

WOMEN UNDER CONSTITUTION OF INDIA

Diksha Dwivedi* & Jahnavi Singh**

Abstract

The aim of this paper is to understand the rights of the women under the Constitution of India, 1950. Women who constitute half of the world's population have always been discriminated against men. Self-denial and self-sacrifice are their nobility and yet they have been subject to all kinds of inequalities and discrimination. The constitution of India provides various provisions relating to the welfare and development of women in every sphere of life. The Indian Constitution enshrined the principle of gender equality in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles of State Policies. Preamble is the key to the constitution. Part III of the Constitution of India deals with fundamental rights. The provisions of Fundamental rights are dealt from Article 12 to 35. It guarantees right to equality to women and also empowers the state to make laws and special provisions for women and children. Part IV of the Constitution of India deals with Directive Principle of State Policy. . The most important feature of DPSP is to protect the rights of women. However, the Constitution of India plays an important role in the development, welfare and uplifting the status of the women in every sphere of life.

Keywords: Woman, Rights, Human Rights, Constitutional Rights, Directive Principle of State Policy

* Student @ Amity Law School, Noida

** Student @ Amity Law School, Noida

“There is no tool more effective than the empowerment of women for Development of the country”

-Kofi Anan

INTRODUCTION

Women, a girl, a wife, a mother overall women is the key to a family. Since many decades, women were regarded as the weaker section of the society but as days passed, many laws have been implemented for the protection of women. The rights of women can be protected either by constitutional rights or by legal rights. If we talk about the Constitution of India it prohibits discrimination based on sex but it equally directs and empowers the government to undertake special measures for women.

The status of women in ancient times was quite high. Aryans regarded women as the important member of the society. They were given equal status as compared with men. The women got opportunities to attain the high standard. During this period there was no practice of Sati, Child Marriage or Polygamy. Women also enjoyed politics.

However, the position of women got deteriorated with the passage of time. Further, the practice of polygamy, sati pratha, dowry system, female infanticide, etc. became dominant and gave rise to the male - dominated society. They were forced to live behind burkha. Manu said that” *man should enjoy supremacy over the women*”. In short, the status of women got vanished.

In medieval period the status of women did not change. They were asked to live within their boundaries. Medieval period gave rise to the practice of child marriage and polygamy. As we talk about child marriage, girls got married before the age of 8 or 9, which was illegal. The education of girl child was neglected. The practice of polygamy was basically practiced among the higher class Hindu families. The practice of ‘Sati’ was encouraged and the widows who did not perform ‘Sati’ were looked down upon by the society. During this period only Ramanujacharya gave rise to Bhakti movement by which the status of women got improved and women were entitled to education and many more. But it could not uplift the economic status. The women continued to be dependent on the males for their maintenance. During this period two principle school of Hindu Law came into existence i.e Mitakshara and Dayabhaga.

During British Period, the position of women was in an unpromising state. The cause was the evil social practices which were done in previous times. Many changes were taken place while keeping in mind the status of women. Many movements took place and two most important movements were the Nationalist Movement and Social Reform Movement. Sati system got abolished. The Hindu Woman's Right to Property Act was passed in the year 1937. This act basically focused on the positions of widow in respect of property.

As time passed, many laws were implemented for the protection of women and our Constitution of India played a very important role with regard to this. Women got their position. They were treated equally. In today's world women are not less than men. In every field women are giving their best and are achieving their goals. In the Constitution of India many articles were made for women and some of them are article 14, 15, 16 and many more. In recent times also government is doing their best to protect the women and give them a status in today's world. This is how our law is making such changes and making women securing in this world.

FUNDAMENTAL RIGHTS AND WOMEN

According to a report by the United Nation's published in 1980 - "Women constitute half of the world's population, perform nearly two - third of the work hours, receive one- tenth of the world's income and owns less than one hundred percent of the world's property."¹

In the view of Supreme Court in *Madhu Krishnan v. State of Bihar*², women form half of the Indian population. Women have always been discriminated against men and have suffered denial and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and yet they have been subject to all kind of inequalities, indignities and discrimination.³

The rights available to women in India can be divided into two categories, namely constitutional rights and legal rights. The constitutional rights are those rights which are provided by the Constitution of India whereas the legal rights are those rights which are provided by the various laws of the Parliament and State legislature.

