Since March 2002
An International, Registered & Referred Monthly Journal : Law
Research Link - 159, Vol - XVI (4), June - 2017, Page No. 98-99
ISSN - 0973-1628 ■ RNI - MPHIN-2002-7041 ■ Impact Factor - 2015 - 2.782

Struggle of Girl Child for Survival Begins Right from The Time She Enters Mothers Womb : Let The Girl Born and Bloom

Female foeticide is one of the most nefarious crimes on this earth; perhaps what is detestable is that the people who commit crime belong to the educated class. The proliferation and abuse of advanced technologies has made the evil practice of female feticide to become common in the middle and higher socioeconomic households. Despite the existence of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of selection) Act, 1994 (referred to as the PC & PNDT Act), the ineffectiveness of the Act, 1994 Act is very much evident. Therefore, there is a dire need to strengthen this law.Moreover, it is necessary to gear efforts against the cultural, economic and religious roots of this social malady by woman empowerment and intensive Information, Education and Communication campaigns.

REETIKA RANA

Introduction :

In a "normal world," the female population equals or slightly surpasses the number of males. Except in India, that is, where the situation is just the opposite, where the gender ratio or the number of females to males is known to be among the most imbalanced in the world.[1]

No doubt, India's legal framework stipulates equal rights for all, regardless of gender. In practice, however, unequal power equations between males and females have led to violations of women's reproductive rights. The girl child has often been a victim to the worst forms of discrimination.Female foeticide is perhaps one of the worst forms of violence against women where a woman is denied her most basic and fundamental right i.e. "the right to life".[2]

Female Foeticide and Female Infanticide :

The act of aborting or terminating a fetus while it's still in the womb, because it is female, is known as female foeticide.Whereas femaleinfanticide is killing a baby girl after she is being born. The practice of killing the female child after her birth has been prevailing in our society formany years. But foeticide is the legacy and contribution of the progress made by the medicalscience.Infanticide can be an overtly barbaric and inhuman practice while foeticide that is carried out by skilled professionals is a medical practice that uses scientific techniquesand skills and reduces the guilt factor associated with the entire exercise.[3]

Sex Selective Abortion or Female Foeticide :

Sex selective abortion is a two-step process involving determination of the sex of the foetus followed by abortion if the foetus is not the desired sex.[4]

India is indeed one of the few countries to have legalized abortions under the Medical Termination of Pregnancy Act in 1972.The MTP Act 1971 allows abortion when continuance of the pregnancy endangers the life or physical/mental health of the woman; if it is going to result in genetic abnormalities in the child; when the pregnancy is caused by rape; or when it occurs as a result of failure of any family planning device or method adopted by the couples.The last reason legalizes abortion on demand, in effect.[5] According to the Act, when the length of pregnancy does not exceed 12 weeks, one medical practitioner can perform abortion; when it exceeds 12 weeks but does not exceed 20 weeks, not less than two practitioners should perform the abortion.[6] The sex of the foetus will not be known until the pregnancy is 12-14 weeks old. Couples opt for female foeticide after the sex of the foetus is known, that is, after the pregnancy is more than 12-14 weeks old.Some unscrupulous couples who are aware of the provisions of the MTP Act 1971 might mention one of the reasons for the MTP and resort to sex selective abortions. Not all the additional MTPs are sex selective abortions. But one can say with certainty that some of them could be female foeticides. Although it may be said that the MTP Act 1971 abets female foeticide, it is difficult to suggest the extent to which it does.[7]

Steps Taken to Combat Female Foeticides :

To check female foeticide, Parliament passed the Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 (referred to as the PNDT Act), which came into operation from January 1, 1996. But while the Act seeks to regulate and prevent misuse of pre-natal diagnostic techniques, it rightly cannot deny them either. However, during the course of the implementation of this Act, certain inadequacies and practical difficulties in its administration came to the Government's notice. Taking into consideration

Assistant Professor, Himachal Pradesh University Institute of Legal Studies, Shimla (Himachal Pradesh)

these developments, the Act has been amended. It is now called the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of selection) Act, 1994 (referred to as the PC & PNDT Act) and it came into force with effect from February 14, 2003.Its main purpose has been to ban theuse of sex-selection techniques before or after conception as well as the misuse of pre-nataldiagnostic techniques for sex-selective abortions and to regulate such techniques.[8] The new Act also specifies that no prenatal diagnosticprocedures may be used unless there is a heightened possibility that thefoetus suffers from a harmful condition or genetic disease.[9] It also states, "noperson conducting prenatal diagnostic procedures shall communicate to thepregnant women concerned or her relatives the sex of the foetus by words,signs, or in any other manner".[10] The PCPNDT Act mandates that any person conducting ultrasonography or any other pre-natal diagnostic technique must maintain proper records. The Act requires the filling up of a written form, duly signed by the expectant mother, as to why she has sought diagnosis.[11] Further, the law restricts the use of diagnostic techniques to registered institutions and operators, which have to maintain detailed records.[12] Any violation, including unlicensed labs, of the Act leads to seizure of equipments. There is fine for those who indulge in sex selection procedure with additional provisions for the suspension and cancellation of the Registration of those as a Medical Practitioner by the concerned Medical Council or any otherRegistering Authority.[13]

Despite the PC & PNDT Act, the conviction rate is low and the selection of male child before conception and female foeticide continue to take place.

Stratergies To Curb Female Foeticide :

Efforts directed selectively towards curbing the practice of prenatal sex determination are unlikely to provide rich dividends. However, measures aimed at improving the status of women in the society are likely to show beneficial effects only after several years.[14] This situation calls for a two-pronged strategy: one to take steps to improve the status of women in the society and the other to ensure effective implementation of the Prenatal Diagnostic Techniques (PNDT) Act and MTP Act so that families find it difficult to undertake sex determination and selective abortion.[15]

There is little doubt that in India the Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994, has not been very effective. The facts revealed by the census speak for themselves. Its implementation needs to be improved upon. There is a need to plug the loopholes. Registration procedures should be made tougher and clinics run by technicians and unqualified personnel should be registered and better regulated. Use of ingenious ways to convey the sex of the foetus should also be curbed through greater use of surprise checks and dummy patients.[16] The PNDT Act is rendered ineffective because of the liberal MTP (Medical Termination of Pregnancy) Act which allows abortion on several grounds including mental trauma and failure of contraceptives. The MTP Act 1971 should be amended in such a way that it permits the abortion of only the first trimester pregnancies, and not those which are more than 12-14 weeks old when the sex of the foetus will be known.Further, even if medical contingency require, MTP providers need to be more vigilant when performing second-trimester abortions.[17]

Conclusion :

Yatra Naranthya Pujyathe Raman The Tatra Devatha" has been our culture. In our country a girl is worshiped as a Devi on one hand and denied her existence on the other as if she has no right to live. Time has perhaps come for us to get rid of male chauvinism and treat children as gifts of nature regardless of their gender. Only if legislations enacted in this behalf are not sufficient. Orthodox views regarding women need to be changed. The PNDT Act should penalize and punish the violators of this crime strictly. Thus, we arrive to a conclusion that female foeticide is a devil in itself that lives amongst us and torments the lives of people all around it. So let's stand united. And fight against this growing parasite. Give them the chance to prove themselves. Give them the chance to live.

