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The Indian Constitution and Women's Rights: A Review

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ABSTRACT

Human consciousness in modern world is conditioned by the concept of Human Rights and Human dignity for both men and women. Women, a girl, a wife, a mother, a grandmother, overall is a key of a family. World can never be complete without a woman. Law is the set of rules enforced to govern the behaviour of people. From the beginning of this world women is treated as a weaker section of the society and they are the victims of the crimes like rape, eve teasing, female infanticide, dowry, domestic violence, child marriage and acid throwing. They were only allowed to live beneath the shoes of their husbands and fathers. Laws are being made to secure the lives of the women from the violence of their families and societies, and to provide them with their rights of which they are the owners. The laws and customs regarding women drawn up during the ancient and medieval period are unlikely to be accepted by women today. They no longer accept their subordinate position in the society. They demand equal status and rights with men. The Constitution of India Guarantees equal rights and status to the women population of India. India being a signatory to a number of international conventions has shown world that it has faith in the promotion and protection of human rights. The ratification of International Conventions also signifies that it intends to be in the forefront of the world human

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rights movement. The human rights for women should be considered as the collective rights of women as a person with the capacity to decide or act on her own behalf. The importance of human rights discourse in relation to the rights of the women is that it brings in the issues of entitlements and legal provisions for implementations, so that women rights are not seen as abstract concepts but as living issues.

Keywords: protection, freedom, legal status, women rights.

Introduction

“Freedom cannot be achieved unless the women have been emancipated from all forms of oppression.”

—Nelson Mandela

In India, the history of oppression against woman is long and very old. Efforts have been made to improve and develop the position of a woman and this can be seen through Indian legal as well as Constitutional provisions. The object has been to protect the best interest of the woman. The Preamble to the Constitution has provided for aim to establish equality in status and opportunity. Constitution empowers the State to use measures of positive discrimination in favour of women for neutralising the cumulative socio-economic, education and political disadvantages faced by them. Fundamental rights among others, ensure equality before the law and equal protection of law; prohibits discrimination against any resident on the grounds of religion, race, caste, sex or place of birth and ensure equality of opportunity to all citizens in concerns relating to employment. Article 14, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of special importance in this regard. The women rights in India and safeguards as well preserved in the Constitution are listed below:

- The state shall not discriminate against any native of India on the ground of sex.¹
- 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.²
- No citizen shall be segregated against or be unsuitable for any office or employment under the state on the base of sex.³
- Traffic in human beings and enforced labour are banned.⁴
- The state to secure for male and female equally the right to a sufficient means of livelihood.⁵

- The state to ensure equal pay for equal work for both Indian male and female.⁶
- 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.⁷
- The state shall make procurement for securing just and humane conditions of work and maternity welfare.⁸
- It shall be the duty of every native of India to renounce practices derogatory to the dignity of women.⁹
- One-third of the entire number of seats to be filled by direct election in every Panchayat shall be reserved for females.¹⁰
- One-third of the entire number of offices of Chairpersons in the Panchayats at each level shall be reserved for females.¹¹
- One-third of the whole number of seats to be filled by direct election in all Municipality shall be reserved for females.¹²
- The offices of Chairpersons in the Municipalities shall be reserved for females in such manner as the State Legislature may provide.¹³

Protection Under Fundamental Rights

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 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.

Part III of the Constitution, Article 12-35 deals with the basic rights, that apply to all citizens in spite of their gender. However, some provisions are furnished for the safety of women's rights. A woman shall now no longer be refused a process simply due to the fact she is a woman.

*Air India v. Nargesh Meerza*¹⁴ is a landmark judgment in which the Apex Court held that a woman should not be denied employment just because she is a woman as it amounts to a violation of Article 14 of the Constitution.

In *Madhu Krishnan v. State of Bihar*¹⁵, the Apex Court observed that women made up half of India's population. In India, women are always discriminated against by men, silently rejected and stigmatised. Self-sacrifice and self-denial are their nobility and strength, fortitude (courage in pain) but they are still discriminated against and humiliated by men.

In *C. Rajakumari v. The Hyderabad Police Commissioner*¹⁶, the High Court ruled that if a woman is depicted indecently in a beauty pageant, describing figure, the shape, the body or part of it in any way that is indecent, derogatory (showing a critical or disrespectful attitude) or to degrading women or likely to deprive, corrupt and injure the public ethics and morality would violate of the provisions of the indecent and obscene representation of women (Prohibition) Act, 1986 and would also be unconstitutional because it violates Article 14, 21 and 51 (a) of the Constitution.

