



FACULTY OF JURIDICAL SCIENCES

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NAME OF FACULTY: DR. SHIV KUMAR TRIPATHI

Lecture-10



Gender injustice and its various forms.

Women's groups started emerging in India in the early 1900s and at first focused on Social reform. They have also campaigned vigorously and successfully for social and political equality with men. In 1950 women and men over the age of 21 were granted voting rights. Indian patriarchal society not only harbours a culture of violence against women in the form of dowry, domestic violence and female infanticide, it also manifests in government policies towards women. The unequal representation of Indian women in national political parties is all the more disquieting given that the Indian constitution guarantees gender equality in the Articles 325 and 326. Despite the deeply ingrained patriarchal attitude prevalent in India, it is one of the few countries ever to have elected a woman prime minister: Indira Gandhi. We still haven't secured 33% reservation for women in parliament and state assemblies, despite the women's Reservation bill being close at hand for so long.

The Constitution of India has various provisions to ensure equality of the sexes and also to dismantle the prevalent imbalances in gender hierarchy. Article 14 of the Constitution states that there shall be "equality before the law and equal protection of the law", Article 15 safeguards the right against discrimination. The Constitution also provides for positive discrimination and affirmative action on some counts. Article 15(3) permits special provisions for women. Article 16 provides equal opportunity with respect to public employment and they shall not be discriminated on the basis of sex of the person. Article 21 guarantees the right to life, the interpretation which has been broadened to include the right to live with dignity. Article 23 guarantees the right against exploitation. It prohibits traffic in human beings.

The directive Principles of State Policy also provide measures for gender equality. Article 39(a) aims providing the right to adequate means of livelihood for men and women equally. Article 51(A) (e) of the Constitution provides that it will be the duty of every citizen to renounce practices derogatory to the dignity of women.

The India Constitution calls for eight years of compulsory education for girls and boys aged 6 to 14. However, women still lag far behind men and rural women are twice as likely to be illiterate compared to their urban counterparts. The legal marriage age is 21 for males and 18 for females. A recent law commission has recommended equalizing the marriage age for both men and women to 18 but this has yet to be implemented. Personal laws of Hindus and Muslims dictate different codes of conduct regarding marriage and divorce.

The people of India are guaranteed equal pay for equal work by the Constitution and reinforced by the 1975 Equal Remuneration Act. The drawback is that this law does not apply to agriculture, the area where most women in India are employed. Gender based pay scales with lower wages for female workers are not uncommon. Today we observe a shift towards the service sector by working women but no occupational field is impervious to gender injustice as of today. It is also horrifying to note that there is no statutory enactment in India against sexual harassment at work place. But in the absence of a law, the Supreme Court has laid down certain guidelines pertaining to sexual harassment at the work place in the landmark case of Vishakha and others v. State of Rajasthan. Women are entitled to maternity benefits under the Employees' State Insurance plan, which provides a 90 day paid leave. The central government has endorsed the concept of paternity leave for the same duration for men, but this cannot be enforced in the private sector.

A woman does not have a right to Abortion in India. The Medical Termination of Pregnancy Act, 1971 legalizes abortion only in certain circumstances- to preserve the woman's physical and mental health, rape and incest cases or when the fetus suffers severe abnormalities. There is no provision in the Act which allows abortion on the basis of the will of the woman. Section 312 of the Indian Penal Code, defines the offence of 'causing miscarriage'. It states that whoever voluntarily causes a woman with child to miscarry shall, if not in good faith be punished with imprisonment of upto 3 years or fine or both. A woman who causes herself to miscarry is within the scope of this section. This form of oppression violates the fundamentals of justice. Women are entitled to their opinion and choices.

The Domestic Violence Act, 2005 was enacted to curb the onslaught of domestic violence. It is the first of its kind in India. An important advance made by the Act in understanding the nature of domestic violence has been in the combination of civil and criminal remedies. The numbers of cases of domestic

violence in India are on the rise. This may also be due to greater reporting of Domestic Violence Cases.

A great majority of Sexual assaults go unreported. Section 397 of the Indian Penal Code penalizes the offence of Rape. The Average penalty is seven of imprisonment. It is unfortunate to note that marital rape is not yet an offence in India as it is in most developed countries. The only semblance to marital rape is where the husband has intercourse with his wife without her consent during separation, where the punishment is lighter. (2 years)

Rape is a perverse form of subjugation of women by men. It is a crime of violence, not sex primarily. Some scholars opine that the Indian Law on rape is gender biased and male oriented. Gender neutral rape laws in India have been proposed but are yet not acted upon. If the legislature responds to this reform favorably, we will have reached a step further in achieving gender justice.

Commercial sex work i.e. the exchange of sexual services for money is legal in India but related activities such as soliciting in public places, owing a brothel, kerb crawling and pimping are illegal. The primary law dealing with sex workers is the Immoral Traffic (Suppression) Act of 1956. Male prostitution is not recognized in the Indian Constitution. In order to achieve gender justice, male sex workers should also be given recognition in order to avail of their basic rights. There are a few contentious issues which are peculiar to developing countries like India. Because of the tremendous preference for sons over daughters, female infanticide is not uncommon. The law bans infanticide and imposes penalties of life imprisonment or death. Harsh punishment has also been ineffective as a deterrent. The age old custom of Sati, in which the widow is burnt alive on her husbands' funeral pyre, has been abolished since 1829 under the aegis of Lord William Bentinck, and the government eventually passed the commission of Sati Prevention Act to prevent its occurrence and curb its glorification.

Another oppressive tradition of giving dowry has been abolished by The Dowry Prohibition Act, 1961 which imposes stiff fine and minimum imprisonment of 5 years in prison for violation.

With disregard to the third gender, Indian laws recognize only two genders, so getting ration cards or other documents is a formidable task for the transsexuals. Tamil Nadu is the first state in India that has allowed the transsexuals to indicate their sex as 'T' Though the transsexuals got the right to vote in 1994, they had to declare their sex as 'M' or 'F' in the gender columns. Only very recently, the Election Commission allowed them to indicate their sex

as 'O', or Others. Panna is the first transgender person in India to have the letter 'E' for Eunuch stamped on her passport.

