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Department: English

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Subject: GE6- Women and Empowerment in Contemporary India.

Class: B.A. (h), Second Semester

Time: (11:45 a.m.- 12:45 p.m.) & (1:00 p.m.-2:00 p.m.)

STATE INTERVENTION IN WOMEN'S RIGHTS

Meenakshi Malhotra and Krishna Menon

The chapter deals with “The role of law and legal mechanism in improving the daily lives of Indian Women across various social classes and communities”- (Page 142, First paragraph)

The women have been discriminated in the country from time unknown. They have been treated in a very unfair manner. It is sad especially since there are innumerable many goddesses worshipped in this country. The country has been striving ever since the independence to protect the women from discrimination. The Marriam- Webster Dictionary defined discrimination as “the practice of unfairly treating a person or group of people differently from other people or groups of people.”

Discrimination strikes at the very heart of being human. It is treating someone differently simply because of who they are or what they believe. We all have the right to be treated equally, regardless of our race, ethnicity, nationality, class, caste, religion, belief, sex, language, sexual orientation, gender identity, age, health or other status. Yet all too often we hear heart-breaking stories of people who suffer cruelty simply for belonging to a “different” group from those in power.

The whole legal system is to be framed according to the provisions of the Constitution of India. But law alone cannot change the society in a night, but it will certainly bring positive changes and also ensure that the discriminated cannot be dealt in any manner.

Article 14
Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Article 14, therefore, not only provides the British concept of equality before law but also gives equal protection of law which is an American concept. The provisions have wide connotations and very protect the women form discrimination from their counterparts.

1. CONCEPT OF GENDER

“Gender is as much a socially constructed idea as any other, such as caste or class” (Page 142, 3rd Paragraph)

- a. Gender refers more to the **arrangement of power and hierarchy in a society** on the basis of identities such as sex, sexual orientation, caste, race, ethnicity and so on.

IDEA OF LAW (Page 143)

- i. Law reflects the **power structures** in any given society.
- ii. The use of monitoring, recording and surveillance mechanisms has become an inseparable part of the modern legal system.
- iii. Law has been used rather effectively to create **uniform and homogenous social arrangements** while invoking the ideals of universal citizenship and equality.
- iv. Legal systems reinforce the existing power equations and prejudices in society. Example: **The Manusmriti, Khap Panchayats** so on and so forth.
- v. Often Laws, because of their very **nature of being rooted in the social structures**, tend to be conservative, thereby repeating and reinforcing the existing inequalities and injustices.

The prolonged debate about the imposition of Uniform Civil Code

Three major challenges:

- i. Misinformation or lack of information about Uniform Civil Code amongst the people.
- ii. Lack of political will.
- iii. Different religious communities have different personal laws.

READ: <https://byjus.com/free-ias-prep/need-for-a-uniform-civil-code-in-a-secular-india/>

- b. In Gendered societies any attempt to universalize can only result in imposition of the standards and values of powerful groups in society thus resulting in unjust arrangements. Thus, we can state that **law and gender have a difficult relationship** in the context of modern nation states that are based on democratic principles.

2. FEMINIST POSITIONS ON THE QUESTION OF LAW

- a. “Two significant question arise...the implementation and application of law does not necessarily result in justice...justice is not possible by always upholding uniformity” (Page 144, 2nd Paragraph)
- b. **Position 1:** Legal campaigns are a part of a strategy to create legitimacy and public awareness, and provide short term redressal, but are not by themselves adequate.
- c. **Position 2:** Skepticism vis-à-vis the power and purpose of law in a gendered society such as ours.
- d. **Position 3:** Legal campaigns are important and relevant but need to be backed by a strong movement to carry the legal reforms forward.

Does that mean that laws are of no significance for women?

Feminist jurisprudence is a burgeoning school of legal thought that involves many theories and approaches to law and legal subjects. Constitutional feminism is an important topic which needs to be highlighted at this stage. A country’s constitution, even where it may appear neutral, impacts disparately or differently with respect to gender. Gender equality is a familiar concept to many. The architecture and design of the constitution should be that; it needs to give every citizen equal rights. Women due to a troubled history have been termed as

disadvantageous sex as compared to men and further their rights should be protected.