References :

(1) *The Daughter Deficit: Exploring Declining Sex Ratio in India, available at www.idrc.ca/.../ArticleDetails.aspx (last visited on January 22, 2017).* ***(2)*** *Preventive Measures For Elimination of Female Foeticide available at www.eldis.org/.../PREVENTIVEMEASURES... (last visited on March 22, 2017).* ***(3)*** *Female Foeticide in India: A Serious Challenge for the Society, available at www.orissa.gov.in (last visited on May 07, 2017).* ***(4)*** *Female Foeticide: Need To change The Mindset Of People, available at www.legalsrviceindia.com/.../1292-Fema...(last visited on April, 18, 2017).* ***(5)*** *Discrimination of Female Children in Modern India: from Conception through Childhood, available at www.unfpa.org/.../indiapublishedpapers/... (last visited on January 12, 2017).* ***(6)*** *The Medical Termination Of Pregnancy Act, 1971 (Act 34 of 1971), s.3.* ***(7)*** *Female foeticide in India. C2007. available from http://www.unicef.org/india/media_3285.htm (last visited on February, 23, 2017).* ***(8)*** *Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994(Act 57 of 1994)* ***(9)*** *Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (Act 57 of 1994), s.4.* ***(10)*** *Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994(Act 57 of 1994), s.5.* ***(11)*** *Ibid.* ***(12)*** *Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994(Act 57 of 1994), s. 3.* ***(13)*** *Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994(Act 57 of 1994), s.23.* ***(14)*** *Does abortion law abet female foeticide, available at http://www.thehindu.com/opinion/open-page/does-abortion-law-abet-female-foeticide/article34(last visited on April 13, 2017).* ***(15)*** *Female foeticide in India: Issues and concerns, available at www.jpgmonline.com/article.asp(last visited on April, 14, 2017).* ***(16)*** *Female foeticide: Death before birth, available at http://zeenews.india.com/exclusive/female-foeticide-death-before-birth_3547.html(last visited on May, 5, 2017).* ***(17)*** *Female foeticide in India, available at http://www.mdhil.com/female-foeticide-in-india(last visited on March, 24, 2017).*

❁❁

Since March 2002
An International, Registered & Referred Monthly Journal : Law
Research Link - 159, Vol - XVI (4), June - 2017, Page No. 100-101
ISSN - 0973-1628 ■ RNI - MPHIN-2002-7041 ■ Impact Factor - 2015 - 2.782

Suspension of Conviction and Sentence under Section 389 Cr.PC - A Case Study & Comparative Analysis of Indian and English Law

The legal position is, therefore, clear that an appellate Court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate Court to the consequences that may arise if the conviction is not stayed. Unless the attention of the Court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case. On the otherhand considering english scenario there isn't a federal constitutional right to bail during appeal of a conviction, post-conviction bail is available in several scenarios. For the most part, the laws of the individual states establish the circumstances in which defendants can bail out while they await resolution of their appeals.

ABHINAV DAHARIYA

The planery provision of Section 389 - An Introduction :

Sub-section (1) of Section 389 says that pending any appeal by a convicted person, the appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released or bail, or on his own bond. This Sub-section confers power not only to suspend the execution of sentence and to grant bail but also to suspend the operation of the order appealed against which means the order of conviction.

Section I : Major Rulings by Apex Court : Development through the case law

Before proceeding further it may be seen whether provisions of 389 Cr.PC[1] enables the Court to suspend the order of conviction as normally what is suspended is the execution of the sentence.

Rama Narang v. Ramesh Narang & Ors[2]

Ahmadi, C.J.,

"That takes us to the question whether the scope of Section 389(1) of the Code extends to conferring power on the Appellate Court to stay the operation of the order of conviction. As stated earlier, if the order of conviction is to result in some disqualification of the type mentioned in Section 267 of the Companies Act, we see no reason why we should give a narrow meaning to Section 389(1) of the Code to debar the court from granting an order to that effect in a fit case. The appeal under Section 374 is essentially against the order of conviction because the order of sentence is merely consequential thereto; albeit even the order of sentence can be independently challenged if it is harsh and disproportionate to the established guilt. Therefore, when an appeal is preferred under Section 374 of the Code the appeal is against both the conviction and sentence and, therefore, we see no reason to place a narrow interpretation on Section 389(1) of the Code not to extend it to an order of conviction, although that issue in the instant case recedes to the background because High Courts can exercise inherent jurisdiction under Section 482 of the Code if the power was not to be found in Section 389(1) of the Code

Ravi Kant S. Patil v. Sarvabhouma S. Bagali[3] :

"All these decisions, while recognizing the power to stay conviction, have cautioned and clarified that such power should be exercised only in exceptional circumstances where failure to stay the conviction, would lead to injustice and irreversible consequences."

The Court also observed : "11. It deserves to be clarified that an order granting stay of conviction is not the rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. An order of stay, of course, does not render the conviction non-existent, but only non-operative. .."[4]

Tamil Nadu v. A. Jaganathanit[5] was observed that when conviction is on a corruption charge, it would be a

Advocate, Chhattisgarh High Court, Chhattisgarh

sublime public policy that the convicted person is kept under disability of the conviction instead of keeping the sentence of imprisonment in abeyance till the disposal of the appeal. In such cases it is obvious that it would be highly improper to suspend the order of conviction of a public servant which would enable him to occupy the same office which he misused. This is not the case here.

Brief Factum Navjot Singh Siddhu v State of Punjab[6] :

Navjot Singh Sidhu along with co-accused Rupinder Singh Sandhu was tried for charges under Section 302 IPC and Section 323 read with Section 34 IPC, but was acquitted by the learned Sessions Judge, Patiala, by the judgment and order dated 22.9.1999 which order was challenged by the State of Punjab by filing an appeal in the High Court which has been allowed and the appellant has been convicted under Section 304 Part II IPC and has been sentenced to 3 years R.I. and a fine of rupees one lakh. The co- accused Rupinder Singh Sandhu has also been convicted under Section 304 Part II read with Section 34 IPC and has been sentenced to 3 years R.I. and a fine of rupees one lakh. He has further been convicted under Section 323 IPC and has been sentenced to 3 months R.I. The appellant filed special leave petition in this Court in which leave has been granted on 12.1.2007 and he has been released on bail and thus the execution of the sentence imposed upon him has been suspended. The appellant also moved an application for suspending the order of conviction passed against him by the High Court on which notice was issued to the State of Punjab and the said application is being disposed of by the present order. The Court ruled that the application moved by the appellant deserves to be allowed. The order of conviction passed against the appellant by the High Court on 1.12.2006 and the sentence awarded on 6.12.2006 are suspended and the conviction shall not be operative till the decision of the appeal.

Section II : Forign Scenario

There isn't a federal constitutional right to bail during appeal of a conviction, post-conviction bail is available in several scenarios. For the most part, the laws of the individual states establish the circumstances in which defendants can bail out while they await resolution of their appeals.

Unlike in pre-trial bail proceedings, there is no presumption of innocence after a conviction. As a result, when there's a question as to whether bail is appropriate, most states place the burden on the defendant to show that it is.

Courts use many of the same factors in post-conviction bail decisions as they do while the case is pending. These include :

(i) the seriousness of the crime

(ii) the defendant's criminal history

(iii) whether the defendant has failed to appear for court hearings in the past, and

(iv) the defendant's ties to the community, such as family and employment. For example, a defendant who lives, works, and has family in the same area as the court is considered to have strong ties to the community. A defendant who committed a crime while visiting an area has less incentive to show up for court than one who lives there.

A defendant who might pose a risk to the public will have a difficult time convincing a judge to allow bail pending appeal. This situation applies to a defendant whose criminal past demonstrates poor decision making or impulsive behavior that has endangered others. Judges also consider the likelihood of the defendant continuing to commit nonviolent crimes if granted appeal.

Courts additionally need to ensure the defendant won't intimidate witnesses or tamper with evidence if freed on bail. Potential intimidation and tampering are important considerations because a defendant might receive a new trial after a successful appeal.

Lastly, trial courts can also consider the merits of the appeal; if there is evidence that the appeal is frivolous or simply intended to delay the proceedings, the court is less likely to set bail.

Section III : Conclusion

The legal position is, therefore, clear that an appellate Court can suspend or grant stay of order of conviction. But the person seeking stay of conviction should specifically draw the attention of the appellate Court to the consequences that may arise if the conviction is not stayed. Unless the attention of the Court is drawn to the specific consequences that would follow on account of the conviction, the person convicted cannot obtain an order of stay of conviction. Further, grant of stay of conviction can be resorted to in rare cases depending upon the special facts of the case. On the otherhand considering english scenario there isn't a federal constitutional right to bail during appeal of a conviction, post-conviction bail is available in several scenarios. For the most part, the laws of the individual states establish the circumstances in which defendants can bail out while they await resolution of their appeals.

