

**ECONOMIC RIGHTS OF INDIAN WOMEN – A CRITICAL ANALYSIS****Barkat Aftab Ahmed Khalid Ahmed****Abstract**

*The Socio-economic rights are a significant aspect of human rights issues for women. The radical change in recognizing the rights of women to a greater extent has helped to build her own Identity and withstand her rights against all discrimination. This has been revealed in a study undertaken for a long period of time. The women's feminists' movement questioned several discriminatory practices ratio against women being practiced. Discriminatory issues with women are hazardous for built up national economy. However, there was a foremost need for revolution to debar the discriminatory practice of status on the ground of gender. And gender based issues are violating the living rights of women in social life and revolution was created by feminist Movement. These movements largely contributed by feminist writing recognized the need to develop the socio-political and economical livelihood among women. Feminist theory emerged from these feminist movements includes general theories and theories about the origins of inequality, economic injustice and unlawful acts in some cases, about the social construction of sex and gender, in a variety of disciplines prevalent in a society. Feminist activists have campaigned for women's rights as such, in contract, property, equal status and voting, while also promoting women's rights from human right's perspective at large. They have opposed domestic violence, sexual harassment and sexual assault, in economics, they have advocated for workplace rights, Reservations in service sectors including equal pay, duty hours and opportunities for careers and to start Entrepreneurships. Interventions of national and international legal instruments and legislations have added advantage, grace and recognized women's rights. All this resulted in increase participation of women both in formal and informal job and service sector. However, the journey to heed her right did not end here; it was the beginning, the beginning to fight for her survival.*



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**THE AIM AND OBJECT OF THE PAPER**

Though women are contributing to the economic development of the country; considerations for her service recognition are unsatisfactory. Study reveal, the women workers encompasses equal to that of men in any job sector around the world. However, the same wage gap and duty hours between men and women differ considerably. Today women are not just turning out as self independent, but are also giving financial help and dignity to her family, simultaneously any kind of discrimination against the women worker will not only affect her status in work place but will also affect her social life scenario altogether. This paper attempts to find the causes for such discrimination from legal perspective and focuses on the following major issues whether the methodology of discriminatory

practice against women changes with changing time? What constitute economic discrimination? Whether it hinders the due process of economic justice? Are women subjected to gender discrimination with regard to economic right? Whether violation of economic right amounts to violation of women's human right? Whether women have equal right to equal wage and service and working conditions? Whether discrimination in equal right to wage violates the correlated rights? What are the rights associated with the economic and social right? All these issues constitute major loopholes that warrant legal enquiry.

Thus the paper investigates principle factors contributing the economic discrimination and subdues the practice as violation of women's human right and to study the role of justice in legal jurisprudence and practice of economic discrimination.

### **Introduction**

The law of nature never discriminated the right of man and women, differently. Both endowed with same sense of reason, responsibility and rights altogether. Unfortunately the practice of gender discrimination is the most humiliating situation a woman is subjected to around the world. Gender is the wide-set of characteristics that distinguish between male and female entities, extending from once biological sex to, inhuman to one's social role. Gender discrimination is the prejudicial treatment of an individual based on their membership in a certain group or category in a society. Discrimination is the actual behavior towards member of another group in a society. It involves excluding or restricting members of one group from opportunities that are available to other groups or set of people in a society. Discrimination denotes **Elite Status** in perception and insight. In the views of legal jurisprudence When the Elite status, becomes a ground to distinguish the right of one human being from that of the other, the reason for such discrimination should be enquired. Is this difference due to intellectual capacity or performance ability between men and women, certainly not because today women have perceived her excellence in almost all field of occupation and service sectors. The difference in elite status is definitely due to the variation in economic status of men and women in society. The United Nations stance on discrimination includes a statement that: "Discriminatory behaviors take many forms, but they all involve some form of exclusion or rejection altogether". This denotes **Asymmetrical approach** adopted to exclude this class of people from social and economic activity prevalent in our society. Today, women represent approximately 70% of the 1.2 billion people living in poverty throughout the universe. In equality with respect to economic, political social and cultural rights is a central fact of women's lives in every country around the world, and is a central manifestation of women's lesser social, economic and political power. Ongoing inequality in the sphere of economic rights contributes to the continuing subordination of women and makes them especially vulnerable to violence, exploitation and other forms of abuse in their daily life. To address the core issues of social prejudice the feminist legal theory has become formidable and sought to dismantle the positive legal barriers that have denied women equal opportunity with men in the society. Feminist activism also had major impact on many areas of law debating in favor of women's right. Most of the times violation of Economic rights are affects on women's liberty. However, the ideology of feminism today goes far beyond the original purpose and widely supports the goal of equal treatment for both sexes. With the emergence of radical feminism, principles as neutrality of the law, inequality, and individual autonomy got discarded because of their "patriarchal" roots in our society. The liberal feminist theory also

