

An Analysis Of Constitutional And Other Legal Rights For Women Empowerment In India

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Abstract

Women empowerment means empowering the women to take their own decisions for their personal dependent and make them independent in all aspects from rights, mind, thought, decisions etc. by leaving all the social and family limitations. It should be bring equality in the society for both male and female in all areas. The Constitution and other laws have provided various constitutional and legal rights to meet the objective of Women empowerment in India.

Introduction

Women contribution in all spheres of life with their unique position is found 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. India, being a country of paradoxes, is not an exception. Here women, a personification of Shakti, once given a dignified status, are also in need of empowerment.

Empowerment has three key elements:

- Access to basic needs such as food, water, education, shelter, health services, fuel etc.
- Participation in decision-making.
- Access to productive asset such as land, credit and technologies that can produce Income.

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 legislature more or less has always tried to cope with the contemporary need based development of laws for the specified purposes. It may be in the field of Human Rights, Constitutional Rights, Politics, Economics, Civil Rights, or Social Transformation.

Research Methodology

The Research Paper is based on Doctrinal study employing descriptive, exploratory and comparative methods of research. The data has been collected from the Library, Books, Bare Acts, Journals, News Papers and web sources.

Constitutional Rights to Women in India

The various rights and safeguards enshrined in Indian Constitution¹ for women empowerment are as following:

1. The state shall not discriminate against any citizen of India on the ground of sex.....
[Article 15(1)].

2. The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favours of women [**Article 15(3)**].
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)**].
4. Traffic in human beings and forced labour are prohibited [**Article 23(1)**].
5. The state to secure for men and women equally the right to an adequate means of livelihood [**Article 39(a)**].
6. The state to secure equal pay for equal work for both men and women [**Article 39(d)**].
7. The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength [**Article 39(e)**].
8. The state shall make provision for securing just and humane conditions of work and maternity relief [**Article 42**].
9. It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women [**Article 51-A (e)**].
10. One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women [**Article 243-D (3)**].
11. One-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women [**Article 243-D (4)**].
12. One-third of the total number of seats to be filled by direct election in every Municipality shall be reserved for women [**Article 243-T(3)**].
13. The offices of chairpersons in the Municipalities shall be reserved for women in such manner as the State Legislature may provide [**Article 243-T(4)**].

Other Legal Rights to Women in Various Indian Enactments

Various Enactments which contain several rights and safeguards for women² are as following:

1. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, provides the protection to women from sexual harassment at all workplaces both in public and private sector, whether organised or unorganized.
2. Protection of Women from Domestic Violence Act, 2005, is a comprehensive legislation to protect women from all forms of domestic violence. It also covers women who have been/are in a relationship with the abuser and are subjected to violence of any kind—physical, sexual, mental, verbal or emotional cruelty.

3. Pre-Conception and Pre-Natal Diagnostic Techniques (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 foeticides.
4. National Commission for Women Act, 1990, provides the establishment of a National Commission for Women to study and monitor all matters relating to the constitutional and legal rights and safeguards of women.
5. Legal Services Authorities Act, 1987, provides free legal services to women.
6. Commission of Sati (Prevention) Act, 1987, provides for the more effective prevention of the commission of sati and its glorification on women.
7. Indecent Representation of Women (Prohibition) Act, 1986, prohibits indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.
8. 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 husbands.
9. Family Courts Act, 1984, provides for the establishment of Family Courts for speedy settlement of family dispute.
10. Equal Remuneration Act, 1976, provides for the 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.
11. Code of Criminal Procedure, 1973, provides certain safeguards for women i.e. obligation of a person to maintain his wife, arrest of woman by female police and so on.
12. Medical Termination of Pregnancy Act, 1971, provides for the termination of certain pregnancies by registered medical practitioners on humanitarian and medical grounds.
13. Dowry Prohibition Act, 1961, prohibits the giving or taking of dowry at or before or any time after the marriage from women.
14. Maternity Benefit Act, 1961 (Amendment Act, 2017), regulates the employment of women in certain establishments for certain period before and after child-birth and provides for maternity benefit and certain other benefits.
15. Hindu Succession Act, 1956, recognizes the right of women to inherit parental property equally with men.

