



INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

Constitutional Safeguards Towards women in India”

Dr. S.K. Rai (Associate Professor)

Faculty of Law, B.S.A. College Mathura

Woman is a very strong person in this world who plays many vital roles in society: like mother, wife, sister, etc. The main objective behind this article is neither to favour the prevalence of feminism nor to be criticizing about the chauvinism. The sole point of this article is to promote equality. In Today's scenario the empowerment of women has become one of the most important concerns of 21st century.

We observe in our day-to-day life how women become victimized by various social evils. Women rights is the vital instrument to expand women's ability to have resources and to make strategic life choices. Rights of women is essentially the process of upliftment of economic, social and political status of women against all forms of violence. Women right is giving legitimate power or authority to perform the tasks. Women population is around 50% of the total population of the world. Reflecting into the Vedas Purana of Indian culture, women is being worshiped such as LAXMI MAA, goddess of wealth; SARSWATI MAA, for wisdom; DURGA MAA for power. We are not going to discussing and comprises the historical position & modern position of women's right but here we are going to discuss the empowerment of women in 21st century in India.

Constitutional Provisions

The Constitution of India is the supreme law of India. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers, and duties of government institutions, and sets out fundamental rights, directive principles, and the duties of citizens¹. It is the longest written constitution of any sovereign country in the world. Dr. Bhimrao Ramji Ambedkar² is widely known as the father of the Indian Constitution. The Constitution follows parliamentary system of government and the executive is directly accountable to legislature. Article 74³ provides that there shall be a Prime Minister of India as the head of government. It also states that there shall be a President of India and a Vice- President of India under Articles 52 and 63. Unlike the Prime Minister, the President largely performs ceremonial roles. The Constitution is federal in nature. The Constitution of India⁴ not only allows equality to women but also empowers the State to use measures of positive discrimination in favour of women for neutralizing the cumulative socio-economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of the law; prohibits discrimination against any resident on the grounds of religion, race, caste, sex or place of birth, and ensure equality and opportunity to all citizens.

¹ Constitution of India: pro. B.N.Shuklla

² Dr. B.R Ambedkar chairman of the drafting committee, presenting the final draft of the Indian constitution to dr. Rajendra prasad.

³ Article of the Indian constitution

⁴ It was adopted by the constituent assembly of India on 26 November 1949 and become effective on 26 January 1950.

Safeguard granted to women by Indian Constitution:

Preamble of the Constitution:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political; LIBERTY of thought, expression, belief, faith and worship; EQUALITY of status and of opportunity; and to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.⁵

The constitution makers secure the right of women without discrimination. The preamble plays a very important role in shaping the destiny of the country. The preamble gives a brief idea to the makers of the constitution so that the constituent assembly make plans and formulates the constitution. The concept of equality means each and every citizen of the country is equal and the state will work on the concept of equality before the law. Every person should have equal opportunity for work, equality in their status i.e., no discrimination on basis of religion, race, caste, sex etc. it is important for a country to treat its citizen equally for the development of the person and bring the best out of him.

Article 14 of the Constitution of India

Article 14 of the Constitution of India provides for equality before the law or equal protection of the laws within the territory of India. It states: "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."⁶

Reasonable Classification and Non-Arbitrariness.

Article 14 guarantees equality to all persons including citizens, corporations, and foreigners. Its provisions have come up for discussion in the Supreme Court in a number of cases and the case of *Ram Krishna Dalmia vs Justice S R Tendolkar*⁷ reiterated its meaning and scope as follows. Article 14 permits classification, so long as it is 'reasonable', but forbids class legislation. A classification of groups of people is considered reasonable when:

The classification is based upon intelligible differentia that distinguishes persons or things that are grouped from others that are left out of the group, and, the differential has a rational relation with the objective of the act. In addition, the classification must be non-arbitrary. Supreme Court in *E. P. Royappa*⁸ (1973) provided guidance on arbitrariness of an act:

Article 15⁹ The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 15(1) and (2) prohibits the state from discriminating against any citizen only on the basis of any one or more of the aspects such as religion, race, caste, sex, place of birth or any of them.¹⁰

Article 15(3) makes it possible for the state to create special provisions for protecting the interests of women and children.¹¹

⁵ The Preamble of the constitution of India was adopted on 26 November 1949 by the Constituent assembly and came into effect on 26 January 1950.

