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Human Rights of Women and Indian Constitution

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Abstract:

The framers of the Indian Constitution were inspired by the Universal Declaration of Human Rights and they saw to it that the essence and the Spirit of the Universal Declaration was incorporated in the Constitution. Human rights are an integral part of the concept of human dignity which are protected by different provisions of the Constitution of India. The Indian Constitution has embodied within itself grounds for gender equality. The Fundamental Rights, Fundamental Duties and Directive Principles together work towards shaping policies and putting safeguards not just for women empowerment in India but also protection.

The father of the nation says something similar,

“To call a woman the weaker sex is a libel; it is man’s injustice to woman. If by strength is meant brute strength, then, indeed, is woman less brute than man. If by strength is meant moral power, then the woman is immeasurably man’s superior. Has she not greater intuition, is she not more self-sacrificing, has she not greater powers of endurance, has she not greater courage? Without her, a man could not be. If nonviolence is the law of our being, the future is with a woman. Who can make a more effective appeal to the heart than woman?” – Mahatma Gandhi

Human rights are an integral part of the concept of human dignity which are protected by different provisions of the Constitution of India. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women’s advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women.

Introduction

In spite of women contribution in all spheres of life and they enjoy a unique position in every society and country of the world, but they suffer in silence and belong to a class which is in a disadvantaged position on account of several barriers and impediments.

Human rights are an integral part of the concept of human dignity which are protected by different provisions of the Constitution of India. It is harsh reality that women have been ill-treated in every society for ages and India is not an exception to this universal problem. The irony lies in the fact that in our country where women are worshipped as Shakti ,the atrocities are committed against her in all sections of life. Women's empowerment in legal, social, political and economic requires to be enhanced. However, empowerment and equality are based on the gender sensitivity of society towards their problems. The intensification of women's issues and rights movement all over the world is reflected in the form of various Conventions passed by the United Nations.

Indian Constitution is a fundamental social document designed to achieve planned social change .Adoption of Constitution on 26th November,1949 and its coming into force on 26th January 1950 can be considered as a remarkable achievement with regard to emancipation and empowerment of women. Basically, as pointed out by Dicey (Dicey, A.V. introduction to the study of the law of the constitution, Mac Millan, London. 9th edition 1952), the Constitutional theories of Rule of Law and the fundamental rights stemmed from the struggle for individual liberty and were intended to curb the power of the State. For a long time gender issues were not in the limelight. In India, the Constitution makers while drafting the Constitution were sensitive to the problems faced by women and made specific provisions relating to them. In various articles, not only mandates equality of the sexes but also authorizes benign discrimination in favour of women and children to make up for the backwardness which has been their age-old destiny. But categorical imperatives constitutionals by the Founding Fathers are not self acting and can acquire socio-legal locomotion only by appropriate State action.

RIGHTS OF WOMEN UNDER INDIAN CONSTITUTION

Constitution of India has done a magnificent job in ensuring gender justice in the supreme law of the country. The preamble to the Constitution ,inter alia, assures justice, social economic and political, equality of status and opportunity and dignity of the individual. It recognizes women as class by itself and permits enactment of laws and reservations favouring them. Several articles in our constitution make express provision for affirmative action in favour of women. It prohibits all types of discrimination against women and lays a carpet for securing equal opportunity to women in all walks of life, including education, employment and participation.

FUNDAMENTAL RIGHTS (PART III)

Part III of the Constitution consisting of Articles 12-35 is the heart of the Constitution. Human Rights which are the entitlement of every man, woman and child because they are human beings have been made enforceable as constitutional or fundamental rights in India. The framers of the Constitution were conscious of the unequal treatment and discrimination meted out to the fairer sex from time immemorial and therefore included certain general as well as specific provisions for the upliftment of the status of women. Justice Bhagwati in *Maneka Gandhi v. Union of India* (AIR 1978 SC 597)4.3 said: "These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent." Article 14 guarantees that the State shall not deny equality before the law and equal protection of the laws;

The Constitution of India not only grants equality to women but also empowers the state to adopt measures of positive thoughts about women's and their rights it also a tool for eradicating the problems for women's in India by this way the discrimination in favour of women for neutralizing the cumulative socio-economic, educational and political disadvantages faced by them. Fundamental Rights, among others ensures equality before the law, equal protection to laws, prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantees equality of opportunity to all citizens in matters relating to employment. .Article 14 in the Constitution Of India 1949. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favour of women Article 15(3).

No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex Article 16(2).

Traffic in human beings and forced labour are prohibited Article 23(1).

