



Policies & Perspectives on Violence against Women in India

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Abstract

Since, India was one who ratified the Universal Declaration of Human Rights (UDHR), as well initially signed the United Nations Organization charter, the makers of the Indian Constitution were well aware of the fact that there are certain natural rights which cannot be overlooked and that the Indian Constitution must contain them as Fundamental Rights. In India, before the enactment of the constitution the concept of equality between male and female was unknown. The constitution, guaranteed equality of opportunity and status to women along with men and special provisions were made for the welfare of the women. However, now the India has an elaborate system of laws to protect the rights of the women. The meaning and content of fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including protection of women from gender violence.

Keywords : Women, Violence, Policies, Fundamental Rights & Duties

Introduction

Women constitute half the population of the world. Violence against women in any form is a violation of fundamental human rights e.g. right of equality. In India women continue to suffer by all means that violence against women in society or country. Since the establishment of the United Nations Organization (UNO) the rights of the women along with those of men have been recognized in major human rights instrument. According to the Charter of the United Nations, “the member of the United Nation declared their faith in fundamental human rights, in the dignity and the birth of human person, in the equal right of men and women and of nations large and small”.¹ Since, India was one who ratified the Universal Declaration of Human Rights (UDHR), as well initially signed the United Nations Organization charter, the makers of the Indian Constitution were well aware of the fact that there are certain natural rights which cannot be overlooked and that the Indian Constitution must contain them as Fundamental Rights.

¹ . Charter, the United Nations Organization.

The comparison of the various provisions of the UDHR & the Indian Constitution clearly indicates that Part-III and other parts, specially the Part-IV embodying the Directive Principles of State Policy of the Indian Constitution confirm to the UDHR. In other words, it can be said that Fundamental Rights in Indian Constitution are nothing but Declaration of Human Rights in India.

The Covenant on Civil & Political Rights and Covenant on Economic, Social & Cultural Rights has been ratified by India on March 27, 1979. The provisions of Civil & Political Rights are covered under the provisions of Part-III of the Indian Constitution. The provisions contained in Covenant on Social, Cultural & Economic Rights is not binding upon the parties ratifying it and thus have been incorporated in Part-IV of the Constitution, which though does not provide for justiciable rights but definitely provide for some entitlements to the citizens in the form of directives for the good governance in country.

The following list of such rights has emerged from such judicial decisions:

- Right to livelihood;
- Right to privacy²;
- Right against torture to arrest³;
- Right against sexual harassment of working women⁴;
- Right to fair & speedy trial⁵;
- Right against custodial violence⁶;
- Right to social & economic empowerment⁷;
- Right against solitary confinement⁸;
- Rights of prisoners.

General Duties of the State under International Law

Generally, “international conventions impose three types of duties on the state. First, the state has a duty to respect rights. Second, the state has a duty to protect rights - that is, to prevent the violation of rights by private persons and organizations who are not themselves bound by international treaties. A state's failure to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridical ensuring the free and full enjoyment of human rights constitutes a breach of this duty. Third, the state has a duty to fulfill rights. Upon ratifying international treaties, states must take appropriate legislative, administrative, judicial, budgetary, economic and other measures to achieve individual's full realization of their human rights. In

². People's Union for Civil Liberties vs. Union of India & others, AIR 1997 SC 568.

³. D.K. Basu vs. State of West Bengal, AIR 1997 SC 610.

⁴. Vishakha vs. State of Rajasthan, AIR 1997 SC 3011.

⁵. Maneka Gandhi vs. Ram Jethmalani, AIR 1979 SC 468.

⁶. Supra Note 3.

⁷. Samtha vs. State of Andhra Pradesh, AIR 1997 SC 3297.

⁸. Sunil Batra vs. Delhi Administration, AIR 1978 SC 1675.

addition, the duty to fulfill rights requires states to alleviate persistent obstacles to the exercise of these rights".⁹

Various International Instruments Relating to Women

The United Nation has been at the centre of growing global moment for women's rights. The United Nation has helped set a common standard by adopting international Laws and treaties on women's rights, for measuring societies advance equalities. The various achievements of United Nations in this field are :

- **Universal Declaration of Human Rights, 1948**

"Human Rights jurisprudence based on the Universal Declaration of Human Rights, 1948 has acquired recognition as the 'Moral Code of Conduct', having been adopted by the General Assembly of the United Nations. Before adverting to domestic jurisprudence, it would therefore be pertinent to consider the principles and objects behind the Universal Declaration of Human Rights as adopted and proclaimed by the United Nations General Assembly by its resolution dated 10-12-1948. While not a treaty itself, the Declaration was explicitly adopted for the purpose of defining the meaning of the words "fundamental freedoms" and "human rights" appearing in the United Nations Charter, which is binding on all member states. For this reason the Universal Declaration is a fundamental constitutive document of the United Nations. The Declaration continues to be widely cited by governments, academics, advocates and constitutional courts and individual human beings who appeal to its principles for the protection of their recognized human rights".¹⁰