References :

(1) *The Code of criminal Procedure 1908 herinafter referred to as CRPC.*

(2) *(1995) 2 SCC 513 (para 19 of the reports).*

(3) *JT 2006 (1) SC 578. After referring to the decisions on the issue, viz., State of Tamil Nadu v. A. Jaganathan (1996) 5 SCC 329, K.C. Sareen v. C.B.I., Chandigarh (2001) 6 SCC 584, B.R. Kapur v. State of T.N. & Anr. (2001) 7 SCC 231 and State ofMaharashtra v. Gajanan & Anr. (2003) 12 SCC 432.*

(4) *Ibid.*

(5) *(1996) 5 SCC 329, K.C. Sareen v. C.B.I., Chandigarh (2001) 6 SCC 584.*

(6) *(2007) 2 SCC 574.*

❁❁

Since March 2002
An International, Registered & Referred Monthly Journal : Law
Research Link - 159, Vol - XVI (4), June - 2017, Page No. 102-104
ISSN - 0973-1628 ■ RNI - MPHIN-2002-7041 ■ Impact Factor - 2015 - 2.782

Observation On Muslim Matrimonial Law

The Courts should give effect to the real meaning of "fair and reasonable provision" mentioned in the Act depending upon the financial status of the husband to emancipate the unfortunate divorced women from the rigors of painful misery and destitution in view of the socio-economic conditions prevalent in India. Besides, divorce is still restricted here and the divorcee hardly stands any chance of remarriage, unlike in Muslim countries. Such legislative implementation is indispensable, divorced women being left to the misery of fate and sufferings may be forced to highly indecent livelihood just in order to survive and rear her unfortunate children.

DR. JASVINDER SINGH NARANG

Islam has categorically granted equal status to man and woman. But the male dominated ethos of the medieval and feudal periods has assigned secondary status to woman in our country. The roots in the milieu and traditional customs existing in the Indian origin have made it rather difficult for the Muslim women in India to enjoy the rights bestowed on them by Islam. Dr., Tahir Mahmood's recommendation that court should pass decree of Khula u/r the residuary clause contained in Section 2(ix) of the Dissolution of Muslim Marriage Act, 1939 is highly appreciable and we whole heartedly support his progressive view. The misconception has vitiated the law dealing with the wife's right to dissolve the tie of marriage.

Once again recapitulate these issues to expose the crystal clear principles of Islamic matrimonial law and clear the dust of misunderstanding accumulated in the course of time by the tradition bound Muslim clergy and the precedent bound judiciary. Finally, we have also set out our recommendations for progressive codification of Muslim Personal Law and enactment of Islamic Code.

By way of conclusion Muslim Personal Law as practiced by the Muslims in India and administered by the Courts is not wholly in conformity with the true spirit of the Holy Quran. The reasons for the emergence of such distorted image are, of course, historical. When the Britishers in Mughal India usurped political authority in this country, one of the first imperialist strategies adopted by them was to displace all the laws then in force. They attempted displacement of the penal, commercial and procedural laws of this country and preeminently succeeded. However, displacement of the Muslim Personal Law, as also of the traditional Hindu Law, was not easy. These laws were most intimately connected with the culture of this country and any attempt to temper with them would have jeopardized the colonial interest.

The English judges performing the task of administering Islamic law awfully distorted most of this noble principles. They changed the very nature of the Islamic legal principles by ignoring their true rationale and the spirit and often enforcing them as they appear in literal, sometimes faulty English translations. This "Indo-Anglican exposition" of Muslim Personal Law (to use Justice Krishna Iyer's terminology) has been faithfully followed all along by the Courts in India also after the advent of independence. For the judges in India today the Muslim Personal Law is what the British-Indian Courts had declared to be, no matter how very much, repugnant to the Holy Quran and Propher's tradition, their pronouncement might have been.

The study under hand exposes the popular fallacy that a Muslim male enjoys, under the Quranic law, unbridled authority to liquidate the marriage. The whole Quran expressly forbids a man to seek pretext for divorcing his wife so long as the remains faithful and obedient to him.1 The Islamic Law gives to the man primarily the faculty of dissolving the marriage, if the wife, is disobedient. Unless the wife is disobedient, no man can justify a divorce. If he abandons his wife or puts her away in simple caprice, he draws upon himself the divine anger, for the course of God, said the Prophet, rests on him who repudiates his wife capriciously. But it is unfortunate that Muslim Personal Law as applied in India has taken a course contrary to the spirit of what the Prophet or the Holy Quran laid down and the same misconception vitiates the law dealing with wife's right to divorce.

Department of Law, University of Rajasthan, Jaipur (Rajasthan)

The true Islamic law of divorce, in fact stands for what is no known as the "breakdown theory" of divorce. The Quran did not specify and matrimonial offences neither the Prophet laid any bar to the matrimonial relief. This is what the modern 'breakdown' theory of divorce exactly stands for which precludes the courts from going into the causes of breakdown of marriage.

A husband, who is convinced that his marriage is irretrievably broken down, can pronounce a talaq, which shall not become effective during the period of Iddat. At the expiry of this period, i.e. he does not revoke, the marriage is dissolved but the couple can revive the marriage by a fresh solemnization, provided the wife agrees. And that is all, there are no complications, no complexities, no inequities in this process. However since the husband cannot be allowed to play hide and seek with his wife by repeatedly pronouncing a talaq and then either revoking it within the permissible period of Iddat or offering to remarry the woman after the expiry, the law provides that he can do so only twice in the whole of his life and whenever he does it for the third time, the marriage is instantly dissolved perpetually, leaving no room either for the revocation of divorce or for a novation of marriage by a fresh solemnization. Unfortunately the Muslims in India are themselves composing a parody of this extremely rationale and humane law by straight away jumping to third talaq in single pronouncement in sheer ignorance, believing that without this their action would have no effect at all and it is again unfortunate that the Muslim clergy approve of it and the courts give effect to it. If people know that triple-divorce superfluous and even a single talaq would dissolved the marriage, of course, leaving room for revocation during the next three months and remarriage thereafter, innumerable families would have been saved from disruption.[2]

Taking the form of Khulla, Courts in India have eclipsed this extremely liberal and pro-women law by judicial ignorance and juristic prejudice against the law of Islam has practically extinguished this parallel right of talaq given to her. The right of divorce which Islam confers on women, if understood in its true perspective, will indeed by found surprisingly exemplary as to how the Islamic law has equated her right to divorce with means' unilateral right to talaq. Where the husband is reluctant and tries to maintain the marital bond against the wishes of the wife despite forgoing of her Mahr. She is free to go to the court and ask for a decree of Khul without even giving the court, the reasons as to why she wants which is, mutatis mutandis, the same as man's right to talaq. But it is unfortunate for the Muslim women in India that this institution giving her equal rights is clouded with misconception and referred erroneously as a 'bargain for the benefit of the husband'.[3]

Islam has clearly granted equal status to man and woman. Holy Quran says:-

They are your garments

And you are their garments.[4]

Yet the male dominated ethos of the medieval and feudal periods and the secondary status to which the woman has been relegated in our country, having deep roots in the milieu and traditional customs existing in the Indian origin have made a difficult for the Muslim women in India to enjoy the rights bestowed on her by Islam. Besides, ignorance on account of lack of Islamic education is attributable to such unfortunate Muslim Women. Therefore, it is the duty of the enlightened Muslims and intellectuals to make Muslim women aware of their rights and men to give them their due.

Dr. Tahir Mahmood's suggestion that the Courts should pass decree of Muslim Marriages Act, 1939 is highly appreciable and we definitely support such a view.

Talaq-e-tafwiz which authorizes the wife to stipulate with the husband, at the time of marriage, to the effect that she would have a right to pronounce a unilateral divorce, on his behalf in specified circumstances, is unknown to the Muslim Women in India.

It is unfortunate that our judges continue beating around the bush faithfully following the Anglo-Indian misconception of the Islamic law of divorce and often irreverently criticising it, without making any attempt worth the name to discover the true law. Justice Baharul Islam, speaking from the Bench of the Guwahati HIgh Court, in two of his consecutive judgements[5] made a very brilliant and refreshing analysis of the true Islamic law of divorce as laid down in the Holy Quran and the Sunnah, read through authentic commentaries and legal treatise, where he forcefully exposed the errors committed by the British-Indian authors and judges in respect of the divorce law of Islam. Buty unfortunately name of these cases were reported in any national law reports. Similarly, Justice Balasubramaniam of the Madras High Court, in Ibrahim Fatima V. Muhammed Saleem[6] made a remarkable exposition of true principles of Islamic law relating to minor children's right of maintenance by referring to authentic treatises like Fath ak Qadur[7] and Sahih Bukhari[8], side-traking the principles of precedent set by Anglo-Muhammadan law.