¹ Dr. S.C Tripathi, *Women and Criminal law*, Central Law Publications, p. 15

² (1956) 5 SCC 148

³ *Supra* note 1

The Constitution of India provides certain principles relating to gender equality which are enshrined in its Preamble, Fundamental rights and duties and Directive Principle of State Policies. The Constitution of India, 1950 provides certain provisions relating to women. It guarantees the right to equality to women. The constitution of India not only grants equality to women but it also deals with welfare and development of women in every sphere of life.

According to Article 15(3) of the Constitution, discrimination on the grounds of caste, sex, race, religion or place of birth does not prevent the state from making laws or special provisions for women and children. The Constitution of India gives power to the state to make special provision for women and children. However, Article 15(1) prohibits gender discrimination. Article 15(3) lifts ignominy and permits the State to positively discriminate in favour of women to make special provisions to ameliorate their social, economic and political condition and accord them parity.⁴

Part III of the constitution of India deals with the Fundamental Rights. Fundamental Rights are basic Human rights which are applicable to all the citizens irrespective of sex, caste, religion, race or place of birth. The provisions regarding Fundamental Rights are dealt in Article 12 to 35, which are applicable to all the citizens irrespective of sex. There are certain provisions which protect the rights of the women. These rights are granted by the constitution equally as it has been given to men.

1. **Right to Equality:** It means that the state shall not deny any person equality before law, equal protection in the laws whereas Article 15 says prohibition of discrimination on grounds of religion, caste, race or place of birth
2. **Right to Freedom:** Article 19 to 22 deals with right to freedom. It includes right to freedom of speech and expression, protection against conviction of offences, protection of life and personal liberty and protection against arrest and detention etc.
3. **Right against Exploitation:** Right against exploitation, states eradication of human trafficking and forced labour.
4. **Cultural and Educational Rights:** The Indian Constitution guarantees cultural and educational rights under article 29 and 30. Article 29 protects the interest of the minorities whereas article 30 provides that all minority communities have the right to establish and administer educational institution of their choice.

⁴ Dr. G.B. Reddy on Women and Law, IV Ed. 2000, p.2

5. **Right to Constitutional Remedies:** Article 32 to 35 deals with Right to Constitutional Remedies which means a person has a right to move to the courts for violation of fundamental rights.

The judiciary has played an important role in the development and uplifting the status of women in every sphere of life. The Judiciary has always tried to uplift the status of women by giving various landmark judgments. Through this paper, we intend to analyse how judiciary has played an important role in the development and uplifting the status of women.

- a) **Triple talaq violates constitution, rights of women:** In the landmark judgement the court held that triple talaq was a violation of the Indian constitution and rights of women in terms of personal laws. In the present case a Muslim women filed a case against her husband regarding harassment for dowry. Therefore, the court held that no personal law is above the Constitution of India and triple talaq was violation of fundamental rights and rights to women under article 14, 15 and 21.
- b) **A woman shall not be denied a job merely because she is a woman:** In its landmark judgement the Apex court in *Air India v. Nargesh Meerza*⁵, has held that a woman shall not be denied employment merely on the ground that she is a woman as it amounts to violation of Article 14 of the Constitution. In the present case, the air hostesses of Indian Air Lines have challenged the service rules which states, “*Air Hostesses shall not marry for the first four years of their joining; they will lose their jobs if they become pregnant. They shall retire at the age of 35 years, unless Managing Director extends the term by ten years at his discretion.*”

The Supreme Court suggested that the first provision is legal, as it would help in promotion of the family planning programmes, and will increase the expenditure of airlines recruiting air- hostesses on temporary basics, but the second and third provisions to be declared as unethical, cruel, unreasonable, and unconstitutional and an open insult to womanhood. Thus, the above decision of the apex court has greatly raised the status of women.

- c) **Constitutional validity of Section 497 IPC** – In the offence of adultery section 497 of the Indian Penal Code, 1860 punishes only the male counterpart and exempts the woman from punishment. The constitutional validity of section 497, IPC was challenged on the ground that it violates Article 14 and section 15(1) of the

⁵ AIR 1981 SC 1829

Constitution.⁶ In *Adul Aziz v. State of Bombay*⁷, the Apex Court upheld the validity of the provisions on the ground that the classification was not based on the ground of sex alone. The court relied upon the mandate of Article 15(3) of the constitution to uphold the validity of the said proviso of the code. However, in the present case the petitioner contended that even though the women may be equally guilty as an abettor, only the man was punished, which violates the right to equality on the ground of sex.