⁶ Article 14 of the Indian Constitution

⁷ AIR 1958

⁸ E.P. Royappa V. state of Tamil Nadu 23 November 1973(sc)

⁹ Article 15 (1) The state shall not discriminate against any citizen on grounds only on religion, race, cast, sex, place of birth or any of them.

¹⁰ Article 15 (2) of the Indian constitution elaborate that no Indian citizen can be discriminated against on basis of religion, race, cast, sex, place of birth. Its state that no citizen shall be denied access to shops, public restaurants, hotel and places of public entertainment.

¹¹ Article 15(3) of the Indian constitution.

Article 15(4) capacitates the State to create special arrangements for promoting interests and welfare of socially and educationally backward classes of society.¹²

Within three years of the adoption of the Constitution, the Supreme Court used Article 15 to invalidate a state law which provided for elections which had separate electorates for members of different religious communities. Courts have on various occasions struck down discriminatory legislation on the basis of race such as in the case of a law which required members of a particular community to report daily to the police, and on the basis of caste, as in the case of a notification which exempted all Harijan and Muslim residents from a compulsory levy in a locality. Similarly, the Article has been used to invalidate sex discrimination by legislation, such as prohibitions on proprietaries holding property or working in premises where liquor was served.] Gay, Lesbian, Bisexual and Transgender people are also protected by Article 15, as discrimination against them is discrimination on the basis of 'sex' as interpreted by the Supreme Court.

Equality of Opportunity

Article 16 provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.¹³

Directive Principals of State Policy

Article 39A directs the State to promote justice, on the basis of equal opportunity and to promote free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 39D requires the State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood and equal pay for equal work for both men and women.¹⁴

Article 42 directs the State to make provision for securing justice and humane conditions of work and for maternity relief.

Fundamental Duty

Article 51A (e) enjoins upon every citizen to renounce practices derogatory to the dignity of women.

Law relating to fight election

Not less than one-third seats shall be reserved for women. Such seats may be allotted by rotation to different constituencies in a Panchayat.¹⁵

The office of the chairperson in the Panchayat at the village or any other level shall be reserved for SCs, STs and women in such manner as the legislature of state may, by law provide.

Reservation of seats for women in Municipalities is provided.

Legislative efforts towards women's:

The Woman's Right to Property Act 1937 was enacted whereunder, limited right of maintenance to women was ensured. But after independent the Woman's Right to Property Act 1937 was superseded by The Hindu Succession Act 1956, whereunder, the limited right of Hindu women was converted into full ownership under section 14. Recent amendment under the Hindu Succession Act 1956 has also given the status of a coparcener in the Hindu Coparcenary/Joint Family property to the daughters.¹⁶

¹² The constitution of India.

¹³ The constitution of India

¹⁴ The constitution of India

¹⁵ Clause (3) of Article 243D of the constitution of India.

¹⁶ The Hindu succession (Amendment) Act, 2005, its revised rules on coparcenary property, giving daughters of the deceased equal rights with sons.

Commission of sati (Prevention) Act (1987) provides for the more effective prevention of the commission or practice of sati or voluntary or forced burning or burying alive of widows, and to prohibit glorification of this action through the observance of any ceremony.

Dowry Prohibition Act 1961 was enacted to prevent the giving and taking of dowry. Under this Act, the demand of dowry is made a punishable offence.¹⁷

The Medical Termination of Pregnancy Act 1971, protection is provided against the illegal termination of pregnancy, such as through female infanticide which is made punishable and penal in nature.

The Protection of Women from Domestic Violence Act 2005 was enacted. It is a comprehensive legislation to protect the interests of women from violence of any kind whatsoever in domestic relations. Since the abuse to the women in the domestic relations has become a common phenomenon, the act ensures protection against every kind of violence such as economic violence, emotional violence, physical violence etc. And to make women enjoying the protection under this act effectively, the provision for appointment of protection officer is also made. Although the provisions under this Act do not make out an act as criminal offence, still effective remedy by way of Protection Order from the court of law is provided and in the event of non-observance of the said Protection Order, it contemplates the punishment to the wrongdoer.

