

## **DISCRIMINATION AGAINST WOMEN AND LEGAL REMEDIES**

**Hon'ble Mr. K. Venkatapathy\*\***

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Though the commercial interests are always try to sell the International Women's Day as another occasion for men to express their love to women with greeting cards and token gifts, somewhat akin to St. Valentine's Day, the International Women's Day has a history of women's struggle against oppression worldwide. March 8<sup>th</sup> marks the global celebration for the economic, political and social achievements of women.

It was on this day in 1857, women from garment and textile factories staged their first protest against the poor working conditions and low wages in New York City. They were attacked and disbursed by the police. However, they formed their first Labour Union two years after and staged more protects on the same day in subsequent years. In 1908, more than 15,000 women marched through New York City demanding shorter work hours, better pay and voting rights.

It was in 1909, that the first International Women's Day was observed on the 28<sup>th</sup> of February following a declaration by the Socialist Party of America. In 1913, women across Europe held peace rallies on this day, on the eve of the First World War. It is also said that demonstrations marking the International Women's Day in Russia provided the first impetus for the Russian Revolution of 1917. Proclaiming it as a day of rebellion against the kitchen slavery, a 1932 soviet poster said: "Down with the oppression and narrow-mindedness of the household work." In the year 1975, the United Nations gave its official sanction to the International Women's Day. However, over the years the day has lost

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\* Abstract of the speech delivered by Hon'ble Mr. K. Venkatapathy, Former Minister of State for Law and Justice at New Law College, Bharati Vidyapeeth Deemed University, Pune.

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its political meaning and has become a day of celebration of women with an emphasis on their beauty and motherhood.

The International Women's Day holds great significance for the Indian women who are worshipped and deified on the one hand, and subjected to the worst forms of crime and violence on the other at the same time. According to a study, *Chronic Hunger and the Status of Women in India*, about 24,000 people die to chronic hunger everyday around the world. Elsewhere in the world, hunger is a social issue; but in India, it is largely due to the subjugation, marginalization and disempowerment of women. Traditionally women bear the primary responsibility for the well-being of their families. Yet they are systematically denied access to the resource to fulfill their responsibilities, which includes access to education, health care, job training and freedom to use family planning services.

According to the study there are seven major areas of discrimination against women in our country. They are:

**Malnutrition:** Gender disparities in nutrition are evident from infancy to adulthood. Girls are breast-fed less frequently and for shorter durations. In childhood and adulthood, while males are fed first and better, females are expected to eat last and least throughout their lives, even when they were pregnant and lactating. Malnourished women give birth to malnourished children, perpetuating the cycle.

**Poor Health:** Females get less health care than males. Studies on the attendance at rural primary health centers reveal that more males are treated in almost all parts of the country than females. Many women die of preventable complications during childbirth. Working conditions and environmental pollution further impair women's health. Women spend at-least three hours a day cooking, often in poorly ventilated area, which causes them eye and respiratory problems, chronic bronchitis and lung cancer.

**Lack of Education:** Girls are less likely to get educated than boys; and far more likely to drop out from the school

on the slightest pretext. Our society is more concerned about protecting their virginity than getting them educated.

**Overwork:** It is generally said that 'women like children, eat a lot and do nothing'. Their long hours of arduous work are not recognized. They are often paid less than their male counterparts for the same work. According to a study, in a one hectare of land in Himalayas, a pair of bullocks work 1,064 hours and a man works for 1,212 hours, and the woman works for 3,485 hours in a year.

**Lack of Opportunity to Develop Skills:** Women contribute about 60 to 65 % of total labour in overall farm production. But the extension services tend to reach only men, which perpetuates the existing division of labour, relegating women to unskilled tasks. Women are impeded from developing their skills by lack of mobility, low literacy levels and prejudices against them.

**Mistreatment:** In recent years, there has been an alarming rise in atrocities against women in India including rapes, assaults and dowry-related murders. Fear of violence suppresses the aspirations of women. Female infanticide and sex selective abortions are other forms of violence that reflect the devaluing of females in our society.

**Powerlessness:** While women are guaranteed equality under the Constitution of India, legal protection has little effect in the face of prevailing patriarchal traditions. Women lack the power to decide who they will marry, and are often married off as children. Legal loopholes are used to deny women inheritance rights. Powerlessness of women contribute to virtually every social malaise, including high birth rates, poverty, malnutrition, high illiteracy, infant mortality and low life expectancy, especially among rural women.

The origin of the Indian idea of appropriate female behaviour can be traced back to the rules laid down by Manu two thousand years back. He decrees that nothing must be done independently by a young girl, by a woman or even by an aged one, even within her own house. According to Manu: "In childhood a female must be

subjected to her father, in her youth to her husband, when her lord is dead to her sons; a woman must never be independent.” Thus, women’s suppression is rooted in the very fabric of our society – in our traditions, in our religious doctrines and practices, in our educational institutions, in our legal systems and within our families.

Some historians claim that in ancient India, women enjoyed equal status with men in all walks of life. However, historical evidence shows that at least from the medieval periods women faced various kinds of discrimination and brutalities in India. Inhuman practices like *sati*, *jauhar*, child marriages, *pardah*, *devadasis etc.* were widely prevalent in this country, which prompted social reformers like Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Jyotiro Phule, Mahatma Gandhi and Thanthai Periyar to fight for women’s upliftment.

