

Constitutional Frame Work: Guaranteeing Women's Rights

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INTRODUCTION

The sociologists had described the women by propounding different perceptions, In India, the history speaks that the women are considered as a divine force but the multi-cultured Indian society placed the women at different positions. Thus, there is no uniform status of women in the Indian society. However, civilization showed the overall upliftment of women's position. According to historian ROMILLA THAPER—

“Within the Indian sub-continent there have been infinite variations on the status of women diverging according to cultural malices, family structure, class, caste property rights and morals.

The Indian philosophy poses the women with dual character. On the one hand, she is considered aggressor and represent ‘Shakti’.¹

Status of women in different human societies of the world is different. In almost all the present and contemporary societies it is discriminatory and prejudicial. Nearly all human societies in different parts of the world are male-dominated. Males are active part and the females only passive part of the different society, only a thing of enjoyment of males are some societies they are only chattels contractable, seable and endowed with the duty to serve males and elder females having no material and worthwhile rights. In theory they are respectable but in practice they are the subject of cruelty, ill-treatment. And all sorts of misbehavior of males.

Great Saints like Swami Dayanand, the founder of Arya Samaj fearlessly raised voice against all such ill-treatments and discriminations with women, which culminated in the basic law of the country. The Constitution of India which declared equality of status and of opportunity. It is provided in Article 16(2) of the constitution that no citizen shall on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment of office under the state. Article 15 prohibits discrimination on grounds of religion, caste, sex or place of birth, and the most prominent fundamental right as to equality before law has been provided in Article 14 that the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.²

INDIAN CONSTITUTIONAL PROVISIONS AND WOMEN RIGHTS

Over the years the constitution has played a crucial role in shaping the legal and social landscape for women in India, striving to provide them with equal rights and opportunities following constitutional provisions are evident of above said fact:-

¹ Dr. S.C. Tripathi and Vibha Arora, Women and Children 01 (Central Law Publication)

² Manjula Batra, Women and law with law relating to children in India 02-03 (Allahabad Law Agency).

- The state shall not discriminate against any native of India on the ground of sex [Article 15(1)]. In the case of **Champakam Dorai Rajan V. State of Madras**³ in this the Madras state reserved some seats for the backward classes of the society but the Supreme Court declares it as a violation of article 15 of the constitution. In the another case of **Indira Sawhney V. Union of India**⁴ the court, in this case, reserved the M.R. Balaji case judgment as under:
 - Caste can be the sole determinant in judging backwardness.
 - Validated further classification of backward classes into backward and more backward classes.
- The state is authorized to make any special provision for women. In other words, this provision permits the state to make affirmative discrimination in favour of females [Article 15(3)].
- No citizen shall be segregated against or be unsuitable for any office or employment under the state on the base of sex [Article 16(2)].
- Traffic in human beings and enforced labour are banned [Article 23(1)]. In the case of **Deena V. Union of India**⁵ it was held that if a prisoner is forced to do labour without giving him any remuneration, it is deemed to be forced labour and is violative of Article 23 of the Indian Constitution. This is because the prisoners are entitled to receive reasonable wages for the labour they did.
- The state to secure for male and female equally the right to a sufficient means of livelihood [Article 39(a)].
- The state to ensure equal pay for equal work for both Indian male and female [Article 39(d)].
- The state is needed to ensure that the strength and health of women workers are not abused and that they are not obliged by economic necessity to enter avocations unsuited to their strength [Article 39(e)].
- The state shall make procurement for securing just and humane conditions of work and maternity welfare [Article 42].
- It shall be the duty of every native of India to renounce practices derogatory to the dignity of women [Article 51-A(e)].
- One-third of the entire number of seats to be filled by direct election in every Panchayat shall be reserved for females [Article 243-D(3)].
- One-third of the entire number of offices of Chairpersons in the Panchayats at each level shall be reserved for females [Article 243-D(4)].
- One-third of the whole number of seats to be filled by direct election in all Municipality shall be reserved for females [Article 243-T(3)].
- The offices of Chairpersons in the Municipalities shall be reserved for females in such manner as the State Legislature may provide [Article 243-T(4)].

Though the position of women has developed in the last four decades, however still they are struggling to maintain their freedom and dignity. Presently Indian women are suffering from the toughest time physically and mentally, mainly due to unawareness and lack of information on legal and constitutional woman rights in India. The Constitution provides many protection women rights such as Protective

³ AIR 1951 SC 226

⁴ AIR 1993 SC 447

⁵ AIR 1983 SC 1155

discrimination in favour of women, Right of women against exploitation, Rights of women under directives, Right to freedom of women and political representations of women.⁶

LEGISLATIVE EFFORTS FOR THE PROTECTION OF WOMEN

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, counter social discrimination and various forms of violence and atrocities and also to provide support services, especially to working women.