- **Convention on the Political Rights of Women, 1952**

"The Convention on the Political Rights of Women provides for equal political rights for women. Under this Convention, states are obligated to ensure that women have the right to vote in elections, to be elected to publicly elected bodies, and to hold public office on equal terms with men. Women are entitled to be free from discrimination in the exercise of these rights".¹¹ Although the Convention does not generally mention the affirmative action to increase involvement in public and political life of women, this is that the barrier's women participation and focuses the state party to equalise the status of men and women in the employment and exercise of political rights.

- **International Covenant on Civil and Political Rights, 1966**

"The International Covenant on Civil and Political Rights, which was ratified in 1966, is a treaty of paramount importance to the international community which sets forth numerous provisions to ensure the enjoyment of civil and political freedom for all people. The Civil Covenant assures women's civil rights, as well as access to the political process".¹²

⁹. Inter-American Court of Human Rights's Judgment in *Velasquez Rodriguez Case (Forced Disappearance and Death of Individual in Honduras)*, 28 I.L.M. 291, 325-326, Inter-American Court of Human Rights, 1989, p.173 & 176.

¹⁰. Universal Declaration of Human Rights, 1948.

¹¹. Convention on the Political Rights of Women, Mar. 31, 1953, art. 1, 27 U.S.T. 1909, 193 U.N.T.S. 135, 1954

¹². United Nation Treaty Collection, International Covenant on Civil and Political Rights, Dec. 16, 1966, 993, 171.

- **International Covenant on Economic, Social and Cultural Rights, 1966**

“The Economic Covenant, in contrast, recognizes positive rights, such as the rights to food, shelter, health care, and education. The Economic Covenant is linked to distributive justice for the most vulnerable, who are everywhere disproportionately female. The Economic Covenant emphasizes the importance of non-discrimination on the basis of sex by reiterating it in two articles (Articles 2 and 3), and it supports the concept of affirmative action”.¹³

- **Declaration on the Elimination of All Forms of Discrimination against Women, 1967**

“In 1967, the United Nations promulgated the Declaration on the Elimination of all Forms of Discrimination Against Women. This Declaration recognized the particular nature of discrimination against women as worthy of a separate legal response”¹⁴.

The Declaration also establishes mistreatment of women during war as a criminal offense. While the document adds the legitimacy to recognize women’s issues in conflict situations, it is only a non-binding declaration and, thus, plays a limited role in eliminating far-reaching, gender-specific war crimes.

- **Convention on the Elimination of All Forms of Discrimination against Women, 1979**

“Since the first years of the 1970s, the international community was convinced of the need to gather, in one single compulsory instrument, the great bulk of norms enunciated in the resolutions, declarations, and recommendations of the international organizations and the provisions of Conventions and Covenants already adopted. This included the principles contained in the Declaration on the Elimination of All Forms of Discrimination Against Women, approved by the UN General Assembly in 1967”.¹⁵

The Convention is divided in six parts : Part-first is related to general principles & commitments. Part-second devoted to the civil and political rights of women. Part-three corresponds to the social area with special attention to rural women. Part-four is refers to equality before law and with in the family. Part-fifth retain the follow-up and surveillance provisions for execution of the Convention and also establishes the Committee on the Elimination of Discrimination Against Women (CEDAW). Finally, Part-sixth refers to issues of procedure, entering into force, solution of controversies, and presentation of reservations.

- **Declaration on the Elimination of Violence against Women, 1993**

The Declaration on the Elimination of Violence against Women broadly defines gender-based violence to include any gender-based act that causes physical, sexual or psychological harm.

“The final Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly in 1993 making it applicable to all United Nations member states,

¹³ . United Nation Treaty Collection International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993.

¹⁴ . General Assembly Resolution, 2263, U.N. GAOR, 22nd Sess., United Nation Doc. A/6555 (1966).