emphasized on the legal rights of women entitling her to equal right to property, equal right to wage and social security aspects. Today the necessity is not to identify the gender based rights but to recognize the rights of individuals beyond gender which connects the individual spiritually and morally and works against asymmetrical approach prevalent in our society.

Asymmetrical approach (which also includes exclusion of class of people from engaging in social and economic activity) adopted to classify the social and economical rights of individual on gender base are a discriminatory act violating the universal rule of justice and equity. Women's social and economic rights are natural and inalienable rights which associate with right to life and livelihood which forms an integral part of a women's life. Any act of marginalization or exclusion, seriously violate the fundamental right of women resulting in economic inequality, social deprivation, gender wage gap, against equal participation and development of economic and social life.

### **ECONOMIC INEQUALITY BASED ON GENDER DISCRIMINATION:**

The core factor of economic inequality and injustice is that it can never be studied independently because economic inequalities are the outcome of social distortion. As mentioned above discriminatory practice include some form of exclusion or rejection, and social exclusion is a kind discrimination detaching groups and individuals from social relations and institutions and preventing them from full participation in the normal, normative prescribed manner and activities of the society in which they live.

Forms of social exclusion which amounts to discrimination include exclusion from rights, opportunity and resource which results in economic inequality among women. Economic inequality or discrimination is an outcome of social exclusion. Gender discrimination of economic right amounts to economic inequality or economic discrimination. Economic discrimination is a term that defines a form of discrimination based on economic factors. These factors can include job processing and outsourcing, wages, the prices or availability of goods and services, and the amount of capital investment funding providing to minorities for business. The term is broadly used in economic research, and includes discrimination against workers, consumers, and minority-owned entrepreneurs.

An economic inequality includes all disparities in distribution of economic assets and income. The term economic inequality is subjected to broad debate based upon its nature cause and importance and exists in wide range of societies and historical period. Women are subjected to economic inequality due to the social and cultural practice of society and gender based identification of economic right. Subject of women to economic inequality has no limitation of its own sometime the exclusion extends beyond gender to include discrimination on the ground of class, race and colour.

Gender based discrimination of economic right also varies from nations to other nations territory, according to National Organization for women U.S. reports that, for full-time, year-round workers, women are paid on average, only 78 percent of what men are paid; for women of color, the gap is much wider. These wage gaps stubbornly remained the same in spite the passage of the Equal Pay Act in 1963, and a variety of legislation prohibiting employment discrimination. Women still are not receiving equal pay for equal work that they do.

The Numerous international and regional instruments have drawn attention to gender-related dimensions of human rights issues, the most important being the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) adopted in 1979. The Convention defines

the prohibiting discrimination against women and sets the core principles to protect this right. It maintain an portfolio for national action to end discrimination, and provides the basis for achieving equality between men and women through ensuring women's equal access to, and equal opportunities in, political and public life as well as education, health and employment sector.