Prohibition of Sex Selection) Act 1994, prohibits sex selection before or after conception and prevents the misuse of pre-natal diagnostic techniques for sex determination leading to female foeticide.¹⁸

Equal Remuneration Act 1976 provides for payment of equal remuneration to both men and women workers for same work or work of a similar nature. It also prevents discrimination on the ground of sex against women in recruitment and service conditions.

Muslim Women (Protection of Rights on Divorce) Act 1986 protects the rights of Muslim women who have been divorced by or have obtained divorce from their husband.¹⁹

The Sexual Harassment of Women at work place (Prevention and Protection) Act 2013 provides protection to women from sexual harassment at all workplaces, both in the public and private sector. The Act came into force from 9 December 2013. These statutes superseded the *Vishakha Guidelines* for prevention of sexual harassment (POSH) introduced by the Supreme court of India.

The Protection of Children from Sexual Offences (POCSO Act) 2012 was formulated in order to effectively address sexual abuse and sexual exploitation of children. It defines a child as any person below the age of 18 years and provides protection to all children under the age of 18 years from the offences of sexual assault, sexual harassment and pornography. Provisions like section 498-A in IPC also aim at providing protection to women and the act of ill-treatment is made a punishable offence.

General rights relating to women

Right to Privacy

A woman who has been raped has the right to record her statement in private in front of the magistrate without being overheard by anyone else or with a lady constable or a police officer in person. Under sec 164 of the Criminal Procedure Code, the police will have to give privacy to the victim without stressing her in front of masses.

Right to free legal aid

When any woman goes to the police station or court without being accompanied by a lawyer; she should be aware of the fact that she has right to get the legal aid that she should exercise the right. A woman is entitled for free legal aid irrespective of her income or financial status. A woman is eligible to apply for free legal aid by virtue of Section 12(c) of the Legal Services Authorities Act, 1987.

¹⁷ The dowry prohibition Act applies to persons of all religion in India.

¹⁸ Pre-Conception and pre- natal diagnostic techniques (PCPNDT) Act, 1994 commenced on 1 January 1996.

¹⁹ The Act was passed by the Rajiv Gandhi government to nullify the decision in Shah Bano case.

Right to FIR in any police station

As per the Supreme Court ruling, a rape victim can register her police complaint from any police station under the Zero FIR.²⁰

Protection against arresting

As per the Supreme Court ruling, a woman cannot be arrested after sunset and before sunrise. Except, in case the woman has committed a serious crime, the police require to get it in writing from the magistrate explaining why the arrest is necessary.²¹

Protection for interrogation in police

According to sec 160 of the Criminal Procedure Code, a woman cannot be called to the police station for interrogation. The Police can interrogate a woman at her residence in the presence of a woman constable and family members or friends.

Right to privacy

Under sec 228-A of the Indian Penal Code makes the disclosure of a rape victim's identity a punishable offence. Under no condition a rape victim's identity can be revealed. Neither the police nor media can make known the name of victim in public. After the Nirbhaya Gang Rape Case, which happened on the night of 16th December 2012, that shocked the entire nation and forced the government to give a new shape to the criminal law by enactment of the most awaited act i.e. The Criminal Law Amendment Act, 2013 is an Indian legislation passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013. This Act provides for amendment of Indian Penal Code, Indian Evidence Act, and the Code of Criminal Procedure, 1973 on laws related to sexual offences. Thus, the Act has included the following sections: Sec 354A, Sec 354B, Sec 354C, Sec 354D in IPC.²²

Legislature has taken every care to ensure safety and security to women in India. But, the need of the time is that, women must know their rights and laws made for their protection. Effective implementation through the law machinery and police authorities requires a little more timely and effective action. Women in any society play a very important role. In Indian society's context her role kept changing and evolving with the enactment of the Constitution and especially since Babasaheb's fight for women's' rights through introduction of the Hindu Code bill. Violence against women such as physical abuse, domestic violence, sexual harassment and female infanticide are on increase in recent times. With a view to curb the violence and abuse on women, our country has enacted, adopted and implemented many laws by making provision for special protection to women. We all need to know the rights of women in India. When we mention the rights of women, then we have to take into consideration both, the Constitutional Rights and Legal Rights.