¹⁵ . General Assembly Resolution 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, United Nation Doc. A/34/46 (1980).

condemned both public and private physical, sexual, or psychological harm or suffering to women, specifically naming violence within families and female genital mutilation as human rights violations”.¹⁶ “Violence against women shall be understood to encompass, but not be limited to : (a) physical, sexual and psychological violence occurring in the family including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”¹⁷ This Declaration noted that these rights were already protected among several international conventions, including the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

Remedies under Indian Constitution

“In India, before the enactment of the constitution the concept of equality between male and female was unknown. The constitution, guaranteed equality of opportunity and status to women along with men and special provisions were made for the welfare of the women. However, now the India has an elaborate system of laws to protect the rights of the women. The meaning and content of fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facets of gender equality including protection of women from gender violence. Gender equality includes protection from sexual abuse and right to work with dignity, which is a universally recognized fundamental human right. The common minimum requirement of this right has received global acceptance”.¹⁸

- **Part III of the Constitution: Fundamental Rights**

Fundamental Rights is the charter of basic rights contained in Indian Constitution and it guarantees the civil liberties such that all Indians can have their lives in peace & harmony as citizens of India. These include rights of individual, common to the most liberal democracies, such as: equality before law, freedom of speech & expression, freedom of association & peaceful assembly, freedom to practice the religion, and the right to constitutional remedies for the protection of civil rights by means of writs. Violations of these rights result in punishments as prescribed in the Indian Penal Code, subject to discretion of the judiciary.

“These rights universally apply to all citizens, irrespective of race, place of birth, religion, caste, creed, colour, or gender. They are enforceable by the courts, subject to certain restrictions. The

¹⁶ . Article 1, Declaration on the Elimination of Violence against Women, 1993.

¹⁷ . Article 2, Declaration on the Elimination of Violence against Women, 1993.

¹⁸ . Supra Note 4.

Rights have their origins in many sources, including England's Bill of Rights, the United States Bill of Rights and France's Declaration of the Rights of Man"¹⁹.

"The six fundamental rights recognized by the constitution are"²⁰:

- (1) Right to equality, including equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, and equality of opportunity in matters of employment.
- (2) Right to freedom of speech and expression, assembly, association or union, movement, residence, and right to practice any profession or occupation (some of these rights are subject to security of the State, friendly relations with foreign countries, public order, decency or morality).
- (3) Right against exploitation, prohibiting all forms of forced labour, child labour and traffic in human beings;
- (4) Right to freedom of conscience and free profession, practice, and propagation of religion;
- (5) Right of any section of citizens to conserve their culture, language or script, and right of minorities to establish and administer educational institutions of their choice; and
- (6) Right to constitutional remedies for enforcement of Fundamental Rights"²¹.

"Fundamental rights for Indians have also been aimed at overturning the inequalities of pre-independence social practices. Specifically, they have also been used to abolish untouchability and hence prohibit discrimination on the grounds of religion, race, caste, sex, or place of birth. They also forbid trafficking of human beings and forced labour. They also protect cultural and educational rights of ethnic and religious minorities by allowing them to preserve their languages and also establish and administer their own education institutions"²².

- **Laws inconsistent with the Fundamental Rights**

- (1) "All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.
- (2) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.
- (3) In this article, unless the context otherwise requires, -
 - (a) "law" includes any ordinance, order, by-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

¹⁹. The Right to Property under Indian Law, retrieved from <https://azgaralimd.blogspot.com/>.

²⁰. Part III, Constitution of India.

²¹. Ibid.

²². Know your Rights, Human Rights Protection Council of India, retrieved from www.hrpcfIndia.org

(b) “law in force” includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.

(4) Noting in this Article shall apply to any amendment of this Constitution made under Article 368”.²³

“Part IV shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy-provided that where such law is made by the Legislature of a State, the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent”.²⁴

Right to Constitutional Remedies

“Remedies or enforcement of rights conferred

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred the part III of the constitution.
- (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).
- (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution”.²⁵

Directive Principles of State Policy

These Directive Principles have not maintain the same constitutional mandate for enforcement as the Fundamental Rights have completed. “The difference between Part III and Part IV is that while Part III prohibits the State from doing certain things (namely, from infringing any of the Fundamental Rights), Part IV enjoins upon the State to do certain things. This duty, however, is not enforceable in law but nonetheless the court cannot ignore what has been enjoined upon the State by Part IV. Thus, though the court may not be able actively to enforce the Directive Principles of State Policy by compelling the State to apply them in the governance of the country or in the making of laws, of the

²³ . www.theconstitutionofindia.net

²⁴ . Basu D. D., *Introduction to the Constitution of India*. Prentice Hall of India, New Delhi, 1993.

²⁵ . *Ibid.*

court can, if the State commits a breach of its duty by acting contrary to these Directive Principles, prevent it from doing so”.²⁶

State to Secure a Social Order for the Promotion and Welfare of the People

- (1) “The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economics and political, shall inform all the institutions of the national life.
- (2) The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations”.²⁷

Equal Justice and Free Legal Aid

“The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes 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”.²⁸

Right to Work, to Education and to Public Assistance in Certain Cases

“The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want”.²⁹

Remedies under Criminal Law

The legal system would tend to bring such acts within the scope of ‘existing proscribed behaviour’ either under criminal law or civil law such as law of contracts or torts or even labour or equal opportunity law. In India, our legal system has reached that level of awareness where gender based violence is recognized as a legally distinct type of prohibited activity. This has been possible not because of some progressive legislation enacted by the authority. Some provisions of the IPC, as also of some other enactments, may become applicable to certain particular fact situations involving gender based violence.

