

Kala Sarovar Quarterly Journal Approved by UGC Care List

कला सरोवर

KALA SAROVAR

(भारतीय कला एवं संस्कृती की विशिष्ट शोध पत्रिका)



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I. Introduction

“Human Rights” means Rights relating to life, liberty, equality and dignity of the individual guaranteed by the constitution or embodied in international covenants and enforceable by the court in India. But these rights are most of the times denied to women. The Government of India has declared the year 2001 as women’s empowerment year. But ground reality is totally different. Discrimination begins at birth or even before it and continues till she is dead.

The notion of Human Rights was in existence in India since Vedic period, “Sarve Bhavantu Sukhinah, Sarve Santu Niraamayah, Sarve Bhandraani Pashantu, Maa Kaschid Dukha Mapnuyat, Om Santhi Shanthi Santhi. Its means that may everybody in this Universe be happy and Healthy. In Short “The welfare of Humanity as a whole.” It connotes that Indian Universal Perspective of Human Rights. No matter further Human Rights developed as a western concept and got International accreditation and recognition.

II. Historical Background

In ancient India, the women enjoyed equal status with men in all field of life. Patanjali and Katyayana suggest that women were educated in the early Rig Vedic verses suggest that women married at a mature age and were probably free to select their husband. Scriptures such as Rig Vedas and Upanishads mention several women sages and seers, notably Gargi and Maitrevi. Women enjoyed equal status and rights during the early Vedic Period. However, the status of women began to decline with the Smritis and with the Islamic invasion of Babur and Moghal Empire and Later Christianity curtailing women freedom and rights.

The Indian women’s position in the society further deteriorated during the medieval period when Sati among some communities, child marriage and ban on widow remarriages become part of social life among some communities in India. In some part of India the Devidasis or the temple women were sexually exploited. Polygamy was widely practiced.

Traditions among some communities such as sati, Jauhar, and devadasi have been banned and are largely defunct in modern India.

III. International Prospective of Protection Human Rights of Women

During the modern era at international level in civilized society specifically after the First World War bound to recognize and protection of Human Rights at International level and then at local level. The Various Conventions, Commissions and committees are there for protection of women’s Human Rights at International and National Level. The Human Rights have got unanimously recognition in all over the world. There is no restriction on the basis of boundary on any Human beings

According to information, since very beginning point of Human Rights movement Women has been given less importance than Men. This subordination happened because the traditional concept of Human Rights is based on Dichotomy of Public and private Interests

The Human Rights movement should itself give equal priority to economic, social and cultural rights together with civil and political rights”

United nation has various agencies, which has its own separate area to work. They dealing with women related issues in their particular area of operation. The atrocities committed during Second World War are one of the strong reasons behind to create protective mechanism for fundamental Human Rights at International level.

The soul of United Nations charter i.e. Preamble speaks explicitly about Human Rights of Women. It shows the importance of concept parity especially in respect to gender. The Preamble says, we the peoples of United Nations determined to reaffirms faith in fundamental human rights, in the dignity and worth of human person, in equal rights of men and women and of nations large and small.

The very purpose of United Nations is, “to achieve international cooperation in solving international problems of economic, social, culture or humanitarian character

Singh Ajay Kumar, “protection of Women’s Rights under International Law” Indian Bar Review Vol, xxxvi (1 to 4): 2009, p 91

Iyer Krisna V.R. “the Dialectics and Dynamics of Human Rights In India(1999) Eastern Law House Private Ltd, Calcutta, P 206

United Nations Charter, 1945

and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.” It means charter provides that there no discrimination on the grounds of sex. Everyone should be treated as equal irrespective his race, language, religion and sex.

The commission on the status of women was established in 1946. This commission is part and parcel of Economic and social council. At the present the commission consists of 45 members. The commission has done valuable work on the status of Women. The functions of commission are to promote the rights of women in political, economic, civil, social, and educational fields and also to advocate equal status of rights woman to those of Men.

Universal Declaration of Human Rights 1948 is one of the great historic achievements of United Nations. This step has been taken for the promotion and protection of Human Rights at International level. “All human beings are born free and equal dignity and rights.” This International document strictly advocates the notion of equality. Everyone shall respect and maintain dignity of all without discrimination. To give due respect to other’s dignity is a basic fundamental principle of Human Rights.