The crimes which are directed specifically against women are characterized as Crimes against Women' These are broadly classified under two categories:

The crimes identified under the Indian Penal Code (IPC):

- Rape (Sec.376 IPC)
- Kidnapping & abduction for different purposes (Sec.363-373 IPC)
- Homicide for Dowry, Dowry Deaths or their attempts (Sec.302/304-B of IPC)
- Torture, both mental and physical (Sec.498-A of IPC)
- Molestation (Sec.354 of IPC)
- Sexual harassment (Sec.509 of IPC) (referred to in the past as Eve-teasing)
- Importation of girls (up to 21 years of age) (Sec.366-B of IPC)
- Acid Attack (Sec 326A and 326B)
- Cruelty by husband or his relatives (Sec 498)
- Outraging the modesty of women (Sec 354)
- Voyeurism (Sec 354C)

The crimes identified under the Special laws, such as :

- Commission of Sati (Prevention) Act, 1987
- Dowry Prohibition Act, 1961
- Indecent Representation of Women (Prohibition) Act, 1986
- Immoral Traffic (Prevention) Act, 1956
- Protection of Women from Domestic Violence Act, 2005
- The Child Marriage Restraint Act, 1929

ROLE OF INDIAN JUDICIARY AND WOMEN RIGHTS

Vishakha Vs State of Rajasthan⁷

Bhanwari Devi, a social worker from Rajasthan, was brutally gang-raped by five men for preventing a child marriage. Determined to seek justice, she decided to go to court. In a shocking decision, the trial court acquitted all five accused. Vishaka, a Group for Women's Education and Research, took up the cause of Bhanwari Devi. It joined forces with four other women's organisations, and filed a petition before the Supreme Court of India on the issue of sexual harassment at the workplace. On August 13, 1997, the Supreme Court commissioned the Vishaka guidelines that defined sexual harassment and put the onus on the employers to provide a safe working environment for women.

Mary Roy Vs State of Kerala⁸

⁶ nrilegalservices.com (23 March 2024, 16:30).

⁷ AIR 1997 SC 3011.

⁸ AIR 1986 SC 1011.

Women from the Syrian Christian community in Kerala were prevented from inheriting property due to patriarchal traditions. This decree was challenged by Mary Roy, a woman's right activist and educator. After the demise of her father, she filed a case against her elder brother when she was denied equal share in the family's inheritance. Though the plea was rejected by the lower court, the Kerala High Court overruled the previous judgment. In 1986, the Supreme Court delivered a landmark judgment that granted Syrian Christian women the right to seek an equal share in their father's property.

Laxmi Vs Union Of India⁹

In 2006, Laxmi, an acid attack victim, filed a petition seeking measures to regulate the sale of acid and provide adequate compensation to the victim. Taking cognizance of the number of cases relating to acid attacks against women on the rise, the Supreme Court imposed stringent regulations on the sale of acid in 2013. The ruling banned over the counter sale of acid. Dealers can sell the acid only if the buyer provides a valid identity proof and states the need for the purchase. It is mandatory for the dealer to submit the details of the sale within three days to the police. It also made it illegal to sell acid to a person below 18 years.

Centre for enquiry into Health and Allied themes (CEHAT) Vs Union of India¹⁰

With the advent of pre-natal diagnostic techniques that could determine the sex of a fetus, the growing trend of aborting female fetuses was observed. In a bid to curtail female feticide, the government of India issued the PNDT Act in 1996. The provisions of the PNDT Act, however, were not being effectively implemented by the state and central government. The Centre for Enquiry into Health and Allied themes filed a petition which led to the Supreme court directing the Central and State governments to enact the provisions of the act immediately, and banned all advertisements relating to pre-natal sex determination techniques.

Shamima Farooqui v. Shahid Khan [6 April 2015]¹¹

Supreme Court held that women cannot be treated as beggars and their grace cannot be lowered in rightful claim to maintenance after divorce if the husband has since then retired from his service.

CONCLUSION

We cannot have a free and equal society until everyone is equally free. In the absence of equal rights for women, this inequality is a concern for everyone. A key component of sustainable development, economic growth, and peace and security is the concept of gender equality and women empowerment. Several studies have shown that women's rights are upheld and taken seriously when society as a whole benefit from this.

Since the past few years, we have seen several attempts designed and implemented to empower women in Indian society to alleviate their condition. Through legislation, women have had access to their constitutional and fundamental rights, which has proven to be one of the most effective ways of empowering women. The mere existence of laws is not enough if those for whom they are made are unaware and unable to use them effectively. That is where the legal empowerment of women comes into play. The majority of Indian women do not know their legal rights. Consequently, women have become easy victims of violations of basic and legal rights owing to this lack of awareness so the Government and the judiciary has to take initiatives about the awareness of the rights to the women.

⁹ AIR 2013 SC 223.

¹⁰ AIR 2003 SC 572.

¹¹ AIR 2015 SC 2025.