Provisions under Indian Penal Code

1. Section 292: Sale etc., of obscene books, etc.
2. Section 294: Obscene Acts and Songs
3. Section 366: Kidnapping, Abducting or inducing Woman to Compel her Marriage, etc.
4. Section 366-A : Procurement of Minor Girl
5. Section 366-B : Importation of Girl from Foreign Country

²⁶ . Supra 8.

²⁷ . Know your Rights, Human Rights Protection Council of India, retrieved from www. hrpcfindia.org.

²⁸ . Ibid.

²⁹ . Ibid.

6. Section 376: Punishment for Rape
7. Section 376-B: Intercourse by Public Servant with Woman in his Custody
8. Section 376-C: Intercourse by Superintendent of Jail, Remand Home, etc.
9. Section 376-D: Intercourse by any Member of the Management or Staff of a Hospital with any Woman in that Hospital”
10. Section 498: Enticing or Taking away or Detaining with Criminal Intent a Married Woman
11. Section 509 : Word, Gesture or Act Intended to Insult the Modesty of a Woman

Certain provisions under Indian Penal Code which deals with offence related to domestic violence:

1. Section 304-B : Dowry Death
2. Section 305 and Section 306 : When women is Driven to Commit Suicide
3. Section 313 : Causing Miscarriage without Woman’s Consent
4. Section 314 : Death Caused by Act done with Intent to Cause Miscarriage
5. Section 315 : Act done with Intent to Prevent Child being Born Alive or to Cause it to Die after Birth
6. Section 316 : Forceful Termination of Pregnancy (Causing Death of quick Unborn Child by Act Amounting to Culpable Homicide“Section 319 and Section 320 : Causing Hurt and Grievous Hurt
7. Section 340 : Wrongful Confinement
8. Section 354 : Assault or Criminal Force to Woman with Intent to Outrage her Modesty
9. Section 376-A : Marital Rape
10. Section 405 : Misappropriation of Wife’s Property
11. Section 498-A : Matrimonial Cruelty

Some Other Provisions

Despite of all these rights the women who constitute half the population are still the sufferer of oppression and violence. Violence in the form of domestic violence has acquired epidemic proportion. On the other hand it can not be denied that efforts were made under criminal Law and civil Law to address the offence of violence against women. A closer view reveals that the various personal laws provide remedies only on divorce or separation. The women suffering from domestic violence may not opt for divorce and may wish to continue with their marital relationship in such circumstances the civil law is silent.

The victims of Domestic violence can also seek civil relief under :

- The Dowry Prohibition Act,1961;
- The Commission on Sati Prevention Act,1987;
- The Pre-Natal Diagnostic Techniques (Regulation and Prevention) of Misuse Act,1954;
- Dissolution of Muslim Marriage act,1939;
- The Hindu Marriage Act, 1955;
- The Indian Divorce (Amendment) Act, 2001;

- Parsi Marriage and Divorce Act, 1936;
- Protection of Women from Domestic Violence Act, 2005.
- The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

Information Technology Act, 2000

The Information Technology Act, 2000 (Act 21 of 2000) is “an Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as ‘electronic commerce’, which involve the use of alternatives to paper-based methods of communication and storage of information, to facilitate electronic filing of documents with the Government agencies and further to amend the Indian Penal Code, the Indian Evidence Act, 1873, the Bankers’ Books Evidence Act, 1891 and the Reserve Bank of India Act, 1934 and for matters connected therewith or incidental thereto,” In order “to prevent the possible misuse arising out of transactions and other dealings concluded over the electronic medium”, “the Act also creates criminal liabilities for contravention of its provisions. The Act extends to the whole of India and, save as otherwise provided therein, applies also to any offence or contravention there under committed outside India by any person [Section1(1)]. The Act came into force with effect from 17th October, 2000. Some of its penal provisions may also have relevance and hence be applied to cases of sexual harassment”.³⁰

Conclusion

Women, in our country, belongs to a class or group of society who is in a disadvantaged position on account of several social barriers and impediments and have, therefore, been victim of tyranny at the hands of men with whom they, fortunately, under the Constitution enjoy equal status. Women also have the right to life and liberty; they also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life. Women, in them, have many personalities combined. They are mother, daughter, sister and wife and not playthings for centre-spreads in various magazines, periodicals or newspapers nor can they be exploited for obscene purposes. They must have the liberty, the freedom and, of course, independence to live the roles assigned to them by Nature so that the society may flourish as they alone have the talents and capacity to shape the destiny and character of men anywhere and in every part of the world.

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