Article 21 provides for Right to life and personal liberty of each and every person in India which includes Right to live with human dignity, right to livelihood, right to work, right to privacy, right against sexual harassment etc. The Indian Parliament also enacted **The Indecent Representation of Women (Prohibition) Act, 1986** which prohibits indecent representation of women through advertisements, books, writings, paintings, figures films or any other manner. The Supreme Court also emphasized the need to provide a life of dignity to the sex workers in our country by giving them some technical skills through which they can earn their livelihood instead of by selling their bodies.

Right of Woman Against Exploitation

Right against exploitation is recognized under Article 23 and 24 of the Constitution of India. **Article 23** prohibits "traffic in human beings and beggar and other similar forms of labour". The expression "traffic in human beings is evidently a very wide expression including the prohibition of traffic in women for immoral or other purposes. Also, **the Suppression of Immoral Traffic in Women and Girls Act, 1956** has been enacted with the object of inhibiting or abolishing the immoral **trafficking** of women and girls. **Articles 21 & 23** also impose the duty on state to identify, release and rehabilitate freed bonded labourers. In *Gaurav Jain v. Union of India*¹⁷, the Supreme Court held that the children of the prostitutes have the right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of mainstream social life.

Protection to Woman under the Directive Principles of State Policy

The Directive Principles reflect the government believes that India is a democratic well-being State. This policy provides for equal employment rights, equal pay for equal work, adequate means for dignified and decent life for men and women, which is guaranteed by the Directive Principles under Part IV of the Constitution which consist of Article 38, 39(a), 39(d), 39(e), 42, 44 and 45 which address the well-being and development of women.

As required under Article 39(a), the State must direct its policy to ensure the equal right to decent livelihood for citizens, men and women. In this Article, all citizens, regardless of gender, have equal rights and decent livelihood.

As required under Article 39(d) of the Constitution, the State is constitutionally duty-bound to direct its politics in such a way as to pay equal wages ought to procure each (men and women) for equal work.

Uniform Civil Code(UCC) and Equality, Justice and Gender

Article 44 requires the State to strive to achieve UCC for citizens throughout India. However, women continue to face inequalities and injustice. In *Sarla Mudgal v. Union of India*¹⁸, the Supreme Court has passed directions to the Central Government to review Article 44 of the Constitution which permits the State to guarantee a Uniform Civil Code. According to the Court, it is imperative and essential for the protection of the oppressed and for the promotion of public solidarity and integrity. These guidelines and rules were given by the Court in the case of examining the question of whether a Hindu wedded spouse under Hindu law, converted to Islam, without dissolving/breakdown of the first marriage, after he can solemnise a subsequent marriage. It has been held by the Apex court that such a marriage will be unlawful and the husband can be prosecuted for bigamy under section 494 of the Indian Penal Code, 1860.

In the present scenario, the court continues to hold that a Hindu marriage continue to exist even after one of the spouses converted to Islam and must be dissolved by a decree of divorce on any of the reasons referenced in Section 13 of the Hindu Marriage Act, 1955 and there is no direct dissolution of Hindu marriage. Subsequently, the second marriage of a Hindu after his conversion to Islam was void within the

significance and meaning of section 494 of the Indian Penal Code, 1860 and the husband was liable to be prosecuted for bigamy.

Right of Woman to Make Reproductive Decision

In the case of *Suchita Srivastava v. Chandigarh Administration*¹⁹, the Supreme Court ruled that a woman's right to make a reproductive health decision is also an aspect of individual freedom under Article 21 of the Constitution of India, 1950. However, the reproductive choice can be exercised for both reproduction and cessation of reproduction. Reproductive choices should not be restricted for example, a woman's right to refuse sexual activities or to insist on contraception methods. The Court ruled that the reproductive rights include the right of women to surrogacy, to give birth and then raise a child.

Political Representation of Woman

Gandhiji believed that women have to play a much meaningful role in politics, making it more accountable, transparent and corruption free. Writing in *Harijan* on 21 April 1946, he emphasized the need to "enrol women as voters, impart or have imparted to them practical education, teach them to think independently, release them from the chains of caste that bind them so as to bring about a change in them...If they will do this, they will purify the present unclean atmosphere." He prophetically said, "as long as the women of India do not take part in public life, there can be no salvation for the country." In independent India, women have held important political and administrative positions. For instance, Srimati Indira Gandhi guided the destiny of the country as Prime Minister for more than one and half decades. Women have also served as Governors, Chief Ministers, Ministers in Union and State Governments, Presiding Officers of Legislative Bodies, Judges of the High Courts and Secretaries to the Government of India. Currently, we have a woman as the President of our Republic. Despite the fact that Indian women have held important positions both at the national and international levels, women's participation in the political arena and in the decision-making bodies is not in proportion to their population, except in the local bodies. Their effective participation, even in these bodies, leaves much to be desired.