Another important aspect in the area of human rights is Prohibition against discrimination. All are equal before the law and are entitled without any discrimination to equal protection of law. All entitled to equal protection against any discrimination in violation of this declaration and against any incitement to such discrimination.

This is important Convention, which prohibits and punishes the persons who do any act, which includes prostitution and traffic in persons. The member’s countries shall take measures to educate and encourage through their public and private services to prevent prostitution and

rehabilitation of victim of such offences.

This is an important step towards universal attainment of equal rights between Men and Women. "Women shall be entitled to vote in elections on equal terms with Men, without any discrimination.

The Women shall be eligible for election to all publicly elected bodies, established by National Law, on equal terms with men without any discrimination. The said convention specially deals with political rights of the women it establishes electoral rights and participation of women in functionaries of government.

In accordance of view expressed by commission on status of women, that there should be a convention on the Nationality of married women to ensure equality between men and women they said conventions speak about prevention of becoming

stateless of women married women after marriage. The General Assembly of United Nations adopted it in 1957.

The General Assembly adopted this Convention in 1967. The present Convention is result of notion of Equality between Men and Women. The Universal Declaration of Human Rights asserted that all human beings are born free and equal in dignity. "Discrimination against women, denying or limiting as it does their equality of rights with men, is fundamentally unjust and constitutes an offence against the human dignity.

The United Nations Convention on elimination of All Forms of Discrimination Against Women advocates to maintain parity and to eliminate discrimination against women in all area of life including health care, education, employment, domestic relations, laws, commercial transactions, and political participation among other things. The convention is valuable mechanism for fighting women's discrimination worldwide. The Convention specifies that the States parties should undertake to embody the principle of equality of men and women in their National Constitutions or other appropriate legislations to ensure, through law and other appropriate means, the practical realization of this principle.

The committee on the elimination of all forms of discrimination against women was established under convention on the elimination of all forms of discrimination against women. Committee has performed significant work but has no succeeded

To combat violence against women at international level this present declaration is "violence against women" means any act of gender based violence that result in, or is likely to result in, physical, sexual or psychological harm or suffering to woman, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life. Violence has affected millions of women worldwide. This results into lack of involvement of women in social economic and cultural activities. The declaration assists to Government of State to take necessary steps to prevent violence against women.

The declaration was adopted by the world conference on Human Rights in 1993. The World Conference on Human Rights urges, "The full and equal enjoyment by women of all human rights and that this be a priority for Governments and for the United Nations.

The equal status of women and the human rights of women should be integrated into the main stream of United Nations system wide activity. These issues should be regularly and systematically addressed throughout relevant United Nations bodies and mechanism.

Everything about equality has been taken into consideration and also it recognizes the importance of the enjoyment by women of the highest standard of physical and mental health.

first International Conference on woman held in Mexico in 1975 under the title "Equality, Development and peace" It was recognized that women are also part and parcel of Development of Nation. Women should contribute for the progress of country.

Again it was reiterated that elimination of all obstacle for gender equality and advancement and empowerment of women is need of the time. Furthermore, prevention of Violence against women and girl child and primary health care for girls and women has given greater attention in the said Declaration.

Besides, this entire framework United Nations Development Fund for women's work on gender justice and United Nations Educational, Scientific and Cultural Organizations statement on women's contribution on the culture of peace is also has taken special care and attention in area of Gender Equality and multifarious aspect of women. The European Convention on Human Rights and the American Convention on Human Rights, 1969 also speaks on the theme of United Nations Charter and adopted same at regional level.

