian Labour Laws.

Kinds of Violence against Woman

Violence against women is not new but is a global phenomenon. In Indian Society the problem of violence against women is widespread. The violence against women is of varied types and can be categorized as follows³:

Physical Violence

The most obvious ranges from pushing and shoving to hitting, beating, physical abuse with a weapon, torture, mutilation and murder.

Psychological Hostility

This includes various tactics to undermine a woman's self confidence such as yelling, insults, mockery, threats, abusive language, humiliation, harassment, contempt and deliberate deprivation of emotional care or isolation.

Financial Cruelty

This includes various tactics for total or partial control of a couple's finances, inheritance or employment income. May also include preventing a partner from taking employment outside the home or engaging in other activities that would lead to financial independence.

Sexual Violence

Any form of non-consensual sexual activity ranging from harassment, unwanted sexual touching to rape. This form of violence also includes incest.

Spiritual Exploitation

Works to destroy an individual's cultural or religious beliefs through ridicule or punishment, forbidding practice of a personal religion or forcing women or children to adhere to religious practices that are not their own, etc.

Sexual Harassment in the Workplace

It is viewed as a manifestation of violence against women that results in creating an atmosphere of discrimination against her. It is seen as unacceptable conditions of work which have detrimental effects for both female employees and the employer⁴.

Constitutional Provisions

The Constitution of India is the true champion of the gender-justice. It guaranteed rights to equality to women, which is the foundation stone for all rights of woman. Under the constitution, women claim equal right with men and even special protection to protect her womanhood. After adopting the Constitution various laws were passed to check the discrimination against women, even the personal laws of Hindu community were codified and rationalized⁵.

Moreover, Indian Constitution has kept its door open for the International laws, if they are not in conflict with the national laws. They can be adopted

for the development of the nation. Due to this, India was able to adopt various International Human Rights Act, National Commission for Women Act, Minorities Act etc., in this category. The main provisions of the Constitution of India which gives equal status to women are -

Article 14

The State shall not deny to any person equality before the law or the equal protection of laws within the territory of India⁶.

Article 15(1)

The state should not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them⁷.

Article 15(2)

No citizen shall, on grounds Only of religion, race, caste sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to -

- (a) Access to shops, public restaurants, hotels and places of public entertainment, or
- (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public⁸.

Article 15(3)

Nothing in this Article shall prevent the State from making any special provision for women and children.

Article 15(3)

Article 15(3) enables the state to make provisions for women. This obviously intends to meet their special needs on account of their peculiar characteristics as woman, such as the need for maternity leave before or after child birth etc⁹.

Article 16(2)

No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the state.

Article 39

The State shall in particular direct its policy towards securing - a) that the citizens, men and women equally, have the right to an adequate means of livelihood; (b) that there is equal pay for equal work for both men and women; (c) that the health and strength of workers, men and women and the tender age of the children are not abused¹⁰.

Article 42

The State shall make provision for securing just and human conditions of work and for maternity relief.

Although we pride in our constitutional and legal edifice, their realization in letter and in spirit, in so far as gender is concerned, is yet to be achieved¹¹.

Reservations of Women in Employments and Elections

In India, the women are by and large economically backward. This economic backwardness of the women has been noticed by the judiciary in a number of its pronouncements. The Supreme Court in a number of cases held that right to economic empowerment of women is a human right of women.

In the case of *State of Andhra Pradesh v. P.V. Vijay Kumar*¹², the Supreme Court has laid down that the State has the power to give priority to women over men in government services, if the woman is equally capable or qualified with man, but the vacancies are limited and all women and men candidates cannot be appointed, then in such case women can be given priority. This priority is within the ambit of Article 15(3).

In consonance with the provisions of Article 15(3) the National Women Commission Act was enacted in 1990. The 73rd and 74th Amendments to the Constitution which were effected in 1992, provide for reservations of seats to women in elections in the Panchayats and the Municipalities¹³.

Rights against Exploitation

Sexual harassment in the workplace is a growing concern for women. Employers abuse their authority to seek, sexual favours from their female co-workers or subordinates, sometimes promising promotions or other forms of career advancement or simply creating an untenable and hostile work environment.

In the leading case *Vishakha v. State of Rajasthan*¹⁴, Supreme Court observed that the present penal law in India is insufficient and inadequate to check the evil of sexual harassment of women at all work places. Therefore, the Court laid down the guidelines and norms for due observance at all workplaces and other institutions until a legislation is enacted for the purpose. It is further emphasized that this would be the law declared by the Supreme Court under Article 141 of the Constitution. According to these guidelines it shall be the duty of the employer or other responsible person in work place or other institution to prevent or deter the commission of acts of sexual harassment and to provide the procedure for the resolution settlement or prosecution of acts of sexual harassment by taking all steps required.