Article: 14 Equality before Law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Right to equality has worked out as a boon for women in all the democratic countries. It ensures to women the right to equality. Article 15 prohibits discrimination against any citizen on the ground of sex: an Article 15 (3) empowers the state to make positive discrimination in favour of women and child;

Article: 15 Prohibition of discrimination on grounds of religion, race, cast, sex, or place of birth

(1) The state shall not discrimination against any citizen on grounds only of religion, race, cast, sex, or place of birth or any of them. (3) Nothing in this article shall prevent the State from making any special provision for women and children. Accordingly Article 15(1) prohibits gender discrimination and Article 15(3) lifts that

rigour and permits the State to positively discriminate in favour of women to make special provisions to ameliorate their social condition and provide political, economic and social justice. The State in the field of Criminal Law, Service Law, Labour Law, etc. Has resorted to Article 15(3) and the Courts, too, have upheld the validity of these protective discriminatory provisions on the basis of constitutional mandate.

Article: 16 Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

(2) No citizens shall, on grounds only of religion, race, cast, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state.

The Constitution, therefore, provides equal opportunities for women implicitly as they are applicable to all persons irrespective of sex. However, the Courts realize that these Articles reflect only de jure equality to women. They have not been able to accelerate de facto equality to the extent the Constitution intended. There is still a considerable gap between constitutional rights and their application in the day-to-day lives of most women. At the same time it is true that women are working in jobs which were hitherto exclusively masculine domains. But there are still instances which exhibit lack of confidence their capability and efficiency. There remains a long and lingering suspicion regarding their capacities to meet the challenges of the job assigned. In case of *C.B. Muthamma v. Union of India* (1979) 4 SCC 260^{4.4}, a writ petition was filed by Ms Muthamma, a senior member of the Indian Foreign Service, complaining that she had been denied promotion to Grade I illegally and unconstitutionally. She pointed out that several rules of the civil service were discriminatory against women. At the very threshold she was advised by the Chairman of the UPSC against joining the Foreign Service. At the time of joining she was required to give an undertaking that if she married she would resign from service. Under Rule 18 of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, it was provided that no married woman shall be entitled as of right to be appointed to the service. Under Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, a woman member of the service was required to obtain permission of the Government in writing before her marriage was solemnised. At any time after the marriage she could be required to resign if the Government was confirmed that her family and domestic commitments were likely to come in the way of the due and efficient discharge of her duties as a member of the service. On numerous occasions the petitioner had to face the consequences of being a woman and thus suffered discrimination, though the Constitution specifically under Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth and Article 4 provides the principle of equality before law.

The Supreme Court through *V.R. Krishna Iyer and P.N. Singhal, JJ.* Held that: "This writ petition by Ms Muthamma, a senior member of the Indian Foreign Service, bespeaks a story which makes one wonder whether Articles 14 and 16 belong to myth or reality. The credibility of the Constitutional mandates shall not be shaken by governmental action or inaction but it is the effect of the grievance of Ms Muthamma that sex prejudice against Indian womanhood pervades the service rules even a third of a century after Freedom. There

is some basis for the charge of bias in the rules and this makes the ominous indifference of the executive to bring about the banishment of discrimination in the heritage of service rules. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to guess." Commenting further on the discriminatory rules the Court said: "Discrimination against woman, in traumatic transparency, is found in this rule. If a woman member shall obtain the permission of government before she marries. The same risk is run by government if a male member contracts a marriage. If the family and domestic commitments of a woman member of the service is likely to come in the way of efficient discharge of duties, a similar situation may arise in the case of a male member. In these days of nuclear families, intercontinental marriages and unconventional behaviour, one fails to understand the naked bias against the gentler of the species."

Expressing its opinion on Rule 18 of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, the Court observed: At the first blush this rule is defiance of Article 16. If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacled the weaker sex forgetting how our struggle for national freedom was also a battle against woman's thralldom. Freedom is indivisible, so is justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-à-vis half of India's humanity, viz. our women, is a sad reflection on the distance between Constitution in the book and Law in action. And if the executive as the surrogate of Parliament makes rules in the teeth of Part III, especially when high political office, even diplomatic assignment has been filled by women, the inference of diehard allergy to gender parity is inevitable."

Striking down the rules as violating the principle of equality, it was said: "We do not mean to universalize or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable the rule of equality must govern."

Article 21 Protection of life and personal liberty.

"No person shall be deprive of his life or personal liberty except according to procedure established by law. Denial of right of succession to women of Scheduled Tribes amounts to deprivation of their right to livelihood under article 21; *Madhu kishwar v. state of bihar*, ((196) 5SCC 125) In *Vishaka v. State of Rajasthan* (AIR 1997 SC 3011)4.9, the Supreme Court, in the absence of legislation in the field of sexual harassment of working women at their place of work, formulated guidelines for their protection. The Court said:"Gender equality includes protection from sexual harassment and right to work with dignity which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. In the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human

dignity in articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose."

Article 23 prohibits trafficking in human beings and forced labour; Article 23 of the Constitution specifically prohibits traffic in human beings. Trafficking in human beings has been prevalent in India for a long time in the form of prostitution and selling and purchasing of human beings.