Article 40 of the Constitution which lay down that the state shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. To realize the Directive the 73rd and 74th Constitutional Amendments had sought to ensure a certain

proportion of women as chair persons of panchayats. According to **Article 243- D (3) and 243-T (3)**, not less than one third of the total number of seats to be filled by Directive election in every **Panchayat/ Municipality** shall be reserved for women (including SCs AND STs). This opportunity of being a part of local level arbitration process has improved the social conditions of women in village areas.

Role of Judiciary

“What if she is a prostitute, she is a woman and human being too”. These were the words of the Court in case of *Budhadev Karmaskar v. State of West Bengal*²⁰. The Apex Court in its division bench headed by Markandey Katju, J and Gyan Sudha Mishra, J. stated: ‘we strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as prostitutes as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.’ Not only this, but the bench acted quite actively and gave the directions to Central and State government to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India.

“Two-finger test, it’s like getting raped once again”, was states by the Court in *Lillu @ Rajesh & Anr v. State of Haryana*²¹. For the first time, the Supreme Court in this case realized the agony and trauma of a rape victim who had to go through two-finger test give her character certification and after analysing through various precedents, held that it is violation of victim’s right to privacy and dignity. It held: “In view of International Covenant on Economic, Social, and Cultural Rights 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel, inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy. Thus, in view of the above, undoubtedly,

the two-finger test and its interpretation violate the right of rape survivors to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, be given rise to presumption of consent.”

In *Laxmi v. Union of India*²², the Court insisted upon to **stop acid attacks and to regulate and to restrict the sale of acid**. On account of increase in number of acid attacks on women in the past few years, Supreme Court in order to curb these gave directions to Home Secretary, Ministry of Home Affairs associating the Secretary, Ministry of Chemical & Fertilizers to convene a meeting of the Chief Secretaries/concerned Secretaries of the State Governments and the Administrators of the Union Territories to curb and restrict the sale of acid throughout the country. Acid attacks on women and girls in 2013 and 2014 have been 56 and 47 in number respectively as per the statistics of acid survivors' organization. Acid attack on a woman is equal to taking away her identity from her and such rampant increase in this heinous crime was leading to terror amongst women and Supreme Court took a vital step and certainly led to the empowerment of women to an extent and was an important step towards the safety of women in country.

In *ABC v. The State (NCT of Delhi)*²³, the Court states that Unwed mothers need not name the child's father. The Supreme Court in this latest and landmark judgment declared that now, an unwed mother is not bound to disclose the name of child's father and also, she would have all the rights as a guardian to child under guardianship rights. She need not take father's consent for guardianship rights. Not only it was necessary to protect the child from social stigma but, also to protect mother's fundamental right. It was certainly an avant-garde verdict on gender equality. The Court emphasized that Section 6(b) of the Hindu Minority and Guardianship Act, 1956 makes specific provisions with respect to natural guardians of illegitimate children, and in this regard gives primacy to the mother over the father. Mohammedan law too accords the custody of illegitimate children to the mother and her relations. Name of father is always a myth while it is only mother whose name the person can always be sure of because she gave birth to him/her. This is one of the reasons why a mother should be given primacy or at least equality to exercise guardianship rights over the child. This judgment is evident of the fact that the highest court of land is deeply indulged in empowering women because it is the key to Nation's development.

Conclusion

Thus, the women empowerment is the most indispensable route to Country's development and cannot be ignored except at the stake of country's deterioration. If almost half of the population of country is suppressed and inactive, then, it is obviously foolish on the part of us to think that the country will ever develop in the next few centuries also. Therefore, the law is trying its best to break and do away with all such traditional norms that look down upon women and various laws have been passed and judgments have been delivered to prevent violence against women and to put them equally as men in the society. In the country of Gods and Goddesses, it is quite a famous shloka of Sanskrit that must be adhered to: '*yatra naryastu pujanya, tatra devta ramante*' meaning where women are worshipped, there God resides.

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6. *Id.*, art. 39(d).
7. *Id.*, art. 39(e).
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