With regard to the issue of maintenance of divorced Muslim women, their rights are beautifully balanced against the Quaranic law which strongly discourages divorce and allows under many restrictions regarding Talaq as the resort. However, this extremely rationale and humanistic law on divorce has indeed been awfully corrupted to the detriment of Muslim women in India. The right to maintenance of a divorced Muslim woman ceases after the expiry of the period of Iddat as a natural corollary to its concept of marriage and policy on divorce. Since marriage, in Islam is a dissoluble union, the parents' liability to maintain their unmarried daughter remains only suspended during her married life. On dissolution, whether by her husband's death or by divorce whether at her own instance or otherwise, the liability of the parents is revived and continues to be discharged until she remarries.[9] Further it should be noted that after dissolution of marriage, Islam does not keep the parties tagged together for the rest of their lives and it encourages both of them (depending on their age) to get married, since remarriage is not permissible in Islam. This arrangement eminently conforms to Islam's own concept of marriage and divorce and its unique theory of equality of sexes.

In consonance with Islamic concept of justice, expressed through the device of mata as mentioned in Ayat 241 Surah-al-Buqura and Ayat 6 Surah-al-Talaq (fair and reasonable provision in statutory terminology) has found place in the act of 1986 which if judiciously applied in suitable cases, would be in conformity with the Shariah law on the subject. There are some points about maintenance of divorced muslim women:-

(i) Maintenance for divorce Muslim wife after Talaq she is entitled to get the allowance up to the end of Iddat period only. **(ii)** If divorced women are pregnant then she is entitled to get the allowances up to delivery. **(iii)** Where she herself maintains the children born to her before and after divorce a reasonable and fair provision and maintenance to be made and paid by her former husband for a period of two years from the respective date of birth of such children. **(iv)** An amount equal to the sum of Mahr to be paid to her at the time of her marriage or at any time thereafter.

We would also like to mention that the Act of 1986 only attempts to enforce the traditional Islamic Law on women's post divorce rights the other part of the law is Islam namely, the true Quaranic principles and processors relating to divorce must also be properly enforced.

Further, the liability imposed on the Wakf Board to provide maintenance to a divorced women who does not have any relatives is an innovation drawn from the general provisions of Islamic jurisprudence where the State is bound to maintain if any member of the society is unable to maintain himself or herself and who have no relatives legally bound for such maintenance. But since India, not being an Islamic State, the liability passes on to local Muslim community. Therefore, there can be no constitutional, legal or Shariyat objection for such an arrangement. Theoretically it is a good provision but practically speaking we are quite skeptics about its implementation through the Wakf Boards because of various reasons inherent in its administration apart from paucity of funds.

The Courts should give effect to the real meaning of "fair and reasonable provision" mentioned in the Act depending upon the financial status of the husband to emancipate the unfortunate divorced women from the rigors of painful misery and destitution in view of the socio-economic conditions prevalent in India. Besides, divorce is still restricted here and the divorcee hardly stands any chance of remarriage, unlike in Muslim countries. Such legislative implementation is indispensable, divorced women being left to the misery of fate and sufferings may be forced to highly indecent livelihood just in order to survive and rear her unfortunate children. Therefore, mata-i-talq or more accurately mataaun bil maaroof (just and reasonable provision) should be treated as an indemnity for divorce and courts be empowered to award it is appropriate cases where the divorce has been arbitrary, in addition to the relief which all divorced women must get.

The Act of 1986 only attempts to enforce the traditional Islamic law on women's post-divorce rights, the other part of the law in Islam, namely, the true Quranic principles and procedure relating to divorce, must also be properly enforced.

Great importance is assigned to reason in Islamic system and Quranic philosophy. While on the one hand human reason is subordinate to Divine reason in revelation, simultaneously man is exhorted to approach an understanding of heights of human knowledge and fulfillment. Qiyas, Ijme, Ijtihad, Istihsan, and Maslahah are some of the brilliant examples of the role reason has played in the development of juristic thought in Islamic Shariat.

Our recommendation is that in India also the Muslim personal law should be codified and necessary reforms be introduced for the enactment of Islamic Code, within the matrix of Sharia law to jewel down the differences among various schools of Islam. To insists that Muslim law as prevalent in India should be preserved amounts to retention of certain legal rigidities, social inequalities, uncalled for discrepancies and undesired hardships which are contrary to Islam. Dr. Tahir Mahmood's work setting out the legislative scenario across the Islamic landscape is at once instructive, seminal and of futuristic relevance for such an Islamic Code for the Indian Muslims of tomorrow.[0] He has cited the Holy Quran to prove that Polygamy under Islam can be restricted by an agreement or by the law.[11] He has presented a long list of many Muslim states who have severely handcuffed this institution and some have even enforced monogamy, based on religious authority.

The trend is in favour of monogamy rather than polygamy. One husband and one wife relationship is ideal in the institution of marriage. This has been universally adopted all over the world to constitute the very base of the family as an institution. These countries, through legislation have dealt with the problem by incorporating various measures such as judicial intervention, administrative intervention, indirect restrictions and abolition of triple divorce formula and revocability of divorce. Such restrictions if made mandatory for the Muslim of India being codified under the said Islamic Code would deter the husband from exercising this power in an arbitrary thoughtless manner, providing protection to the women living under shadow of fear that they can be discarded in any way and at any time. It may also be pointed out that the ingenious juristic devise, talaq-al-tafwiz apart from Khul and mubaraat should be expressly recognized and provided as recently enacted by Statute Laws of Iran and Syria.

References :

(1) *Quran Surah Al-Nisa, Ayat, 34.* ***(2)*** *See, Abul Ala Maududi, Huquq al Zawajayn, 10 (4th Ed. 1964).* ***(3)*** *Tahir Mahmood Personal Law in Crisis, 64-65 (1986).* ***(4)*** *Quran, Surah Al Buqara, Ayat 187.* ***(5)*** *Ziauddin Ahmed vs Anwar B. Begum: Rukia Khatun vs Abdul Khaliq Laskar – both decided during 1978-79* ***(6)*** *AIR 1980 Mad. 82.* ***(7)*** *Jbn Human's Famous Treatise on the Hanafi Law, cited in Tyabji, Muslim Law, 226 (4th Ed. 1968).* ***(8)*** *One of the six most authentic collections of prophet's tradition, cited in Ameer Ali, 11 Mohammedan Law, 406 (5th Ed. 1929).* ***(9)*** *See, Fatawa-e-Qadi Khan (English Trans. by Maulavi Muhammad Yusvs) Vol.1-11 (1875).* ***(10)*** *Tahir Mahmood, Family Law Reform in the Muslim World (1972).* ***(11)*** *Id. at 273.*

Since March 2002
An International, Registered & Referred Monthly Journal : Law
Research Link - 159, Vol - XVI (4), June - 2017, Page No. 105-106
ISSN - 0973-1628 ■ RNI - MPHIN-2002-7041 ■ Impact Factor - 2015 - 2.782

Changing Concepts of Human Rights

Human Rights are inherent right. It allows us to develop fully. The denial of human rights creates unrest in society. Historically it has been defined as natural law. It International base UN Charter & UDHR are important. At National base the concept of Dharma, Constitution played Role. Judiciary has pivotal Role to play. Human right is a live concept. It must become a part of school curriculum. It awareness is essential.
Key Words : Human Rights, UDHR, Constitution, Court.

DR.NITESH D. CHAUDHARI

Introduction :

Human Rights inhere in a person by virtue of his/her being a human. They comprise both civil and political rights as well as economic, social and cultural rights. Human rights and fundamental freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection. The denial of human rights and fundamental freedoms not only is an individual and personal tragedy, but also creates conditions of social and political unrest, sowing seeds of violence and conflict within and between societies and nations.