IV. Indian Constitution and Protection of Women's Rights

The Supreme Legislation i.e. Constitution of India is true guarantor of rights of equality of women. It is fundamental document, which deals with women's rights to Equality in India. Further the Constitution of India provides special protection to women with help of various provisions inserted under part III. Besides, the Constitutional framework Indian parliament has taken positive Steps to protect women's rights specially Dowry Prohibition Act, 1961, Sati Prevention Act, 1987 and Immoral Traffic (Prevention) Act, 1956 are important Legislations of Parliament. The Constitution of India has adopted in 1950 provides certain rights to its citizen known as the Fundamental Rights (part III, Article 14-35) Though the words "Human Rights" are not there in the Constitution of India but the rights provided are similar to those rights which are provided in Universal Declaration of Human Rights and the rights provided in International Covenant on Civil and Political Rights and International covenant on Social, Economic and Cultural Rights. In *Sunil Batra vs Delhi Administration* the Apex Court has observed that Human Rights Jurisprudence in India has Constitutional status. Again in *Maneka Gandhi VS Union of India* Supreme Court has held that provisions of part III of the Constitution of India should be given widest possible interpretation. The Article 14, 15 and 16 guarantees equality before law and equal protection of law. Article 15 prohibits discrimination on any basis Also deals with special provisions to be made for women, which shall not be considered as discriminatory. Article 16 provides equal opportunity in matters of public employment. Part IV of Constitution of India deals with Directive Principles of state Policies. These are not enforceable in the Court of law like Fundamental Rights. Even though Directive Principles of State policies are helpful to guide the State while making legislations and policies, it has its own importance as binding on the States. "Equal Pay for Equal Work" Just and Human Conditions of work and for maternity relief" and fundamental duty to respect women and renunciation of practices derogatory to the dignity of women are the important provisions of Constitution of India. The 73rd and 74th Constitutional Amendment Act 1993 is new dimensions in the advancement of women in India. Having all these provisions women in India are victims of personal laws which restrict her from representation in society.

V. Supreme Court of India on Protection of Women's Rights

The Indian Judiciary is playing a significant role in comparison of Judiciaries of the world. The public at Large have faith in our Judiciary the supreme court is ultimate interpreter of constitution of India the judiciary is protector of Human Rights over decades. Some of the unpleasant violations of Human Rights like Sati, Child Marriage, Honor killings, Slavery, Child Labor have been abolished by the initiatives Judiciary. Following are some instances The Supreme Court in *Hussainara Khatoon and others vs Home secretary State of Bihar* expressed “travesty of justice” on account of under trial prisoners spending extended time in prison. In *Prem Surana vs Delhi Administration* The Supreme Court found the practice of using handcuffs and fetters on the prisoners violating the guarantee of human dignity. In *Nilabati Behera vs State of Orissa and others* the Supreme Court referred Article 9(5) of the International covenant on Civil and Political Rights, 1966 which deals with right to compensation in cases unlawful arrest and detention. In *Bodhi Satwa Gautam vs Subra Chacraborty* The Apex Court has held that the rape is a crime against basic Human Rights.

The most versatile role of judiciary reflects from the decisions of Supreme Court in *UnniKrshnan vs State of Andhra Pradesh and others* the right to education and *PUCL vs Union of India* the right of access of those below the poverty line to food supplies as essentials to preserve human dignity.

The Supreme Court of India has interpreted various provisions of International instrument correlated with Constitutional law of India. India is a signatory to various International Conventions and Treaties. The Universal Declaration of Human Rights was adopted on 10th December 1948 has greatly helpful to create universal thinking that Human Rights are supreme shall preserve. In *Madhu kishwar vs State* Supreme Court has considered the provisions of convention on the Elimination of All Forms of discrimination against women, 1979 and held it is mirror image of Part III and Part 4 of Constitution of India The Protection of Human Rights Act, 1993 The Supreme Court of India had admitted that the provisions of International Instrument are not in conflict with National Laws. The Human Rights Act, 1993 has formed after consideration of said provisions. The said Act defines Human Rights as the Rights relating to life, liberty and Equality and Dignity of the individuals. The Act provides for setting up of National Human Rights Commission and Human Rights Courts to heal the issues relating to Human Rights

National Commission for Women's Act, 1990. It is result of unequal status of women and grievances of women in India. The activist demanded that there should be an Autonomous Agency for resolution of their grievances the Commission shall monitor the proper implementation of laws made to protect of Rights of women. Further, the Act provides for the Constitution of National commission for women and shall perform all the functions which involve issue of women.

VI. Conclusion

There are number of National and International covenant are available on human rights of women. The United Nations are committed to the Promotion of Universal respect for and observance of Human Rights and fundamental freedoms for all without distinction as to race, sex, language or religion by way of pledge. The women are an important part of humanity. The women are almost 50% of the world population women's are an important and basic unit of family she is the creator and protector of family but in practical life very much was difference between them the Constitution and legal provisions guaranteeing human rights to the people of country particular the woman but it does not follow in present scenario. Women are victim of gender bias crimes the very much crimes are committed in society in day by day therefore rights of women must be considered as human rights and it has demanded reconstruction of understanding of human race its has been directed against action and inaction of the State and agent of the State.

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