
Constitutional Provisions and Empowerment of Women in India

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Abstract: The paper is an attempt to compile and review the existing literature on the Constitutional provisions for empowerment of women. Some of the very important and landmark judicial announcements by the apex court of the country for upholding the rights of women as enshrined in the Constitution of India have been referred to. Special enactments by the State for empowerment of women have also been mentioned.

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I. INTRODUCTION

For many communities around the world there are several barriers like poverty, climatic disaster, socio-economic and political injustice that prevent them from enjoying the fruits of a good and humane living. But the worst among these is, perhaps, gender inequality.

Gender bias in India has gone on changing over the ages. In ancient India, status of men and women were almost the same. There are references of many women scholars such as Gargi and Maitrayee in our ancient texts.

During medieval period the status of women in society started dropping. Muslim rule in India brought further deterioration in their status in general. Notwithstanding many objectionable decisions adopted by the British rulers, British rule infused many illuminating western ideas into the country. Encouraged by the rays of knowledge radiating from the West, a few enlightened Indians such as Raja Ram Mohan Roy, Ishwar Chandra Vidyasagar, Swami Vivekananda, Acharya Vinoba Bhave, Jyotirao Phule etc. worked for the upliftment of status of women in India. Through their untiring efforts, the heinous custom of 'Sati Dahi' was abolished and 'The Widow Remarriage Act' of 1856 was passed. Many luminaries including Sister Nivedita endeavoured opening of schools for girls' education in Bengal and also in other parts of the country.

During freedom movement, almost all the leaders of the struggle were of the view that women should be given equal status with men in free India and all types of discriminatory practices against women should stop. And for that to happen, it was thought fit to include such provisions in the Constitution of India which would help eliminate age-old exploitative customs and traditions and also include such provisions which would help in empowering women in all spheres of social activities.

II. CONSTITUTIONAL PROVISIONS

The Constitution of India is a living instrument with capabilities of enormous dynamism. It is a Constitution made for a progressive society. The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Directive Principles of State Policy and Fundamental Duties. The Constitution provides equality to men and women. It also empowers the State to adopt measures of positive discrimination in favour of women. Within the framework of a Sovereign Socialist Secular Democratic Republic, our plans and programmes have aimed at empowering women in all spheres of activities in life.

2.1 Fundamental Rights:

Article 14: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 14 introduces two expressions - "equality before the law" and "equal protection of the laws". Both these expressions have also been used in the Universal Declaration of Human Rights. The first expression 'equality before law' is of English origin and the second expression has been taken from American Constitution. Both these expressions aim at establishing what is called "equality of status" in the Preamble of the Constitution. Article 14 uses the word 'any person'. Each and every person, citizen or non-citizen, male or female or otherwise, within the territory of India, is all covered within its sphere. The Constitution of India has thus guaranteed equality of men and women without any discrimination whatsoever.

This Rule embodied in Article 14 is one of the basic features of the Indian Constitution.

Article 15(1) : 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(3) : Nothing in this article shall prevent the State from making any special provision for women and children

The founding fathers of the Constitution of India thought that, in a society predominantly controlled by patriarchal motivations and discriminations, to elevate the status of women, some special provisions for women have to be made to guarantee equality of men and women. It is important to point out in this connection that Article 14 of the Constitution forbids class legislation but does not prohibit reasonable classification. The reasonable classification must be based on some intelligible differentia and should have a rational relation to the object sought to be achieved by the classification.

The dream of the Constitution makers was that a welfare State will always strive, by both executive and legislative action, to help the less fortunate and to improve their condition so that social inequality may be bridged.

A Supreme Court case may be referred in this connection:

Vijay Lakshmi – v – Punjab University

This relates to the appointment of a lady Principal in a Girls' College. A Rule in Punjab University Calendar Vol.III provided for appointment of lady Principal or a lady teacher or a lady Superintendent. It was alleged that the provisions in the University calendar was violative of Article 14 of the Constitution of India.

The Supreme Court held that the provision for appointment of lady Principal or lady Teacher exclusively in Girls' College was not violative of Articles 14 and 15 of the Constitution. The classification was reasonable. It had nexus with the object sought to be achieved. It was highlighted that there can be classification between male and female for certain posts. In the instant case the object sought to be achieved was precautionary and preventive based on public morals in view of the young age of the girl students to be taught.

Article 16: (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

Article 16 (2) No citizen shall, on grounds of 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 or office under the State. Etc... Etc...

The Constitution provides equal opportunities for women implicitly as they are applicable to all persons irrespective of sex. However, the Society has not yet been able to accelerate the process of equality to the extent the Constitution visualised.

It is very unfortunate that subordinate legislation by high level executives have very often baffled the dream of the fathers of the Constitution makers as mandated in Articles 14 and 16. of the In this connection two Supreme Court cases may be cited as examples to show how discretionary Rules framed by governmental agencies has been standing in the way of 'equality' as envisaged by the Constitution of India.