As the first sentence of the universal declaration of human rights states, respect for human rights and human dignity "is the foundation of freedom, justice and peace in the world." Human rights issues in Asia are very different from those in a developed society. For a large number of people particularly country like India, human rights are related at once to food, shelter, education, employment and health.

The greatest need today is to increase awareness about human rights because every aware individual ceases to be a potential violator and instead becomes a potential protector.[1]

Concept of Human Rights :

Throughout history every society has sought to define the concept of human dignity in the sense of seeking to ascertain the qualities and inherent value, if any, of each person and his relationship to society.[2] Human rights are derived from the principal of natural law. They are neither derived from social order nor conferred upon the individual by the society. They reside inherently in the individual human beings independent of and even prior to his participation in the society.[3] There are the rights, which entitled mankind a decent, civilized life in which inherent dignity of each human being will receive respect and protection.[4]

Origin and Development of Human Rights :

The concern of human rights became popular particularly in the twentieth century, though it had its roots in different forms since time immemorial. It is not static but a part of "continuing dialectic process through which progress in the field might be and manifestly has been made.[5] The origin and development of human right has been on two bases, the first is the National base, and the second is the International. On National base, the conception of human rights got its breed to originate and develop in the form of religion in different countries and in different times.

In Greek and Roman Laws, the principals of International Laws appear to be attached with the principals of natural justice. The stoic philosophers found all creatures being prevailed by universal power, the principle that was already established in the period of Mahabharata (500 BC) in India.

Human Rightsat International Level :

At the end of the First World War of 1919, some attempts were made on liberal level favoring the common man. The treaty of Versailles tended to promote and universalize human rights though it resulted in no success. The Institute of International Law, a private organization was formed to recognise rights of man but it was also failed. The communist and fascist governments were totalitarian governments and they did not recognise human rights as

Principal, N.T.V.Samiti's College of Law, Institute of Legal Education & Research, Nandurbar (Maharashtra)

such but only recognised human rights of their party man or followers.[6] As a matter of fact human rights were universalized after the end of Second World War of 1939 in 1942. President Roosevelt of USA on 6th Jan. 1941 declared four fundamental freedoms of human beings i.e. freedom of speech and expression, to worship God, freedom from want and fear. The Atlantic charter played a crucial role in development of human rights.

The charter of the United Nations represents a significant advancement so far as faith in and respect for human rights is concerned. The provisions concerning human rights run through the UN Charter like "a golden thread"[7].The General Assembly of UNO on 10th Dec.1948 adopted Universal Declaration of Human Rights by which the right to life in peace has become reality for all. UDHR consists of preamble and 30 Articles covering civil and political and economic, social and cultural rights. The preamble refers to the "faith in fundamental human right in the dignity and worth of the person and the equal rights of men and women".

On the recommendation of Third Committee, the General Assembly finally and unanimously adopted the two International Covenants namely, International Covenant on Civil and Political Rights and International Covenant on Economic Social and Cultural Rights on 16th Dec. 1966.[8] The General Assembly also adopted an Optional Protocol to the International Covenant on Civil and Political Rights 1966, and in Dec. 1989 another protocol i.e. second optional protocol on International Covenant on Economic Social and Cultural Rights.

Some important world conferences on human rights were held like Vienna Conference 1993, Beijing Conference 1995 etc., which played an important role for the protection of human rights. Numbers of Conventions were passed for the protection of human rights on the issues like Genocide, Prisoners of war, Slavery, Racial Discrimination, Refugees, Women's rights etc.

Human Rights in India :

During Vedic period there were rules of ethics and morality to treat human beings with dignity. The Indian culture never treated women with indignity. The caste system was established as per social utility of human beings. King used to dispense justice in open court. Later on jury system was adopted in Indian Legal system.[9] The framers of Indian Constitution were greatly influenced byUDHR and it helped in shaping part-III on fundamental rights and part-IV on Directive principals.Preamble, Fundamental Rights and Directive Principal together provide the basic human rights of the people of India. Preamble insures all citizens' right to life, liberty, equality, and dignity. The courts have given proper direction and interpretations to those concepts in the context of changing social and economic order in the country through judicial activism.

The Protection of Human Rights Act 1993 has been enacted for the betterment of human rights. It provides for establishment of National Human Rights Commission and State Human Rights Commission to accomplish the objectives of protection of human rights. The Supreme Court is the guarantor and protector of fundamental rights. Citizens can seek redressal against their infringement in the Supreme Court or High Court u/Art.32 or Art.226, respectively. Indian judiciary has been very sensitive and live to the protection of human rights of the people. It has served as an institution for providing effective remedy against the violation of human rights. The recent trend shows that it has not only granted compensation to the victims or heirs of victims of human rights violation by the state officials but also policing the police.

The Indian Judiciary has given important decisions upholding the human rights such as right of child, compensation to victims, environmental right, civil liberties, right to education, prisoner's rights, right to legal aid, welfare of women etc.

Conclusion & Suggestion :

The concept of Human Right is an old concept. It's a live concept changes from time to time and place to place. Though it has a great history and development, it is useful for literate and forwarded people. Until and unless a fruit of the concept of human right reaches to each and every person living in the world it will remain merely a letter. Hence the concept of human right must become a part of school curriculum. It must be spread through media or other efficient means in all possible languages. There must be some criteria of priority between human rights of women, downtrodden, poor and tribal people against their counter parts. Role of judiciary is most important for the upliftment of concept of human right. People has lost faith in the legislatures in the country like India, hence judiciary has to play a pivotal role.

References :

(1) *www.rlek.org*

(2) *Ray, Arun (1997) : National Human Rights Commission of India, Kama publication, Delhi, P.37.*

(3) *Anand, Dr.V.K. (2001) : Human Rights, Allahabad Law Agency, P.1.*

(4) *Sen, A.N. (2002) : Human Rights, Shri Sai Law Publications, Faridabad, P.1.*

(5) *Ray, Arun (1997) : National Human Rights Commission of India, Kama Publication, Dehli, P.38.*

(6) *Tondan, M.P. (2002) : International Law and Human Rights, Allahabad Law Agency, P.8.*

(7) *Kapoor, S.K. (1999) : Human Rights and International Law, Central Law Agency, Allahabad, P.9.*

(8) *General Assembly Resolution 2200 A (xxi), Dec. 1966.*

(9) *Deshta, Dr.Sunil and Singh, Dr. Partap (2004) : Human Rights in India, Allahabad Law Agency, P.4.*

Since March 2002
An International, Registered & Referred Monthly Journal : Law
Research Link - 159, Vol - XVI (4), June - 2017, Page No. 107-108
ISSN - 0973-1628 ■ RNI - MPHIN-2002-7041 ■ Impact Factor - 2015 - 2.782

E-Waste

The effects of improper disposal of E-waste are observed relatively after a long period of time, When an electronic gadget is disposed of with all its hazardous elements embedded in it, precarious health and environmental effects are not observed immediately. It takes considerable amount of time to have an outlook of the actual risk from the waste. This intensifies the problem of realization of the hazards from waste. In India, e-waste management assumes greater significance not only due to the generation of its own e-waste but also because of the dumping of e-waste from developed countries.

URMILA

Introduction :

E-Wastes are one of the fast growing wastes in the world. It is a situation that prevails everywhere and it's hard to survive in this world without machines. The humans are fully influenced that machines that make our lives more comfortable. So to satisfy the requirements of the people, electrical goods are increasing day by day and they get crowded in the market .This finally results in the generation of E Wastes.[1]

What is E-Waste? :

E-Waste is the term used to describe old or discarded electronics and appliances, for example, cathode ray tube (CRT) televisions and computer monitors, desktop computers, laptop computers, liquid crystal display (LCD) monitors, cell phones, keyboards, computer mice, printers, and copiers. E-Waste contains valuable components such as precious metals that can be recovered through the recycling process; however, E-Waste also contains a high proportion of heavy metals and persistent organic pollutants (POPs) that can be toxic to human health and the environment when they are released through inappropriate recycling processes.