Our constitution has provided in article 14 read with article 12 that 'state shall not deny to any person "equality before the law or the equal protection of the laws within the territory of India" and further no discrimination on grounds of religion, race, caste, sex or place of birth'. With knowledge to this, article 15(3) also provides the provision where nothing shall prevent the State from making any special provision for women and children. These rights ensured to the women are the hope for equal representation. Constitutional design can never be settled with finality. A constitution will always be liable to alteration, either expressly or through shifts in interpretation that arise through changes in jurisprudential and methodological "fashion". The recent judgements related to decriminalization of same-sex [section 377 (I.P.C)], the unconstitutionality of Adultery [Section 497 (I.P.C)] and entry of women to Sabrimala temple have won us the confidence in the feminist jurisprudence. Likewise, some of the past judgements have changed the dimensions of patriarchal society leading to a horizontal application of equality and dignified life to every citizen irrespective of discriminations.

READ: <https://blog.ipleaders.in/feminist-jurisprudence-indian-constitution/>

e. JUDICIAL VOID

adj. referring to a statute, contract, ruling or anything which is null and of no effect. A law or judgment found by an appeals court to be unconstitutional is void, a rescinded (mutually cancelled) contract is void, and a marriage which has been annulled by court judgment is void.

"Most feminist campaigns in India have been aimed at the state---seeking legalizations in areas of 'judicial void' of family and sexuality." (Page 145, 4th Paragraph)

However, it is not always clear that laws made in response to political and feminist demands have helped in overcoming the problems of a tradition- bound society or in ushering in modernity or progress.

3. **LEGAL PROVISIONS AND FEMINIST CAMPAIGNS AND POLITICS** (Page 146,
2nd Paragraph)

a. **Pre- Conception and Pre- Natal Diagnostic Techniques Act, 1994 (2003)** (Page 146)

“The enactment of this law has been a result of the feminist campaign against sex-selective abortions that have had a delirious impact on the sex ratios in India.”

Main provisions:

- The Act provides for the prohibition of sex selection, before or after conception.
- It regulates the use of pre-natal diagnostic techniques, like ultrasound and amniocentesis by allowing them their use only to detect :
 - genetic abnormalities
 - metabolic disorders
 - chromosomal abnormalities
 - certain congenital malformations
 - haemoglobinopathies
 - sex linked disorders.
- No laboratory or centre or clinic will conduct any test including ultrasonography for the purpose of determining the sex of the foetus.
- No person, including the one who is conducting the procedure as per the law, will communicate the sex of the foetus to the pregnant woman or her relatives by words, signs or any other method.
- Any person who puts an advertisement for pre-natal and pre-conception sex determination facilities in the form of a notice, circular, label, wrapper or any document, or advertises through interior or other media in electronic or print form or engages in any visible representation made by means of hoarding, wall painting, signal, light, sound, smoke or gas, can be imprisoned for up to three years and fined Rs. 10,000.

One of the major feminist critiques was that the Act, in punishing the person who went in for sex selection, punished culpability to the victim, rather than the real criminal. They pointed out that the pregnant woman seldom exercises agency and, thus, was not in a position to decide whether to go for the test or not. She is often doing so under tremendous pressure from the husband and his family, very often the mother-in-law. Husbands and in-law compel young brides to go in for sex determination tests even for the first pregnancy and repeat it for every pregnancy till the test is positive (meaning

thereby, a male foetus). This leads to repeated abortions³¹. This pressure is not just usual pressure to provide a male child and heir, but also specifically to undergo the test. Very often, she may be accompanied by such relatives. Criminalizing the powerless pregnant woman's act would revictimise her and not solve the problem. The pregnant, often adolescent, young woman is in a position of powerlessness and is considered dispensable as compared with the necessity for a male child.

The Act specifies that pre-natal diagnostic test can be conducted for the detection of five types of abnormalities – chromosomal abnormalities, genetic metabolic diseases, haemoglobinopathies, sex-linked genetic diseases, congenital anomalies. It also lays down certain conditions under which these tests can be conducted – if pregnant woman is over thirty-five, if she has a history of two or more spontaneous abortions, if there is a family history of mental retardation or physical deformities, or if she had been exposed to potentially teratogenic agents such as drugs, radiation infection or chemicals.