The Convention is ratified by 180 states, making it one of the most ratified international treaties; State parties to the Convention must submit periodic reports on women's status in their respective countries. CEDAW's Optional Protocol establishes procedures for individual complaint on alleged violations of the Convention by State parties, and sets enquiry procedure that allows the Committee to conduct inquiries into serious and systematic abuses and bypass of women's human rights in countries. So far 71 States have ratified the Protocol.

In 1993, 45 years, after the Universal Declaration of Human rights approval and eight years after CEDAW entered into enforcement, the UN World Conference on Human Rights in Vienna confirmed and ratified that women's rights were human rights. That this statement is confirmed that women's rights were human rights. That this statement was even necessary is striking women's status as human beings entitled to equal rights should have never been in doubt. And yet this was a step forward in recognizing the rightful claims of one half of humanity, in identifying and inspecting neglectful of women's rights as a human rights violation and in drawing attention to the relationship between gender and human rights violations around the globe. In 1994, the International Conference on Population and Development in Cairo (ICPD) articulated and affirmed the relationship between advancement and fulfillment of rights and gender equality and equity among both genders. It also clarified the concepts of women's empowerment, gender equity, and reproductive health and rights are universally recognized. The Programme of Action of ICPD emphasized that the empowerment and autonomy of women's political, social, economic, and health status was highly important end in itself and essential for the achievement of sustainable growth. In 1995, the Fourth World Conference on Women in Beijing generated global commitments to advance a wider range of women's rights. The inclusion of gender equality and women's empowerment as one of the eight Millennium Development Goals was a reminder that many of those promises made were yet to be achieved. It also represents a critical opportunity to implement those promises. Beside these international agreements, the denial of women's basic fundamental human rights is persistent and widespread and still there is a long way to go.

As mentioned in the introductory part, if both the features like the elite' status and Asymmetrical approach are to be considered as the characteristic of gender discrimination depriving economic right of women, it will be easy to debate that the paradoxical changes that can be expected through legal intervention brought about by bringing legislations.

#### **ECONOMIC JUSTICE V/S GENDER DISCRIMINATION:**

The practice of gender discrimination violates divine principle of justice. Justice is the concept of moral rightness based on ethics, rationality, law, natural law, religion, fairness, or equity along with the punishment for breach of said ethical rules. One definition of justice is "giving to each what he or she is due." But the problem is in knowing what is "due". If we analyze the economic right of women from theoretical perspective of justice whether she has right of choice with regard to work, service and the right of equal pay for equal work? Whether gender based discrimination of economic justice violates theory of natural justice?

Economic justice, which attracts the individual person as well as the social order, encompasses the moral principles which guide us in designing our economic policies and institutions. These institutions determine how each person earns a living, enters into contracts, exchanges goods and services with others and otherwise produces an independent material foundation for his or her economic sustenance that is vital. The ultimate purpose of economic justice is to free each person to engage creatively in the unlimited work beyond economics, that of the mind and the spirit to benefit him/her.

Theory of justice specifies Justice as transparent within which comprises two main principles of liberty and equality. According to the first principle every individual has equal right to basic freedom and that certain rights and freedoms are more important than the other which include right to hold personal property to extend of enjoying the basic liberty compatible with the similar liberty. The second principle of equality is the component of fair justice wherein, even if social and economical inequalities are to be arranged both reaches to the greatest benefit of the least advantaged and deprived, consistent with the just savings principles, and attached to offices and positions open to all under conditions of fair equality of opportunity. It was however pointed out that society cannot arrange inequalities to maximize the share of the least advantaged lot whilst the exploited suffer in silent agony.

#### **ALLOWING ACCESS TO CERTAIN OFFICES OR POSITIONS.**

The principle of fair justice also emphasizes on the difference principle which seem to be discriminatory because it regulates inequality but stress on positive discrimination like it only permits inequalities that work to the advantage of the worst-off and down-trodden. The third aspect of the theory is worth notable from the feminist point of economic justice which includes fair equal opportunity for all. This principle maintains that “offices and positions should be open to any individual, regardless of his or her social background, ethnicity, gender or caste and/or religion. It is stronger than the theory of “Formal Equality of Opportunities” in that Rawls argues that individual should not only have the right to opportunities, but should have an effective equal chance as another of similar natural attitude.