Environmental contamination caused by improper E-Waste management has been noted as a growing problem in several developing countries.[2] Also, the UNEP and Basel Convention (2005) indicated that emissions from E-Wastes are damaging human health and the environment. For example, the burning of E-Waste to recover precious metals releases organic compounds and, potentially, dioxins and furans. Arsenic and asbestos may act as catalysts during burning, increasing the formation of dioxins, which are carcinogenic in nature.[3] Examples: Computers, LCD / CRT screens, cooling appliances, mobile phones, etc., contain precious metals, flame retarded plastics, CFC foams and many other substances.

Sources of E -Waste :

The sources of the E-Wastes are broadly classified into 3 categories. They are :

(1) White Goods : It includes the house hold materials like air conditioners, washing machines and air conditioners.

(2) Brown Goods : It includes televisions, Cameras, etc.

(3) Grey Goods : This includes computers, scanners, printers, mobiles phones etc.

Causes for E - Waste

(i) Manufacture Technology of a Computer,

(ii) Invasion of Technology.

Effects of E-waste :

EEEs are made of a multitude of components, some containing toxic substances that have an adverse impact on human health and the environment if not handled properly. Often, these hazards arise due to the improper recycling and disposal processes used.[4] It can have serious repercussions for those in proximity to places where e-waste is recycled or burnt. Waste from the white and brown goods is less toxic as compared with grey goods.

(i) Lead is toxic to the kidneys, accumulating in the body and eventually affecting the nervous and reproductive systems. Children's mental development can be impaired by low-level exposure to lead.

(ii) When burned, PVC produces dioxins, some of the most hazardous carcinogens known.

(iii) Brominates flame retardants have been linked to fetal damage and thyroid problems.

(iv) Barium produces brain swelling after a short exposure. It may cause weakness in muscles as well as heart, liver, and spleen damage.

(v) Mercury is known to harm developing fetuses and is passed through the mother's milk to newborns. In adults it can cause brain and kidney damage.

(vi) Beryllium causes acute or chronic beryllium disease,

Ph.D. Research Scholar (Department of Law), Kurukshetra University, Kurukshetra (Haryana)

a deadly ailment affecting the lungs.

(vii) Cadmium is a carcinogen and long-term exposure leads to kidney and bone damage.[5]

Policy level initiatives in India :

In view of the ill-effects of hazardous wastes to both environment and health, several countries exhorted the need for a global agreement to address the problems and challenges posed by hazardous waste. However, the policy level initiatives regarding E-waste in India is quite rudimentary and needs immediate attention. Following are some of the policy level initiatives in India regarding E-waste.

(1) The Hazardous Wastes (Management and Handling) Amendment Rules, 2003 : Under Schedule 3, E-waste is be defined as "Waste Electrical and Electronic Equipment including all components, sub-assemblies and their fractions except batteries falling under these rules". The definition provided here is similar to that of Basal Convention. E-waste is only briefly included in the rules with no detail description.[6]

(2) Guidelines for Environmentally Sound Management of E-waste, 2008 : This guideline was a Government of India initiative and was approved by Ministry of Environment and Forest and Central Pollution Control Board. It classified the E-waste according to its various components and compositions and mainly emphasises on the management and treatment practices of E-waste. The guideline incorporated concepts such as "Extended Producer Responsibility". [7]

(3) The e-waste (Management and Handling) Rules, 2011 : This is the very recent initiative and the only attempt in India meant solely for addressing the issues related to E-waste. These rules are not implemented in India as yet and will only come into practice from 1st May, 2012. According to this regulation, 'electrical and electronic equipment' means equipment which is dependent on electric currents or electro-magnetic fields to be fully functional and 'e-waste' means waste electrical and electronic equipment, whole or in part or rejects from their manufacturing and repair process, which are intended to be discarded.[8]

Prevention :

A systematic approach guided by exposure assessments and health effects research is needed to prevent toxicant exposures associated with E-Waste. Engineers, environmental scientists, and other professionals can participate in this research and seek to minimize exposure to these toxicants among affected populations. Restricting the use of toxic chemicals in manufacturing of electronic devices will form the upstream of prevention efforts, but many changes are also needed in the current recycling practices. Appropriate recycling technologies should be the mainstay of E-waste recycling, and informal and primitive recycling practices need to be significantly reduced or eliminated. Exposure of children to excessive E-Waste toxicants should be minimized at both household and community levels. There is an urgent need for improvement in e-waste management covering technological improvement, institutional arrangement, operational plan, protective protocol for workers working in e-waste disposal and last but not the least education of general population about this emerging issue posing a threat to the environment as well as public health.

Conclusion :

India is placed in a very interesting position. The need of the hour is an urgent approach to the e-waste hazard by technical and policy-level interventions, implementation and capacity building and increase in public awareness such that it can convert this challenge into an opportunity to show the world that India is ready to deal with future problems and can set global credible standards concerning environmental and occupational health. The relationship between cause and effect is important in all kinds of waste. Here the causes may be characterized as the causes for the generation and rapid obsolescence of electrical and electronic equipment. The reasons for prompt generation and obsolesces of E-waste include rapid economic growth, urbanization, openness of the market, high Research and Development facilities, industrialization, increased consumerism etc. The effects are on the health and environmental risks associated with E-waste. The effects of improper disposal of E-waste are observed relatively after a long period of time, When an electronic gadget is disposed of with all its hazardous elements embedded in it, precarious health and environmental effects are not observed immediately. It takes considerable amount of time to have an outlook of the actual risk from the waste. This intensifies the problem of realization of the hazards from waste. In India, e-waste management assumes greater significance not only due to the generation of its own e-waste but also because of the dumping of e-waste from developed countries.

References :

(1) Arun Prakash, An Introduction to E-waste Management posted by CELPD Available on https://celpd.wordpress.com/2012/07/22/an-introduction-to-e-waste-management,acssed on 11/11/2016. (2) Robinson BH (2009) : E-waste: An Assessment of Global Production and Environmental Impacts. Science Total Environ 408:183191. (3) Shashi N. Kumar and Arun Kumar Jain, E-Waste: Health Impacts in Developing Countries, Jul 19th, 2014. (4) E-Waste Guide. Available on http://www.ewaste.in. (5) David W. Wooddell, E-Waste available on http://ngm.nationalgeo graphic.com/geopedia/E-Waste (6) Anwesha Borthaku and Pardeep Singh : Electronic waste in India: Problems and policies, International Journal of Environmental Sciences, Volume 3 No.1, 2012. (7) Ibid. (8) Anwesha Borthaku and , Pardeep Singh ,Electronic waste in India: Problems and policies, International Journal of Environmental Sciences Volume 3 No.1, 2012.

Since March 2002
An International, Registered & Referred Monthly Journal : Law
Research Link - 159, Vol - XVI (4), June - 2017, Page No. 109-111
ISSN - 0973-1628 ■ RNI - MPHIN-2002-7041 ■ Impact Factor - 2015 - 2.782

भारतीय संविधान एवं शिक्षा का अधिकार

प्रस्तुत शोधपत्र, भारतीय संविधान एवं शिक्षा के अधिकार से सम्बंधित है। संसद द्वारा 86वें संविधान संशोधन अधिनियम 2002 द्वारा अनुच्छेद 21 के पश्चात् एक नया अनुच्छेद 21क जोड़कर शिक्षा के अधिकार को एक मूल अधिकार बना दिया है। अनुच्छेद 21क में उपबंध है कि - राज्य छह वर्ष से चौदह वर्ष तक की आयु वाले सभी बालकों के लिए निःशुल्क और अनिवार्य शिक्षा देने का ऐसी रीति में जो राज्य विधि द्वारा अवधारित करें, उपबंध करेगा, इसके साथ ही इस संशोधन अधिनियम द्वारा अनुच्छेद 45 एवं अनुच्छेद 51ट में राज्य एवं माता-पिता, संरक्षक पर 14 वर्ष तक के बच्चे की प्रारंभिक शिक्षा का अनिवार्य कर्तव्य अधिरोपित किया गया है।