The Act lays down that no person conducting pre-natal diagnostic ³³ procedures shall communicate to the woman or her relatives the sex of the foetus. All genetic counseling centres, labs, and clinics are to be compulsorily registered, and their licences are liable to be suspended or cancelled in case of complaints. There is a ban on the advertising of sex determination tests, with the publishers sharing equal culpability with the advertisers. The punishment can be up to three years of imprisonment and a fine of Rs. 1000. There are similar rules for medical practitioners, who can be deregistered by the Medical Council for two years for a first offence and permanently for a subsequent one. The woman undergoing the test will be presumed to have been compelled to do so unless the contrary is proved, in which case she too is liable for punishment. **Women's groups were dissatisfied with the Bill in the form it was passed, and in August 1994, urged the President to send it back for reconsideration to Parliament.**

Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (PNDT), was **amended in 2003 to The Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition Of Sex Selection) Act (PCPNDT Act)** to improve the regulation of the technology used in sex selection.

Implications of the amendment are

1. Amendment of the act mainly covered bringing the technique of pre conception sex selection within the ambit of the act
2. Bringing ultrasound within its ambit
3. Empowering the central supervisory board, constitution of state level supervisory board
4. Provision for more stringent punishments
5. Empowering appropriate authorities with the power of civil court for search, seizure and sealing the machines and equipment's of the violators

6. Regulating the sale of the ultrasound machines only to registered bodies

READ: https://shodhganga.inflibnet.ac.in/bitstream/10603/132942/5/06_chapter%202%20pdf.pdf

b. Domestic Violence Act, 2005 (Page 149)

An Act to provide for more effective protection of the rights of women guaranteed under the Constitution who are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

READ: http://chdlsa.gov.in/right_menu/act/pdf/domviolence.pdf

Scholars have criticized the law as having too little force, serving chiefly as a civil, rather than criminal, law—requiring a further offense by the accused respondent (such as violating a Protection Order issued under this law) before triggering criminal law sanctions against the respondent (such as arrest and imprisonment). There are several gaps in the implementation of laws. However, groups involved in drafting the law believed this would provide more rapid and flexible relief for the victim.

Men's organizations such as the Save Indian Family Foundation have opposed the law, arguing that it might be misused by women during disputes. It has been noticed by women's groups that such claims emerge only when special provisions are made for the marginalised.

Renuka Chowdhury, the Indian Minister for Women and Child Development, agreed in a *Hindustan Times* article that "an equal gender law would be ideal. But there is simply too much physical evidence to prove that it is mainly the woman who suffers at the hands of man".

Former Attorney General of India Soli Sorabjee has also criticized the broad definition of verbal abuse in the act.

According to the then President of India, Pratibha Devisingh Patil, "Another disquieting trend has been that women themselves have not been innocent of abusing women. At times women have played an unsavory, catalytic role in perpetrating violence whether against the daughter-in-law, the mother-in-law or female domestic helps. Instances exist whereby protective legal provisions for the benefit of women have been subjected to distortion and misuse to wreak petty vengeance and to settle scores. Some surveys have concluded that 90 percent of dowry complaints are false and were registered primarily to settle scores. It is unfortunate if laws meant to protect women get abused as instruments of oppression. The bottom-line therefore, is the fair invocation of legal provisions and their objective and honest implementation."

c. The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2012.

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is a legislative act in India that seeks to protect women from sexual harassment at their place of work. It was passed by the Lok Sabha (the lower house of the Indian Parliament) on 3 September 2012. It was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. The Bill got the assent of the President on 23 April 2013. The Act came into force from 9 December 2013. This statute superseded the Vishakha Guidelines for prevention of sexual harassment introduced by the Supreme Court of India. It was reported by the International Labour Organization that very few Indian employers were compliant to this statute. Most Indian employers have not implemented the law despite the legal requirement that any workplace with more than 10 employees need to implement it. The government has threatened to take stern action against employers who fail to comply with this law.

Objectives of the Act:

To provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.

It addresses:

1. Sexual harassment results in violation of the fundamental rights of a woman to equality under articles 14 and 15 of the Constitution of India and her right to life and to live with dignity under article 21 of the Constitution and right to practice any profession or to carry on any occupation, trade or business which includes a right to a safe environment free from sexual harassment;
2. The protection against sexual harassment and the right to work with dignity are universally recognised human rights by international conventions and instruments such as Convention on the Elimination of all Forms of Discrimination against Women, which has been ratified on the 25th June, 1993 by the Government of India;
3. To make provisions for giving effect to the said Convention for protection of women against sexual harassment at workplace.