Theory of Distributive Justice based on egalitarianism gives more weight age to the right of economic harmony. Distributive justice is related with the fair allocation of resources among members of a community. Fair allocation typically takes into account the total amount of goods to be distributed, the distributing procedure, and the pattern of distribution of those output.

Like every system, economic justice includes input, output, and feedback for restoring harmony or balance between input and output. Within the system of economic justice as defined by Louis Kelso and Mortimer Adler, there are three essential and interdependent principles: 1) **The Principle of Participation.** 2) **The Principle of Distribution** and 3) **The Principle of Harmony.** Like the legs of a three-legged stool, if any of these principles so far outlined, with the exception of strict egalitarianism, could be classified as liberal theories and are the product of the liberal democracies which have emerged over the last two centuries. Lumping them together this way, though clumsy, makes the task of understanding the emergence of feminist critiques (and the subsequent positive theories) much easier to understand. John Stuart Mill in *The Subjection of Women* (1869) gives one of the clearest early feminist critiques of the political and distributive structures of the emerging



liberal democracies in nations. His causes for economic inequality are associated with social injustice and that the economic injustice is the outcome of social distortion.

Economic rights are significant parts of rights of all member of human family when these human rights are summarized and categorized under gender base; the violation of human right takes place. The women being the vulnerable group subjected to economic inequality suffers terribly under distortion of social change were there women are forced to be independent mother, widow or single. Causes of economic inequality can have profound ill effect, which can push low income family into poverty in any society. Radical based income inequality could invite social unrest, increase sense of vulnerability may deprive up morality rate and crime. Thus the inequality can rob the very factors of law, order and efficiency. Attempts have been made to provide complete and robust security system that addresses the long-lasting issue of gender discrimination.

### **BREAKING THE PATTERN:**

To address the pertinent issue of women's human right feminist movement, women organizations, both national and international laws have played important role in protecting human rights of women. Several international conventions have adopted feminist approach to tackle the situation of discrimination and bias against the women.

### **The feminist movement –**

A change is an outcome of revolution; a change can never be sudden, but only through slow and radical process. A change through revolution is necessary either to stabilize society or re-establish justice system. Revolution is nonetheless a child of agony and pain.

Feminist revolutionary movement was an effort to fight against inequality and retain gender equality. This effort resulted in defining the gender equality in terms of human rights, especially women's rights, and economic development, as level playing field for girls and women by ensuring that all children have equal opportunity to develop their talents and caliber across the world. The feminist movements were classified into first second and third wave of feminism. First-wave of feminism was started in a period of activity during the nineteenth century and early twentieth century. This period was known as the feminism of classical liberalism and the feminism of social democracy. In the U.K. and U.S., it focused on promotion of equal contract, marriage, parenting, and property rights for women. However, by the end of the nineteenth century, activism focused primarily on gaining political power, particularly the right of women's sufferings, though some feminists were active in campaigning for women's sexual, reproductive, and economic rights at this time. First-wave feminism sought equality in property rights, changes in the marriage laws, and, eventually, in women's suffrage, or women's right to vote.

Second-wave feminism also called as women's liberation, began in the 1960s and focused on discrimination on social, cultural, and political issues. The so-called "Second Wave" of Women's Liberation, the modern Women's Liberation movement, had its origins in the entry of women into the industrial labour force during World War Two, the changing requirements for labour power in modern industry creating new jobs opportunity for women, the development of trading, manufacturing, service industries and food processing which opened up women's domestic labour requirement for "socialization", making domestic appliances and processing food for sale in the market, rather than depending on women's domestic servitude for this work.