डॉ.अरुणा सेठी* एवं संगीता मसानी**

भारतीय शिक्षा जगत के इतिहास में एक अप्रैल, 2010 का दिन स्वर्णाक्षरों में लिखा गया है। इस दिन पूरे देश में निःशुल्क एवं अनिवार्य शिक्षा अधिनियम 2009 को लागू किया गया। महात्मा ज्योतिबा फूले, गोपाल कृष्ण गोखले व महात्मा गाँधी सरीखे भारत माता के महान सपूत यदि आज जिंदा होते तो देश के बच्चों के लिए 'शिक्षा के अधिकार' के अपने सपने को साकार होते देखकर सबसे अधिक प्रसन्न होते। आज शिक्षा का अधिकार हमें मिल गया है, लेकिन इसका एक लंबा इतिहास है। सच्चाई तो यह है कि इसे पाने में हमें सैकड़ों साल लगे तथा इसके पीछे बहुत ही लंबे संघर्ष की कहानी है। इस अधिकार को पाने के लिए ज्योतिबा फुले ने लगभग 125 साल पहले हंटर आयोग को ज्ञापन दिया था तो गोखले ने लगभग 100 साल पहले इंपीरियल लेजिस्लेटिव असेम्बली से जोरदार मांग की थी। गाँधी की वर्धा योजन इसी उद्देश्य को लेकर चलाई गई थी।

भारत में सर्वप्रथम बालकृष्ण गोखले द्वारा 1910 में निःशुल्क और अनिवार्य शिक्षा की मांग की गई। 1966 में स्वतन्त्र भारत में पहली बार शिक्षा सम्बन्धी आयोग का गठन किया गया। कोठारी आयोग नामक इस आयोग ने देश के सभी बच्चों के लिए समान शिक्षा नीति की वकालत की थी। 1986 में राष्ट्रीय शिक्षा नीति के बाद देश में नवोदय विद्यालय की स्थापना की गई, यह एक ऐसे शिक्षण संस्थान की परिकल्पना थी, जिसमें जाति, धर्म, वर्ग, समाज व लिंग आदि सभी भेदभावों से ऊपर उठकर सभी के लिए शिक्षा की अवधारणा को बल मिला। यह प्राचीन काल के गुरूकुल का आधुनिकतम व पूर्णतः परिष्कृत स्वरूप था।

भारत में बाल शिक्षा के क्षेत्र में नई और परिष्कृत अवधाराओं का जन्म 1992–93 में तब हुआ जब भारत ने संयुक्त राष्ट्र बाल अधिकार चार्टर पर हस्ताक्षर किए। प्राथमिक शिक्षा के महत्व पर यह भारत सरकार द्वारा मुहर लगाने जैसा था। हस्ताक्षरकर्ता देश होने के नाते भारत को अब बाल शिक्षा को मौलिक अधिकार के रूप में मान्यता प्रदान करना आवश्यक हो गया था। इसी संदर्भ में एक ऐतिहासिक महत्व का निर्णय मोहिनी जैन बनाम कर्नाटक राज्य में ''शिक्षा पाने का अधिकार'' अनुच्छेद 21 के अन्तर्गत प्रत्येक नागरिक का मूल अधिकार है निर्धारित किया और राज्य के प्रायवेट मेडिकल कॉलेजों द्वारा कैपिटेशन फीस को असंवैधानिक ठहराया था। इसी प्रकार 1993 के निर्णय में सर्वोच्च न्यायालय द्वारा उन्नीकृष्णन बनाम आन्ध्र प्रदेश राज्य के मामले में दिया गया निर्णय भी इस दिशा में मील का पत्थर साबित हुआ। जिस में कहा कि शिक्षा का अधिकार अनुच्छेद 21 में उल्लेखित जीवन के मौलिक अधिकार का ही एक भाग है।

संसद द्वारा 86वें संविधान संशोधन अधिनियम, 2002 द्वारा अनुच्छेद 21 के पश्चात् एक नया अनुच्छेद 21क जोड़कर शिक्षा के अधिकार को एक मूल अधिकार बना दिया है। अनुच्छेद 21क में उपबंध है कि – राज्य, छह वर्ष से चौदह वर्ष तक की आयु वाले सभी बालकों के लिए निःशुल्क और अनिवार्य शिक्षा देने का ऐसी रीति में जो राज्य विधि द्वारा अवधारित करें, उपबंध करेगा इसके साथ ही इस संशोधन अधिनियम द्वारा अनुच्छेद 45 एवं अनुच्छेद 51ट में राज्य एवं माता–पिता, संरक्षक पर 14 वर्ष तक के बच्चे की प्रारम्भिक शिक्षा का अनिवार्य कर्तव्य अधिरोपित किया गया है।

शिक्षा का अधिकार एक मूलभूत मानव अधिकार है, किसी भी लोकतांत्रिक प्रणाली की सरकार की सफलता वहाँ के सभी नागरिकों के शिक्षित होने पर निर्भर करती है। एक शिक्षित नागरिक स्वयं को विकसित करता है और साथ ही साथ अपने देश को भी विकास की

**प्राध्यापक एवं विभागाध्यक्ष, शासकीय विधि महाविद्यालय, उज्जैन (मध्यप्रदेश)*
***शोधार्थी, शासकीय विधि महाविद्यालय, उज्जैन (मध्यप्रदेश)*

ओर आगे बढ़ाने में योगदान करता है। शिक्षा व्यक्ति को मानव की गरिमा प्रदान करती है। कोई देश या समाज कितनी तरक्की करता है, यह इस बात पर निर्भर करता है कि उसमें रहने वाले लोग शिक्षित है। शिक्षा इंसान की जरूरत ही नहीं, उसके व्यक्तित्व की पहचान भी है। वर्ष 2011 की जनगणना के आंकड़ों पर गौर करे तो पता चलता है कि आज भी हमारे देश में साक्षरता की दर 75.6 प्रतिशत तक ही पहुँची है। इसका अर्थ यह हुआ कि आज भी एक चौथाई लोग हमारे देश में निरक्षर है। आज भी जहां पुरूषों की साक्षरता दर 82.14 प्रतिशत है, वहीं महिलाओं की साक्षरता दर 65. 46 प्रतिशत तक ही पहुँच सकी है। अभी तक हम अपने माथे पर लगे निरक्षरता का कलंक क्यों नहीं धो पाए।

निःशुल्क एवं अनिवार्य शिक्षा का अधिकार का मतलब है हमारे देश के हर बच्चे को जिनकी आयु 6 से 14 वर्ष है, शिक्षा प्राप्त करने का संवैधानिक अधिकार मिल जाना चाहे वह बच्चा किसी भी धर्म, वर्ग या लिंग से सम्बन्ध रखता हो, उसे बिना किसी भेदभाव के अपने नजदीकी स्कूल में बिना शुल्क के अनिवार्य रूप से दाखिला मिल जाएगा। सरकार ने सभी विसंगतियों को दूर करते हुए 01 अप्रैल 2012 से इसे पूरे देश में लागू कर दिया है। अब बच्चों को लिए यह एक मौलिक अधिकार बन चुका है। सरकार प्रत्येक बच्चे का 8वीं कक्षा तक निःशुल्क पढ़ाई के लिए उत्तरदायी होगी। इस कानून से बच्चों को मजबूत, साक्षर एवं कुशल बनाया जाएगा। इसलिए इस लक्ष्य को साकार करने के लिए सभी हितधारकों, माता–पिता, शिक्षक, स्कूलों, गैर–सरकारी संगठनों और कुल मिलाकर समाज, राज्य सरकारों और केन्द्र सरकार की ओर से एकजुट करने के प्रयास का आव्हान किया गया है।

शिक्षा का अधिकार पाने के अपने उद्देश्य में कामयाब हम तब तक नही होंगे, जब तक कि इस कानून को सख्ती से लागू नहीं करवा लेते। शिक्षा का अधिकार पाने की मांग आखिर क्यों उठी ? यह मांग किन–किन रास्तों से होकर गुजरी? कहीं यह ऐसा कानून तो बनकर नहीं रह जाएगा, जो लागू ही न हो पाए ? कहीं हमारा लम्बे समय तक चला संघर्ष कागजों में दबकर तो नहीं रह जाएगा? शिक्षा के विकास के लिए कई सरकारी, गैर–सरकारी संस्थाएँ कार्यरत हैं फिर भी हम अपने शिक्षा के लक्ष्य को नहीं प्राप्त कर पा रहे हैं। हमें यह कदापि नहीं भूलना चाहिए कि भारत विश्वगुरू रहा है यानि शिक्षा के क्षेत्र में सबसे आगे। तो फिर ऐसे कौन–से कारण समय के साथ–साथ पनपे कि हम आज शिक्षा के क्षेत्र में ही पीछे रह गए।