In **C.B.Muthamma- v - Union of India** the petitioner C.B.Muthamma was India's first woman IFS Officer. She complained of discriminatory regulations of Indian Foreign Service Rules, 1961. Some of the major issues raised by her were,

- (i) no married woman shall be entitled as of right to be appointed to the service
- (ii) a woman member was required to obtain written permission of the Government before her marriage
- (iii) at any time after marriage she could be asked to resign if the Government was confirmed that her family and domestic commitments were coming in the way of her due and efficient discharge of duties.

In a landmark judgement in 1979 delivered by a three-member bench headed by Justice V. R. Krishna Iyer it was held that, henceforth, it was not mandatory for Women Officers in IFS to seek Government permission for getting married.

Commenting on the third issue the Court said, "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 case of a male member..."

Commenting further the Court said, "..... 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 manhandling 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-a-vis half of India's humanity, is a sad reflection on the distance between Constitution in the book and Law in action."

Another important case is **Air India - v - Nargesh Meerza**. In this case Nargesh Meerza, an air-hostess of Air India, filed a writ petition regarding discriminatory Regulations of Indian Airlines Corporation. Several issues of gender discrimination were raised. Most important of them were:

- (i) Whether termination of services of air-hostesses on first pregnancy was unreasonable and arbitrary?
- (ii) Whether the procedure of extension of the age of retirement of an air-hostess 'at the option' of the Managing Director is violative of Article 14 of the Constitution of India?

The Supreme Court held that Article 14 forbids hostile discrimination but not reasonable classification. It applies where equals are treated differently without any reasonable basis. The provision according to which the service of air hostesses would stand terminated on first pregnancy is manifestly unreasonable and arbitrary and contains the quality of unfairness. It amounts to compelling Air Hostesses not to have any children and thus interfere with and divert the ordinary course of human nature. It is not only a callous and cruel act but an open insult to Indian womanhood. The Regulation was struck down by the Supreme Court as it was grossly violative of Article 14 of Constitution.

In regard to the second issue of extension of service after retirement 'at the option' of the Managing Director, the Court held that the relevant Regulation confers a discretionary power without laying down any guideline or principle. It is violative of Article 14 and is liable to be struck down as unconstitutional.

2.2 Directive Principles of State Policy

Article 39: The State shall, in particular, direct its policy towards securing -----

- (a) That the citizens, 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 42 – The State shall make provision for securing just and humane conditions for work and for maternity relief.

Article 44 – The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.

The Directive Principles of State Policy give the details of aims and objectives to be taken up by the State in the governance of the country. Article 39 specifically requires the State to direct its policy towards securing economic justice.

2.2.1 Equal pay for equal work by men and women :

In pursuance of Article 39(d), the Parliament has enacted the **Equal Remuneration Act, 1976**. Although the principles laid down in the Directive Principles are not enforceable in a Court of Law, the directive contained in Article 39(d) and the Act passed can be judicially enforceable by Court.

In **Randhir Singh -v- Union of India** the Supreme Court held that the principle of "Equal pay for equal work" though not a fundamental right, is certainly a constitutional goal and, therefore, capable of enforcement through constitutional remedies provided under Article 32 of the Constitution. This right although finds place in Article 39, it can be considered as an accompaniment of equality clause enshrined in Articles 14 and 16 of the Constitution.

2.2.2 Uniform Civil Code:

Article 44 requires the State to secure for the citizens a Uniform Civil Code throughout the territory of India. After so many years of independence and the birth of the Constitution, this dream of the founding fathers of our Constitution, a Uniform Civil Code, has not seen the light of day. A very large section of women of our society are the sufferers.

In **Sarala Mudgal - v – Union of India** the Supreme Court directed the Union Government to take steps for making a Uniform Civil Code as envisaged in Article 44 of the Constitution. Justice Kuldip Singh and Justice R.M.Sahai held that notwithstanding the constitutional mandate under Article 44 no Government since 1950 has been able to introduce a Uniform Civil Code. Taking advantage of its absence many Hindus have changed their religion and have converted to Islam for the purpose of escaping the consequence of bigamy.

In **Seema - v – Ashwani Kumar** the Supreme Court held that all marriages, irrespective of their religion, be compulsorily registered. This was first step towards a Uniform Civil Code. Moved by the plight of women fighting for their rights under marriage like maintenance and custody of their children, a two Judge Bench of the Supreme Court directed the Centre and the State Governments to frame Rules which would (Pandey 2017):

- i) prevent child marriage;
- ii) check bigamy and polygamy;
- iii) help women to exercise their rights under marriage like maintenance and custody of children;
- iv) enable widows to claim inheritance; and
- v) deter husbands from deserting their wives.

In this regard it may not be out of place to mention that the landmark judgement on triple talaq has laid the foundation of **Triple Talaq Bill** being recently passed by the Parliament.

In **Shayara Bano - v - Union of India** the Supreme Court, on 17 August, 2017, by a 3-2 majority verdict struck down the age-old practice of instant triple talaq, also known as talaq-e-biddat, under which a Muslim man could divorce his wife by uttering the word “talaq” thrice.

Thereafter, **The Muslim Women (Protection of Rights on Marriage) Bill, 2017** was passed by Parliament. According to this Bill, **triple talaq** (talaq-e-biddat) in any form – spoken, in writing or by electronic means such as e-mail, SMS or WhatsApp will be illegal and void, with punishment up to three years of imprisonment for the husband.