16. Immoral Traffic (Prevention) Act, 1956, is the premier legislation for prevention of trafficking for commercial sexual exploitation. In other words, it prevents trafficking in women and girls for the purpose of prostitution as an organised means of living.
17. Hindu Marriage Act, 1955, introduced monogamy and allowed divorce on certain specified grounds. It provided equal rights to man and woman in respect of marriage and divorce.
18. Minimum Wages Act, 1948, does not allow discrimination between male and female workers or different minimum wages for them.
19. Mines Act, 1952, and Factories Act, 1948, prohibits the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides provisions for their safety and welfare.
20. Dissolution of Muslim Marriages Act, 1939, grants a Muslim wife, the right to seek the dissolution of her marriage.
21. Indian Christian Marriage Act, 1872, contain provisions relating to marriage and divorce among the Christian community.
22. Indian Penal Code, 1860, contains provisions to protect women from dowry death, rape, kidnaping, cruelty and other offences.
23. The following other legislation's also contain certain rights and safeguards for women:
 1. Bonded Labour System (Abolition) Act, 1976
 2. Foreign Marriage Act, 1969
 3. Hindu Adoptions and Maintenance Act, 1956.
 4. Special Marriage Act, 1954
 5. Employees' State Insurance Act, 1948
 6. Plantation Labour Act, 1951
 7. Parsi Marriage and Divorce Act, 1936
 8. Indian Succession Act, 1925
 9. Legal Practitioners (Women) Act, 1923
 10. Indian Evidence Act, 1872
 11. Indian Divorce Act, 1869

Women Empowerment and Indian Judiciary

In the case of *C.B. Muthamma vs. Union of India*³, 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 had 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.

Justice V.R. Krishna Iyer and Justice P.N. Singhal, Supreme Court, held that:

"This writ petition by Ms. Muthamma, a senior member of the Indian Foreign Service, be speaks 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."

In the case of **Vishaka and others Vs State of Rajasthan**⁴ 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 the 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 writ petition under Articles 14, 19 and 21 of the Constitution of India before the Supreme Court of India on the issue of sexual harassment at the workplace.

On August 13, 1997, the Hon'ble 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 which formed the basis of *The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013*.

It has been laid down in the judgment above-mentioned that it is the duty of the employer or other responsible persons in work places or other institutions to

1. Prevent the happening of such event

2. To furnish the employees with effective mechanism for the process of resolving & trying of such indecent acts of sexual harassment
3. For this purpose “*Sexual harassment*” means disagreeable sexually determined behavior direct or indirect as:
 - physical contact and advances;
 - a demand or request for sexual favours;
 - sexually coloured remarks;
 - showing pornography;
 - any other unwelcome physical, verbal or non-verbal conduct of sexual nature

The Indian Judiciary has several times reiterated upon the fact that Right to life under Art. 21 also includes Right to live with dignity. Such aforesaid dignity could and should be protected with suitable guidelines. It is of utmost importance to frame some guidelines to fill the legislative vacuum and curb the evils. Gender Equality finds place in Fundamental Rights enshrined under Article 14, 19 & 21. Sexual Harassment at Workplace is a clear violation of gender Equality which in turn violates these integral rights of the female class. Such harassment also results in the freedom provided under Article 19(1)(g). The protection of females has become a basic minimum in nation across the whole globe. In the absence of domestic law to curb the evil, assistance could be rendered from International Conventions and Statutes to the extent that it does not contravene with any domestic law or the do not violate the spirit of Indian Constitution. The Judiciary derived this authority from Article 51(c) and 253 read with Entry 14 of the Union List of Seventh schedule of the Constitution. The Supreme Court held that such violation therefore attracts the remedy under Article 32

Conclusion and Suggestions

Women empowerment is very necessary to make the bright future of the family, society, country and world. Although the Constitution and other laws provide various rights and equal opportunities for women implicitly as they are applicable to all persons irrespective of sex but these provisions reflect only ‘*de jure equality to women*’. They have not been able to accelerate de facto equality to the extent the Constitution intended.

The expansion of the market economy, industrialization and globalization brought increased inequalities, resulting in loss of livelihoods, exploitation, displacement, tourism, sex trade, retrenchment, erosion of natural resources and with it decreased women’s access to water, fuel, fodder and traditional survival resources. Women are being pushed into less productive sectors.

The Constitutional rights, which are available to women in Part-III of the Constitution, viz. Art.14, Art.15(1), Art.15(3), Art.16, Art.21 and Art.23 can be ensured against State and not against another individual person, because fundamental rights are available against ‘State’ only.

The legislation, Protection of Women from Domestic Violence Act, 2005, through which the protection is given not only the wife, but to sister, mothers, and daughter also. But the question is that how many women, are aware about this Act or have lodged complain?

Good Education, changing mind-set through Public Awareness as well as poverty alleviation is necessary for women empowerment and to end discrimination against women in true sense.

References

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