भारतीय समाज में शिक्षा के विकास की आवश्यकता के लिए भारतीय संविधान और इसके दिशासूचक नीति सिद्धान्तों के बारे में ज्ञान प्राप्त करना आवश्यक है। संविधान में उल्लेखित विभिन्न अनुच्छेद जो शैक्षिक व्यवस्था तथा शैक्षिक विकास के लिए अनिवार्य है, उनका अनुपालन आवश्यक है। साधारण व्यक्ति का यह जानना आवश्यक है कि संविधान का स्वरूप क्या है। शिक्षा के लिए हमारे संविधान में क्या–क्या व्यवस्थाएँ निहित हैं, शिक्षा को कैसे जन–जन तक पहुँचाया जा सकता है, इसलिए भारतीय संविधान विषयक विषय सामग्री का अध्ययन भी शैक्षिक उन्नति के लिए आवश्यक तथा महत्वपूर्ण है। प्रत्येक स्वतन्त्र राष्ट्र को यह अधिकार प्राप्त होता है कि वह अपनी शासन व्यवस्था को सुचारू रूप से चलाने के लिए अपनी आशाओं और आकांक्षाओं के अनुरूप अपना संविधान बनाएं। भारतीय संविधान की प्रस्तावना में राष्ट्र की एकता और व्यक्ति की गरिमा को विशेष महत्व दिया गया है। यह संघ सरकार का दायित्व है कि व्यक्ति के व्यक्तित्व का आदर करे तथा ऐसी अवस्थाएँ बनाए, जिसमें व्यक्ति आत्मापूर्ति के लिए स्वतन्त्रता का अनुभव करें।

कोई देश या समाज कितनी तरक्की करता है, यह इस बात पर निर्भर करता है कि उसमें रहने वाले लोग कितने शिक्षित है। शिक्षा इंसान की जरूरत ही नहीं उसके व्यक्तित्व की पहचान भी है। वर्ष 2011 की जनगणना के आंकड़ों पर गौर करें, तो पता चलता है कि आज भी हमारे देश में साक्षरता की दर 75.6 प्रतिशत तक ही पहुंची है इसका अर्थ यह हुआ कि आज भी एक चौथाई लोग हमारे देश में निरक्षर हैं। आज भी जहाँ पुरूषों की साक्षरता दर 82.14 प्रतिशत है, वहीं महिलाओं की साक्षरता दर 65.46 प्रतिशत तक ही पहुंच सकी है। अभी तक हम अपने माथे पर लगे निरक्षरता का कलंक क्यों नहीं धो पाए। म. प्र. का झाबुआ जिला एक अनुसूचित जनजाति क्षेत्र है, यहाँ पर सर्वाधिक जनजाति संख्या 12 लाख 81 हजार 116 है, जो यहाँ कुल जनंसख्या का 87.56 प्रतिशत है। म. प्र. में सबसे कम साक्षरता झाबुआ जिले की है। यहां पर 42 प्रतिशत पुरूष एवं 37 प्रतिशत महिलाएं साक्षर है। अतः हमें साक्षरता कि दर को बढ़ाने के लिए हमारे संविधान के शिक्षा से संबंधित अनुच्छेदों कि जानकारी भी विस्तारित करनी होगी।

भारतीय संविधान में शिक्षा से सम्बन्धित निम्न अनुच्छेद है :

अनुच्छेद 21क : शिक्षा का अधिकार – राज्य, 6 वर्ष से 14 वर्ष तक की आयु वाले सभी बालकों के लिए निःशुल्क और अनिवार्य शिक्षा देने का ऐसी रीति में जो राज्य विधि द्वारा अवधारित करे, उपबन्ध करेगा।

अनुच्छेद 28 – शैक्षणिक संस्थाओं में धार्मिक शिक्षा प्रदान करने से सम्बन्धित व्यवस्था दी गई है।

अनुच्छेद 30 – शिक्षा संस्थाओं की स्थापना और प्रशासन करने का अल्पसंख्यक वर्गो को अधिकार प्रदान करता है।

अनुच्छेद 45 – 6 वर्ष से कम आयु के बालकों के लिए प्रारम्भिक बाल्यावस्था में देख–रेख और शिक्षा का उपबन्ध दिया गया है।

अनुच्छेद 46 – राज्य, जनता के दुर्बल वर्गो के लिए विशेष रूप से अनुसूचित जातियों, जनजातियों और अन्य दुर्बल वर्गों के शिक्षा और अर्थ सम्बन्धित हितों की अभिवृद्धि करेगा।

अनुच्छेद 350 – राज्य सरकार का इस सम्बन्ध में दायित्व है कि इसके अनुसार प्रायमरी स्तर पर शिक्षा का माध्यम मातृभाषा में होना चाहिए ।

अनुच्छेद 351 – हिन्दी भाषा के विकास के लिए निर्देश दिए गए ।

प्रश्न यह है कि इन्हें कैसे कार्यान्वित किया जाएगा। आज देश की जनसंख्या बहुत बढ़ गई है और 6 से 14 वर्ष के बालकों की संख्या करोड़ों में है। राज्य के पास वर्तमान विद्यालयों के संचालन के लिए धन ही नहीं है। राज्य तो केवल विद्यालयों को 'मान्यता दे रही है' वित्तीय सहायता नहीं। अधिकांश माध्यमिक शिक्षा के विद्यालय प्रायवेट व्यक्तियों द्वारा चलाए जा रहे हैं, जहाँ निःशुल्क शिक्षा की

कोई व्यवस्था नहीं है। मूल अधिकार बना देने मात्र से समस्या का निराकरण नहीं हो सकता है। संसार के किसी भी देशों में यह दायित्व केवल सरकारों का ही नहीं है, वरन् समाज की गैर–सरकारी संस्थाएँ भी इस दिशा में पर्याप्त महत्वपूर्ण भूमिका निभा रही है। हमें शिक्षा के इस अनिवार्य अधिकार को प्रदान करने के संवैधानिक लक्ष्य को प्राप्त करने के लिए केन्द्र एवं राज्य सरकारों को अपने–अपने शिक्षा संस्थानों को प्रचुर मात्रा में संसाधन मुहैया कराने होंगे। जिसमें सघन रूप से प्रशिक्षित शिक्षक, विद्यालय भवन, प्रत्येक गांव में प्राथमिक स्कूल आदि की व्यवस्था करनी होगी। इसके साथ ही मध्यान्ह भोजन जैसी अन्य योजनाएं चलाकर बच्चों को स्कूल आने के लिए प्रेरित करना चाहिए। यह नारा ऐसे में उचित लगता हैं –

रोटी, कपड़ा और मकान : साथ–साथ हो अक्षर ज्ञान।

अतः सर्वांगीण विकास की आकांक्षा रखने वाले देश में शिक्षा के अधिकार को सर्वाच्च प्राथमिकता देनी होगी, क्योंकि सूचना प्रौद्योगिकी की अभूतपूर्व उपलब्धियों ने सम्पूर्ण विश्व को एक ग्लोबल विलेज का रूप दिया है। अतः सम्पूर्ण साक्षरता की मशाल जलाकर ज्योतिर्मय भारत का निर्माण किया जा सकता है।

<u>संदर्भ</u> :

(1) अग्रवाल, डॉ.एच.ओ. : मानव अधिकार, सेन्ट्रल लॉ पब्लिकेशन्स, इलाहाबाद।

***(2)** त्रिपाठी, डॉ.टी.पी. : मानवाधिकार, सेन्ट्रल लॉ पब्लिकेशन्स, इलाहाबाद।*

***(3)** पाण्डे, डॉ.जयनारायण : भारत का संविधान।*

***(4)** सिलावट, सोनम : शिक्षा पर कानून, पूजा लॉ हाउस, इन्दौर।*

❁❁