Third- wave feminism began in 1980s or early 1990s and addresses feminism across class and race lines, as being grounded in culture rather than biology, and through many issues, there existed less concentration and observation on particular issues.

The feminist movement largely influenced and attracted the women's around the world reckoning the fundamental rights, that she is also the child of nature and have absolute right to survive with complete dignity as her male counterpart.

### **Legal instruments acclaiming the rights of women**

Several national and international conventions, conferences, and seminars were held till date to recognize and protect the right of this suppressed class. The following conventions prohibit gender discrimination and emphasizes on the social and economic liberty of women in society. These are as follows:

#### **1. Universal Declaration of Human Rights, 1948.**

Nearly all international human rights instruments adopted by the United Nations bodies since 1948 elaborates principles set out in the Universal Declaration of Human Rights. The framers of the Universal Declaration of Human Rights considered fair status of women and granted them the equal rights enjoyed by mankind. Convention on the Political Rights of Women, 1952 provides for equal political rights for women. Under this convention, states are under obligations to ensure that women have the right to vote in elections, to be elected and to hold public office on equal terms with men. Women are entitled to be free from discrimination in exercise of these rights given to them.

#### **2. The International Bill of Human Rights**

The international bill of right covers wide range of issue on human right and concludes the right against bias. UDHR acts as the world constitution of human rights and allows space for need of conventions which includes:-

1. Equal Remuneration Conventions, 1951
2. Discrimination (Employment and Occupation) Convention, 1958
3. Convention against discrimination in Education 1960
4. Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which may arise between States Parties to the Convention against discrimination in Education 1962
5. International Convention on the Elimination of all Forms of Racial discrimination (ICERD) 1969
6. Declaration on Race and Racial Prejudice 1978
7. Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief 1981
8. World Conference against Racism, 2001 (Durban Declaration and Programme of Action)

### **UN'S APPROACH TO WOMEN**

One of the primary ways United Nations Convention on women works to advance women's human rights is by providing support to national actors, in government and in civil society, for their efforts to implement CEDAW in both letter and spirit. The focus of UN Women Support in this area is threefold:

1. Facilitating the improvement of national human rights frameworks in line with CEDAW, such as Bringing amendment in Constitutional law and policies.
2. Supporting the implementation of existing human rights to help ensure impact and rights

Realization; and

3. Putting special focus on particularly vulnerable and marginalized groups, such as poor or Illiterate women, so that national frameworks become more inclusive or and responsive to the full Range of women's rights concerns.

Under CEDAW, States are required to eliminate the many different forms of gender-based discrimination women come across, not only by making sure that there are no existing laws that directly discriminate women, but also by ensuring that all necessary arrangements are put in place that will allow women to actually experience equality in their individual lives. Governments around the world have undertaken and motivated legal human rights obligations to combat gender inequalities. The key international agreement on women's human rights is the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which is also described as the international bill of women's rights vis-à-vis their dignity. Ratified by 185 UN Member States, CEDAW encompasses a universal consensus on the changes that need to take place in order to realize women's human rights.

**a) National Law:**

The Indian Constitution guarantees equality as "Fundamental Rights" under Part III. The fundamental rights were included in the constitution because they were considered essential for the development of the personality of every individual and to preserve human dignity in general for all. Charter of rights contained in the Constitution of India guarantees civil liberties such as that all Indians can lead their lives in peace and harmony as citizens of India and law will not discriminate against each other on the basis of gender. These include individual rights common to most liberal democracies, such as equality before law and equal protection of law while the Constitution not only grants equality but also empowers states to adopt positive measures of positive discrimination in favour of women for neutralizing cumulative socio economic, education and political disadvantage faced by them in Indian society. The Constitutional (74<sup>th</sup> Amendment) Act, 1992, brought in provisions mandating one-third reservations for women in local governance bodies to give them much sought power. These guarantees apply to state and public local body institutions.