23. Prohibition of traffic in human beings and forced labour.—

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them. In *Gaurav Jain v. Union of India* (1997 (8) SCC 114) 4.10, the condition of prostitutes in general and the plight of their children in particular was highlighted. The Court issued directions for a multi-pronged approach and mixing the children of prostitutes with other children instead of making separate provisions for them. The Supreme Court issued directions for the prevention of induction of women in various forms of prostitution. It said that women should be viewed more as victims of adverse socio-economic circumstances than offenders in our society.

DIRECTIVE PRINCIPLES OF STATE POLICY (Part IV)

Directive principles of state policy contained in Part IV of the Constitution incorporate many directives to the state to improve the status of women and for their protection. However Directive Principles of State Policy are not enforceable in any court of law

they are essential in the governance of the country and provide for the welfare of the people, including women. Fundamental Rights furnish to individual rights while the Directive Principles of State Policy supply to social needs.

Article: 39 certain principles of policy to be followed by the state.

The State shall, in particular, direct its policy towards securing -

(a) That the citizen, men and women equally, have the right to an adequate means of livelihood;

(d) That there is equal pay for equal work for both men and women;

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

Article 39(a) directs the State to direct its policy towards securing that citizens, men and women, equally have the right to an adequate means of livelihood.

Article 39(d) directs the State to secure equal pay for equal work for both men and women. The State in furtherance of this directive passed the Equal Remuneration Act,

1976 to give effect to the provision.

Article 39(e) specifically directs the State not to abuse the health and strength of workers, men and women.

Article: 42 Provision for just and humane conditions of work and maternity relief.—

The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity relief.

The State has implemented this directive by incorporating health provisions in the Factories Act, Maternity Benefit Act, Beedi and Cigar Workers (Conditions of Employment) Act, etc.

Uniform Civil Code

Article 44 Uniform civil code for the citizens.—

The State shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Article 44 directs the State to secure for citizens a Uniform Civil Code applicable throughout the territory of India. Its particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce a Uniform Civil Code in India, the judiciary has recognised the necessity of uniformity in the application of civil laws relating to marriage, succession, adoption, divorce, maintenance, etc. but as it is only a directive it cannot be enforced in a court of law.

However, one of the most dynamic members of the Assembly, Shri K.M.

Munshi expressed his opinion that: "if the personal law of inheritance, succession, etc. is considered as a part of religion, the equality of women can never be achieved."

Fundamental Duties

Parts IV-A which consist of only one Article 51-A was added to the constitution by the 42nd Amendment, 1976. This Article for the first time specifies a code of eleven fundamental duties for citizens.

Article 51-A (e) is related to women. It states that;

“It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religion, linguistic, regional or sectional diversities; **to renounce practices derogatory to the dignity of women**”

THE CONSTITUTION 73rd AND 74th AMENDMENTS ACT 1993**Article: 243 D Reservation of seats. (73rd Amendment - w.e.f. 1-6-1993)**

(1) Seats shall be reserved for—

- (a) the Scheduled Castes; and
- (b) the Scheduled Tribes,

In every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.

(2) Not less than one-third of the total number of seats reserved under clause

(1) **shall be reserved for women** belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number **of seats reserved for women** belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every **Panchayat shall be reserved for women** and such seats may be allotted by rotation to different constituencies in a Panchayat.

(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and **women** in such manner as the Legislature of a State may, by law, provide:

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State:

Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall **be reserved for women**:

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than **the reservation for women**) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

4.3.6. Article: 243 T Reservation of seats. (74th Amendment - w.e.f. 1-6-1993)

243T. Reservation of seats.—

(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality.

(2) Not less than one-third of the total number of seats reserved under clause (1) shall be **reserved for women** belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.

(3) Not less than one-third (including the number of **seats reserved for women** belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.

(4) The offices of Chairpersons in the Municipalities **shall be reserved** for the Scheduled Castes, the Scheduled Tribes and **women** in such manner as the Legislature of a State may, by law, provide.

(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens

CONCLUSION

All the organs and layers of state legislature, executive and judiciary at central, state and local levels have the responsibility towards empowerment of women. Legislature has enacted many laws in bringing about equality between men and women to fulfil the obligation not only of the international conventions but also of the constitution of India. It is the duty of human to protect the human rights of those who are victims. Even though the government is trying to take care of this right by formulating various policies, enacting and formulating laws but these are not enough to tackle this problems unless a strong move to protect the rights of

women is launched by the people’s movement. It is realized that despite the constitutional safeguard and the active judicial support towards the cause of women, changes in social attitudes and institutions cannot be brought about very rapidly. Inequality is seen everywhere in the world. Unless and until there are certain attitudinal changes, women will continue to get a raw deal. Many times women are not fully aware about their rights. In this connection they need to be educated.

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