Judicial response towards women's rights:

The influence of the court in public consciousness is no longer confined to its position as the final arbiter of disputes, but also as a front-line protector of Constitutional values. The Supreme Court has often responded to mobilisation by rights groups and civil society members in general but in many cases has also taken upon itself the responsibility to intervene and correct deep inequities, cutting across caste, class and gender. The constitutional law and ordinary law through judiciary has been working as a saviour of women from atrocities and also giving helping hand in numerous ways for perk up status of women in all spears of their life. The unbiased and independent judiciary has always played the role of a true Guardian of justice. Since independence many a times the judiciary has pro-actively interpreted and amplified the ambit of legislative provisions in favour of the unprivileged half of the society, i.e., the women of our country. *The Secretary, Ministry of Defence v. Babita Puniya & Ors. (2020)*²³ "Permanent Commission should be granted to women

²⁰ The Provision of zero FIR came up as recommendation in justice Verma committee report in the new criminal law (Amendment) Act, 2013, devised after the December 2012 gang rape of a girl in the territory .

²¹ Section 46(4) of Code of Criminal Procedure, 1973.

²² The Criminal Law Amendment Act, 2013.

²³ In one of the land mark judgments of the Supreme Court of India.

in the army regardless of their service, in all the ten streams where the Union Government has already taken a decision to grant the Short Service Commission for women. "*Joseph Shine v. Union of India (2018)*"²⁴The five-judge bench unanimously struck down Section 497 IPC saying that it was unconstitutional since the very basis for criminalising adultery was the assumption that a woman is considered as the property of the husband and cannot have relations outside the marriage. The said section violated the right to privacy as well as the liberty of women by discriminating against married women and perpetuating gender stereotypes." *Shamima Farooqui v. Shahid Khan (2015)* ²⁵"The divorced Muslim women are covered under Section 125 of CrPC and maintenance is an absolute right of a woman, unless it is disqualified. The court also ruled that the quantum of maintenance to be paid by the ex-husband should be such that it allows the divorced women and her children if any to live with dignity." *D. Velusamy v. D. Patchaiammal (2010)*²⁶"Live-in relationships will also come under Domestic Violence Act 2005." The bench comprising Justice Markandey Katju and Justice TS Thakur held that 'not all live-in relationships will amount to a relationship in the nature of marriage to get the benefit of the DV Act of 2005. To get such benefits the conditions mentioned by the bench must be satisfied, and it has to be proved by evidence. If a man has a woman whom he maintains financially and uses mainly for sexual purpose and/or as a servant it would not be a relationship in the nature of marriage'.

Conclusion

All provisions of the Constitution and all laws enacted by the legislature get their real meaning and import through the process of judicial interpretation. The Constitutional mandate and the various laws providing for protective discrimination in favour of women relating to several aspects of their social, economic and political life have come up before the courts. Through various devices like judicial review, judicial activism, social action litigation and the duty of enforcement of fundamental rights the superior Courts in India have evolved a gender jurisprudence which has given substance and life to the constitutional scheme of protective discrimination in favour of women. Below is detailed overview of the judicial approach in various cases, where the Courts have successfully delivered their verdict to strengthen position of women. In India there are so many laws by legislatures, rules by administrator and judicial pronouncements and more importantly individual as well as group women organizations continuous affords for women protection and empowerment but too little justice to her because of lack of unawareness, un-interest among women and people in society. It is the need of the hour to have aware and empowered women. An empowered woman not only protects herself but also protect people around her. So, it is time to break silence; women should fight for her place in this male dominated society. It should be start from family itself. The mindset and the patriarchal views that have engulfed Indian people mindset since ages should be change then only the real fruits of law will be enjoyed by women.

²⁴ SC 2018

²⁵ AIR 2015 SC 2025

²⁶ AIR (2010) SCC. 375