Right against domestic violence

Almost every woman is suffering from one or other form of domestic violence by in-laws, husband and in old age by their own children. Domestic violence is common and a serious problem.

Before the enactment of the Domestic Violence Act, 2005, we have different laws which covers different kinds of domestic violence like dowry is covered by Dowry Prohibition Act, 1961, the demand for the same and any harassment can lead to criminal offence under the Indian Penal Code, 1860; Sati prohibited under the Commission of Sati (Prevention) Act, 1987; outraging the modesty of a woman is covered by the Indian Penal Code but there were still many offences which were not covered under various provisions¹⁵.

The Domestic Violence Act provide for more effective protection of the rights of the woman within the domestic relationship. The Act widely interprets the definition of domestic violence under Section 3 which includes any kind of physical, sexual, verbal and emotional or economic abuse of any person who lives in a domestic relationship with the victim.

Labour Law Provisions

Under the labour laws, women were given various rights such as right to minimum wages under the Minimum Wages Act, 1948; maternity leave and benefits under the Maternity Benefit Act 1961; right not to be placed on night work and the work not suited to their health under the Factories Act, 1948; right to get equal pay under the Equal Remuneration Act, 1976.

With the objective of protecting the women from sexual exploitation, separate laws such as Immoral Traffic (Prevention) Act, 1956 and Indecent Representation of Women (Prohibition) Act, 1986, Dowry Prohibition Act, 1961 have been passed in addition to amending the criminal law making the punishment for sexual offences more severe.

The Factories Act, 1948

The Factories Act is a welfare legislation enacted with an intention to regulate working conditions in the factories and to provide health, safety and welfare measures¹⁶. Besides, the Act envisages regulating the working hours leave holidays, overtimes, employment of children, women and young person's etc¹⁷.

The Factories Act, 1948 prohibits employment of women in dangerous occupations. Section 22(2) of the Factories Act, 1948 provides that no woman shall be allowed to clean, lubricate or adjust any part of a prime mover or of any transmission machinery while the prime mover or transmission machinery is in motion, or to clean, lubricate or adjust any part of any machine if the cleaning, lubrication or adjustment thereof would expose the women to risk of injury from any moving part either of that machine or of any adjacent machinery.

In an English case *Pearson v. Belgium Co. Ltd*¹⁸, the question was whether stationary parts of a machine can be cleaned by woman if the machine as a whole is in motion. It was held by the Court that if the machinery as a whole is in motion even stationary parts of the machine cannot be cleaned by woman. But in *Richard Thomas and Baldwins Ltd. v. Cummings*¹⁹, the Court observed that there would be no breach of statutory duty if an injury occurs while the machinery is unfenced, if the power is cut off and the machinery is under repairs and the parts are not in motion but are moved by hand for purposes of repairs.

The Plantation Labour Act, 1951

This Act regulates, for the first time, the condition of work of plantation workers and provides for their welfare. Though, in the first instance, it applies only to tea, coffee, rubber and cinnamon plantations, the State Governments have been empowered to extend the provisions of the Act to other plantations with the approval of the Central Government²⁰. For the purpose of this Act the plantation means any plantation to which this Act applies and includes offices, hospitals, dispensaries, schools, and any other premises used for any purpose connected with such plantation, but does not include any factory covered under the Factories Act, 1948²¹.

Wages Protection for Women

Though labour welfare enactments have provided various protections, safeguard and benefits to working women in our country, there was an emergent need to give more protection to women workers who are discriminated as regards employment and wages. The wages of women workers in India are extremely low. They are generally not paid the minimum wages for the kind of work they do. The wages paid below the minimum wages is a form of gender discrimination at workplace. There are several unfair labour practices pertaining to the payment of wages. The employers did not make payment of wages in definite form that is sometimes they made payment of wages in cash and sometimes in kind. The wages were paid after much delay which resulted into poverty and growing indebtedness. In an economy where even minimum wages are not paid to the women workers, the need to protect the wages earned by them has greatest significance. In this regard the most relevant and important pieces of legislations for the women workers are Minimum Wages Act, 1948²², Payment of wages Act, 1936 and Equal Remuneration Act, 1976²³.