One other example of how the Judiciary has stood up for saving womanhood is the Supreme Court Case **Vishakha - v - State of Rajasthan (1997)** which finally led to the enactment of **Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** by Parliament.

III. FUNDAMENTAL DUTIES

Article 51-A (e): 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 religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

IV. REPRESENTATION OF WOMEN IN LOCAL BODIES

4.1 Panchayats

Article 243-D(3) : Seats shall be reserved for 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 to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat

Article 243-D (4) proviso: Not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women.

4.2 Municipalities

Article 243- T (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 to be allotted by rotation to different constituencies in a Municipality.

Article 243-T(4) : The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, Scheduled Tribes and women in such manner as the Legislature of a State may by law, provide.

4.3 Cooperative Societies

Article 243- ZJ (1) proviso: ... there shall be reservation of two seats for women on board of directors of every co-operative society consisting of individuals as members and having members from such class or category of persons.

V. SPECIAL LAWS AND GOVERNMENT INITIATIVES

In terms of the Constitutional mandate under Directive Principles of State Policy, the State has enacted various legislations to counter social discrimination and various forms of violence and atrocities against woman. Some of these important special laws are: ‘The Dowry Prohibition Act, 1961’, ‘The National Commission for Women Act, 1990’, ‘Protection of women from Domestic Violence Act, 2005’, ‘Prohibition of Child Marriage Act, 2006’, ‘Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and ‘The Muslim Women (Protection of Rights on Marriage) Bill, 2017.

The Indian Penal Code (I.P.C.) came into force from January 1, 1862. After independence, keeping in view the constitutional mandate and the violence and atrocities to which the common Indian women are subjected to, several Sections were inserted, through amendment Acts, into the Indian Penal Code. Some of the important amendments are: (K. D. Gaur, 2018)

- Sec.304B: Dowry death: Inserted by Amendment Act 43 of 1986.
- Sec. 354A: Sexual harassment and punishment for sexual harassment: Inserted by Amendment Act 13 of 2013.
- Sec.354B: Assault or uses of criminal force to woman with intent to disrobe: Inserted by Amendment Act 13 of 2013.
- Sec.354C: Voyeurism: Inserted by Amendment Act 13 of 2013.
- Sec. 354D: Stalking : Inserted by Amendment Act 13 of 2013.
- Sec.498A : Husband or relative of husband of a woman subjecting her to cruelty : Inserted by Criminal Law (Second Amendment Act, 1983) Act 46 of 1983

In terms of 'The National Commission for Women Act, 1990', Government of India in 1992 created the statutory body of 'National Commission for Women' for monitoring all matters, on a national level, relating to the rights guaranteed to women by the Constitution of India.

The Department of Women & Child Development in the Ministry of Human Resource Development prepared a document on 'The National Policy on Empowerment of Women' in 2001. The document emphasises that all forms of physical and mental violence against women at domestic or societal levels arising from customs, traditions and practices will be dealt with effectively in order to eradicate their incidence.

VI. PRESENT STATE OF AFFAIRS

In spite of all such endeavours by the legislature and the executive at the state and national level the representation of women in Parliament (the House of the People- Lok Sabha), has not been much. In 2019, in the 17th election to the Lok Sabha, the number of elected women members is 78, which is nearly 14% of the total number of members. However, this is the highest number of women representation in Lok Sabha since independence.

Patriarchal values and age-old traditional practices of keeping women in the backyard have time and again been thwarted and baffled by more conscious and progressive sections of the society who along with women, have constantly been fighting to uphold the constitutional morals mandated by Articles 14, 15, 16, 21, 25 and 26.

In its crusade against gender bias, the apex court once commented "historically, women have been treated unequally." When it comes to religion, patriarchal culture has never accepted women as their equal partners in their spiritual journey through life. The recent landmark judgements on two Public Interest Litigations (PIL), one by **Bombay High Court in 2016** on **Haji Ali Darga** (a shrine in Central Mumbai) where women were not allowed to enter the sanctum sanctorum and the other by the **Supreme Court in 2018** on **Sabarimala Temple**, the largest Hindu pilgrimage centre in Kerala, where entry of women aged between 10-50 years were barred, show how the verdicts in the said two PILs have broken all barriers of male appropriation of religion, and upheld the dignity, liberty and equality of women of all ages guaranteed under Articles 25 and 26 of the Constitution of India.

VII. CONCLUSION

Gender inequality impacts not only women. It has a ripple effect on the rest of the community. It prevents humanity, as a whole, to march forward towards a progressive and enlightened society. Citizens from all communities have the right to enjoy all the constitutional guarantees, and if some sections of society were held back, it is likely to hold back the community at large, resulting in unbalanced and unstable development, with pockets of social backwardness. In order to achieve the goals of secularism, equality and fraternity and to carry forward the entire citizenry towards our constitutional goals we must guarantee equal rights to women, irrespective of caste, creed, religion and other socio economic conditions. It is then and only then that we can preserve our unity in a plural democratic polity.

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