Thanthai Periyar exhorted men not to oppose women’s rights keeping their spouses in mind; he told them to think of their sisters and daughters. He argued for complete parity between men and women in every walk of life. As far back as 1929, he passed a series of resolutions in the 1<sup>st</sup> Women’s Conference held in Chergalpattu, which remains relevant to women’s empowerment even today. It is said that despite such efforts, women in India still face various forms of discrimination.

After Independence, we have adopted an egalitarian Constitution which guarantees women equality in every sphere of life. Article 14 of the Constitution of India guarantees their right to equality. Article 15(1) forbids discrimination on the grounds of religion, race, caste, sex or place or birth. Article 15(3) provides for special provisions in favour of women and children. Equality of opportunity is ensured by Article 16 while the right to adequate means of livelihood is protected under Article 39(a). Article 39(b) ensures equal pay for equal work for both men and women. Article 42 directs the State to make provisions for securing just and humane conditions of work and for maternity relief. Article 51(A)(e) exhorts renouncing practices derogatory to the dignity of women.

Coming to the laws, there are ample provisions under the Indian Penal Code, 1860 to tackle all sorts of criminal actions against women, including rape, molestation, eve teasing, obscenity and other forms of violence. In addition, there are many notable pieces of legislation addressing specific issues affecting the women. The Immoral Traffic (Prevention) Act of 1956, the Medical Termination of Pregnancy Act of 1971, the *Sati* Prevention Act of 1971, the Indecent Representation of Women (Prohibition) Act of 1986, the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act of 1994 are few of the post-independence legislations which come to mind in this regard.

The Protection of Women against Domestic Violence Act, 2005 is a landmark legislation enacted by the present UPA Government at the Centre. This Act recognizes, for the first time in the history, that violence against women need not be only physical or sexual; it can be psychological, verbal, emotional or economic. It has also laid down stringent rules to prosecute men who harass, beat or insult women at home. The Act recognizes live-in relationships, and aims at creating infrastructure and system to take care of the women in distress. The Act empowers the courts to pass protection orders preventing the abuser from entering places the victim frequents, communication with her or isolating any assets they share.

The impact of the 73<sup>rd</sup> and 74<sup>th</sup> Constitutional Amendment Acts which provided for reservation of one third seats in *panchayat raj* institutions for women has to be mentioned herein. The move has spearheaded an unprecedented social experiment in more than 5 lakh villages of India. It has shattered the myth that women are not fit for politics. Women leaders at grassroots levels are transforming local governance by sensitizing the State to the issues of poverty, inequality and gender issues. They are taking up issues that had gone unacknowledged previously. It has also brought about significant transformations in their lives. Empowered now, women have gained self-confidence and political awareness. They also affirm their own identity.

Even the Indian Judiciary has made several seminal contributions in protecting the interests of women. Notable among them were the guidelines for employers to prevent sexual harassment at work place laid down in *Vishaka's case*<sup>1</sup> and also the guidelines in *Vishwa Jagriti Mission v. Union of India*<sup>2</sup> on ragging and the guidelines for arresting a person.

Well, we do have a plethora of laws, enactments and judicial pronouncements. Are they effective in ensuring equality for women? Has there been an improvement in the ground realities? The *Times of India* (Delhi) carried a story under the caption 'As the world gets set to celebrate womanhood, for some mothers, the girl child is a daughter too many'. The story is, under pressure for having failed to produce a son, one Seema Sai killed her daughters – four year old Riya and one and half year old Shreya – hurling them into water. The same paper carried another story from Rajkot of a mother committing suicide after giving birth to six girls. Kokila Nayka ended her life before seeing her 29<sup>th</sup> birth day delivering a baby for every year of her married life. Obviously, laws alone cannot save Kokilas, Riyas and Shreyas.

One can feel that the Indian legal system is less sensitive to the problems faced by women. The formal system of courts and the law intimidates women more than it does men. There is a dearth of lawyers willing to conduct litigation from a feminist perspective. Some lawyers hesitate to take up cases of violence against women, because their clients do not have the paying capacity. Therefore, increasing gender sensitivity amongst lawyers is very crucial. Lawyers should come forward to conduct legal awareness programmes in schools, colleges and in communities.

Most women are not aware of their rights and they often don't place great trust in what the laws can do to help them. They are so much preoccupied with their daily struggles to invest much hope in getting relief from complex new laws that would be difficult to implement and execute in practical life. They are unable to benefit

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<sup>1</sup> *Vishaka and Others v. State of Rajasthan and Others*, AIR 1997 SC 3011.

<sup>2</sup> 2001 AIR 2814.

from some of the landmark judgment and significant decisions of the higher judiciary, as it takes a long time to percolate down to the district courts and the lower judiciary. Non-governmental organizations and para-legal workers can conduct legal literacy workshops, and provide legal aid and counseling to the women in distress. They can also come to their aid over seeking the process of case registration, investigation, arbitration, judgment and follow ups.

Coming to the Judiciary, it is agonizing to know that women judges constitute less than 4% of the total strength of judges in High Courts and the Supreme Court in India. The situation in the lower Judiciary cannot be any different. It took 42 long years after independence for a woman to become judge of the Supreme Court of India. Only in the year 1989 we had the first women judge of the Supreme Court of India, when Justice Ms. Fathima Beevi assumed office. One can hope that more women judges will be inducted into the higher Judiciary in the coming years.

Thus the issues relating to inequality of women have several facets; while some of them can be addressed by enacting suitable legislations, most of them require change in our attitudes towards female gender. We can hope every one of us use the occasion of the International Women's Day to introspect ourselves and make the celebrations more meaningful in the coming years. We can also hope that the International Women's Day is declared a national holiday, as it is the practice in more than twenty countries including Russia and China.