The Maternity Benefit Act, 1961

The Act was passed with a view to reduce disparities under the existing Maternity Benefit Acts and bring uniformity with regard to rates, qualifying conditions and duration of maternity benefits. The Act, repeals the Mines Maternity Benefit Act, 1941, the Bombay Maternity Benefit Act, 1929, the provisions of maternity protection under the Plantations Labour Act, 1951 and all other provincial enactments covering the same field. However, the Act does not apply to factory or establishment to which the provisions of Employee's State Insurance Act 1948 applies²⁴, except as otherwise provided in Section 5A and 5B of the Act.

Meaning of Maternity Benefit

Prior to the amendment of 1989, if a woman employee could not avail of the six weeks' leave preceding the date of her delivery, she was entitled to only six weeks leave following the day of her delivery. However, by the above Amendment, the position has changed. Now, in case a woman employee does not avail six weeks' leave preceding the date of her delivery, she can avail of that leave following her delivery, provided the total leave period, i.e., preceding and following the day of her delivery, does not exceed 12 weeks²⁵.

A woman employee is entitled to maternity benefits under the Act irrespective of the number of children she has. This matter was considered in a high level Committee set up by the Central Government. The Committee thought that though it is contrary to the family planning norms being advocated by the Government, it is also not appropriate to deny a woman employee the benefits under the law, once she gave birth to a child.

Maternity Benefit

It is provided to women workers who are covered under the Employees' State Insurance Act, 1948. The Act provides for periodical payment to an insured woman at the prescribed rate and for a

prescribed period in case of confinement, miscarriage, sickness arising out of pregnancy or premature birth of a child. The term confinement²⁶ means "labour resulting in the issue of a living child or labour after 26 weeks of pregnancy resulting in the issue of a child whether alive or dead" and the expression miscarriage as defined in the Act means "expulsion of the contents of a pregnant uterus at any period prior to or during twenty six weeks of pregnancy, but does not include any miscarriage the causing of which is punishable under the Indian Penal Code²⁷."

Eligibility for Maternity Benefit

An insured woman shall be qualified to claim maternity benefit for a confinement occurring or expected to occur in a benefit period, if the contributions in respect of her were payable for not less than half the number of corresponding contribution period. The insured woman becomes eligible for the benefit after being certified to be eligible for such payment by the medical officer to whom she has been allotted or by an insurance medical officer attached to a dispensary, hospital, clinic or other institution to which the insured woman is or was allotted if in the opinion of such insurance medical officer the condition of the woman so justifies²⁸. Any other evidence in lieu of a certificate of pregnancy, expected confinement or confinement from an insurance medical officer may be accepted by the corporation, if in its opinion, the circumstances of any particular case so justify.²⁹

Suggestions

1. A girl child should be provided with at least the required basic educational facilities.
2. Women should be provided with health care facilities. Awareness programmes should be conducted to make them aware about their health conditions.
3. Nutritious food should be available to women not just as a right but as a necessity.
4. Different Constitutional and other legislative provisions provided for protection of women should be promoted and implemented effectively.

Conclusion

At last it is concluded that unless the attitude of the society is changed no fruitful change or revolution is possible. The only solution is for women to come together as a unifying force and initiate self empowering actions. It hereby wound-up with the quote of Rahindranath Tagore "No nation or country which do not respect women have never become great and nor will ever be in the future".

Endnotes

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4. *Ibid.*
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6. *Constitution of India Act, Article.14*
7. *Constitution of India Act, Article.15*

8. *Ibid.*
9. *Ibid.*
10. *Constitution of India Act, Article .39*
11. *Constitution of India Act, Article.42*
12. *1995 AIR 1648, 1995 SCC (4) 520*
13. *Ibid.*
14. *AIR 1997 SUPREME COURT 3011*
15. *Supra note 3.*
16. *Suresh V. Nadagoudar, "Right of Women Employees at their work place," Lab. IC. Feb. 2007, p. 35.*
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18. *(1896) 1 Q B 244.*
19. *(1955) 1 All ER 285.*
20. *Meenakshi Gupta, "Labour Welfare and Social Security in Unorganised Sector", 1st edition, 2007, Pub. Deep and Deep Publication, New Delhi, p. 117.*
21. *Supra note 17 at 271.*
22. *Minimum Wages Act, 1948 (11 of 1948)*
23. *Equal Remuneration Act, 1976 (25 of 1976)*
24. *Section 2(2) of the Maternity Benefit Act, 1961.*
25. *'Week' is to be taken to signify a cycle of 7 days including Sundays. Ref. B. Shah v. Presiding Officer Labour Court, Coimbatore (1978) AIR 12 SC.*
26. *Section 2(3) of the Employees' State Insurance Act, 1948*
27. *Id, Section 2(14B)*
28. *Rule 94 of the Employees' State Insurance (General) Regulation 1950.*
29. *Id, proviso 2 to Rule 94*