Background and provisions:

According to the Press Information Bureau of the Government of India: The Act will ensure that women are protected against sexual harassment at all the work places, be it in public or private. This will contribute to realisation of their right to gender equality, life and liberty and equality in working conditions everywhere. The sense of security at the workplace will improve women's participation in work, resulting in their economic empowerment and inclusive growth.

The Act uses a definition of sexual harassment which was laid down by the Supreme Court of India in Vishaka v. State of Rajasthan (1997). Article 19 (1) g of the Indian Constitution affirms the right of all citizens to be employed in any

profession of their choosing or to practice their own trade or business. Vishaka v. State of Rajasthan established that actions resulting in a violation of one's rights to 'Gender Equality' and 'Life and Liberty' are in fact a violation of the victim's fundamental right under Article 19 (1) g. The case ruling establishes that sexual harassment violates a woman's rights in the workplace and is thus not just a matter of personal injury.

Under the Act, which also covers students in schools and colleges as well as patients in hospitals, employers and local authorities will have to set up grievance committees to investigate all complaints. Employers who fail to comply will be punished with a fine of up to 50,000 rupees.

The legislative progress of the Act has been a lengthy one. The Bill was first introduced by women and child development minister Krishna Tirath in 2007 and approved by the Union Cabinet in January 2010. It was tabled in the Lok Sabha in December 2010 and referred to the Parliamentary Standing Committee on Human Resources Development. The committee's report was published on 30 November 2011. In May 2012, the Union Cabinet approved an amendment to include domestic workers. The amended Bill was finally passed by the Lok Sabha on 3 September 2012. The Bill was passed by the Rajya Sabha (the upper house of the Indian Parliament) on 26 February 2013. It received the assent of the President of India and was published in the Gazette of India, Extraordinary, Part-II, Section-1, dated the 23rd April 2013 as Act No. 14 of 2013.

Major Features: The Act defines sexual harassment at the work place and creates a mechanism for redressal of complaints. It also provides safeguards against false or malicious charges.

The definition of "aggrieved woman", who will get protection under the Act is extremely wide to cover all women, irrespective of her age or employment status, whether in the organised or unorganised sectors, public or private and covers clients, customers and domestic workers as well.

While the "workplace" in the Vishaka Guidelines is confined to the traditional office set-up where there is a clear employer-employee relationship, the Act goes much further to include organisations, department, office, branch unit etc. in the public and private sector, organized and unorganized, hospitals, nursing homes, educational institutions, sports institutes, stadiums, sports complex and any place visited by the employee during the course of employment including the transportation. Even non-traditional workplaces which involve tele-commuting will get covered under this law.

The Committee is required to complete the inquiry within a time period of 90 days. On completion of the inquiry, the report will be sent to the employer or the District Officer, as the case may be, they are mandated to take action on the report within 60 days.

Every employer is required to constitute an Internal Complaints Committee at each office or branch with 10 or more employees. The District Officer is required to constitute a Local Complaints Committee at each district, and if required at the block level. The Complaints Committees have the powers of civil courts for gathering evidence. The Complaints Committees are required to provide for conciliation before initiating an inquiry, if requested by the complainant. Penalties have been prescribed for employers. Non-compliance with the provisions of the Act shall be punishable with a fine of up to INR 50,000. Repeated violations may lead to higher penalties and cancellation of licence or registration to conduct business.

4. CONCLUSION

“Laws are neither monolithic or static. Therefore...more equitable and just gender arrangements.”(Page 152)

There are adequate legislations in India which not only removes the discrimination against women but also empowers the women. The Constitution itself makes room for the discriminatory laws in favour of the women who are considered the weaker sex, disadvantaged and discriminated in the male dominated society. The action wise plan of the Government in preventing the discrimination has proved the legislations as a failure. The existence of these laws only in the books is the major problem in India. The Supreme Court, however, has taken initiatives too and in some cases issued directions to the Government as well. But the implementation of these legislations in actual sense is very much necessary to remove the discrimination in the society.