In India women workforce forms an integral part of total workforce, there is a serious under-estimation of women's contribution as workers and is far fewer women in the paid workforce than men. This discrepancy

not only affects women's spending power, it penalizes their retirement security by creating gaps in Social Security and pensions. It's sad to see such situation in country like India where the legal systems are largely shaped by its unique history of fundamental freedom and right to equality, for instance principle of gender equality is enshrined in the Indian Constitution, in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favor of women since they are oppressed lot. India has also ratified various international conventions and human rights instruments committing to secure equal rights for women in India.

Part IV of the Indian Constitution is dedicated to uplift social, economic, political acclivity of depressed and deprived class. It enlists socio-economic and cultural rights under the title of "Directive Principles of State Policies" (DPSP). The Judiciary under Article 32 and 226 respectively, has the power to enforce and implement constitutional guarantees of fundamental



rights, thus making the right to Constitutional Remedies as one among the fundamental rights.

#### **b) Need for a Strong Legislative Framework in India**

There is no complete anti-discrimination code in India although there are laws that address specific aspects related to equality. For instance, laws like the Maternity Benefits Act, 1961, Equal Remuneration Act, 1976 and the National Rural Employment Guarantee Act, 2005 attempt to address the existent systemic discrimination towards women in employment in India. Based on the guarantee of equality, laws have been enacted to address violence against women under civil and criminal laws. The Protection of Domestic Violence Act, 2005 is an example of the civil law to address violence within the home. On the other hand, the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is an example of criminal law to counter acts of comprehensive statutory definition of discrimination that takes into account different manifestations of discrimination and its impact based on the caste lines in India.

Also there is a necessity to identify right of individual beyond gender and replace those notions and concepts with new breed of philosophy and jurisprudence based on “connection” between persons and accordingly Law should be seen as an instrument to “Change the distribution of power,” which requires not just equal treatment but work, against an asymmetrical approach that adopts the perspective of the less powerful group with the specific goal of equitable power sharing among diverse groups.”

#### **CONCLUSION:**

Somewhere in the course of human history we have allowed ourselves to fall prey and consequently victim to the gross ambitions of power-starved people. The sad reality is that it is not the fault of such people that our world has become one of suppression and oppression, but the fault of the silent masses of the past and present so willing to allow their rights and Liberty to be bought and sold by the masters of empty promises and false hope. The law must be recognized and acceptable for what it is truly is, not the simple proclamations of mere mortals. The law is the perpetual axiom of pacific human interaction between people. The law is the incontrovertible origination of what we call the “**golden rule**,” coming into existence long before the words ever needed to be spoken in this society. The sooner this self-evident truth becomes clear within the minds of not just Indians, but of people throughout the entire universe, the sooner the world will be rid of such iniquities as Institutionalized inequality and utter despair.

Law which distinguishes the right and liberty of individual based on gender is not a law but a mockery of law. As a matter of fact, they are quite contradictory to the rule of law that truly should exist. That all men and women are equal under the scanner is law. That all men and women are free to pursue their own endeavors so long as they do not encroach upon those of another is called as law. That all men and women have the right to acquire and dispose of property in any manner which does not violate the Liberty or property of another is called as law. That all men and women have a right to defend themselves from the encroachment of others is law. These are laws, natural and immutable, existing before the first state ever issued its first decree, and anything to the contrary is an affront to humanity in general.

To quote Justice Sujata V. Manohar of Supreme Court of India

“.... It is not easy to eradicate deep seated cultural values or to alter traditions that perpetuate discrimination. It is fashionable to denigrate the role of law reform in bringing about social change.

Obviously law, by itself, may not be enough. Law is only an instrument. It must be effectively used. And this effective use depends as much on a supportive judiciary as on the social will to change. An active social reform movement, if accompanied by legal reform, properly enforced, can transform society and women in particular. And an effective social reform movement does need the help of law and a sympathetic judiciary to achieve its objectives.”

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