DIRECTIVE POLICY OF STATE POLICY AND WOMEN

Part IV of Indian Constitution deals with Directive Principle of state policy. The provisions contained in this Part cannot be enforced by any court, but these principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Article 36 to 51 deals with Directive Principle of State Policy. The constitution borrowed it from the Irish government. The most important feature of DPSP is to promote the welfare of people. It also focus to minimize the inequalities in income, inequalities in status and opportunities not only among individuals but also among groups of people residing in different areas or engaged in different vocations . DPSP plays a vital role in Indian Constitution. Now, the question arises how Directive Principle of State policies are helping the women to achieve their rights?

Basically, DPSP have some provisions regarding women and it is the right of a government to enforce these provisions. There are basically three article which deals with women i.e. Article 39(a), 39(d), 42.

Article 39(a) basically talks about the promotion of justice on a basis of equal opportunity and also provides 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.

Article 39(d) says that both men and women should have equal right of livelihood and there should also be equal pay for both men and women and most importantly 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.

⁶ *Supra* note 1

⁷ AIR 1994 SC 321

Article 42 allows states to make provision for securing just and human conditions of work and for maternity relief which is a very important factor.

UNIFORM CIVIL CODE AND GENDER JUSTICE/EQUALITY

Article 44 of the Indian Constitutional law states that, “*The state shall endeavour to secure for the citizens Uniform Civil Code throughout the territory of India.*” As we know that India is a secular country but because of our personal laws women are the one who are suffering the most. Unless equality is not being accepted and Uniform Civil Code does not come into force then there is a less chance that women will be treated equally and they get a chance to live a better life. In a landmark judgement in *Sarla Mudgal v. Union of India*⁸ the Apex Court has passed direction to the Central Government to take a fresh look at Article 44 of the Constitution which enjoins the State to secure a Uniform Civil Code which, according to the Court is imperative for both protection of the oppressed and promotion of national unity and integrity. The above direction was given by the Court while dealing with the case where the question for consideration was whether a Hindu husband married under Hindu law, converted to Islam, without dissolving the first marriage, after he can solemnize a second marriage. It has been held by the Apex Court that such a marriage will be illegal and the husband can be prosecuted for bigamy under section 494 of Indian Penal Code, 1860. In the present case, the Court further held that a Hindu marriage continues to exist even after one of the spouse converted to Islam.

*Mohd. Ahmend Khan v. Shah Bano Begum*⁹ is seen as one of the milestones in Muslim women’s fight for rights in India and the battle against the said Muslim law. It was held that Section 125 of the code is truly secular in character and it was enacted to provide quick and summary remedy to the class of persons who are unable to maintain themselves. Irrespective of the person being of any religion sec 125 is applicable because it is a part of Criminal Procedure Court and not Civil Laws. Secondly, Neglect by a person of sufficient means to not give maintenance to any dependant’s leads to invoking of 125. Lastly, In this case husband liabilities to provide maintenance doesn’t get limited into the foundation of time period of Iddat but as long as the wife is unable to maintain herself or remarried even though Iddat period is over.

⁸ (1995) 3 SCC 635

⁹ AIR 1985 SC 945

This case changed the whole system and still there is a big debate which is been going on. Basically a uniform civil code will free women from the chain of inequality. While many women throughout India are standing in support of a UCC, others are speaking out against it, claiming it would tear as under their personal religious practices. The current scenario might be slightly different on paper but the harsh reality has not changed on ground zero. Be it the crime against women or their rights, there has been very little or no progress at all.

The Uniform Civil Code and gender justice, in many aspects, have a relation which cannot be given a blind eye. Muslim personal laws have given more rights to men as compared to women. The discrimination has taken place in many aspects of Iddat, divorce, inheritance. Both these concepts are interrelated and complimentary to each other. The Indian State has the necessary statutory bedrock for the implementation of the Uniform Civil Code and it should be enforced. It will lead to true equality among the citizens as its existence will strengthen gender justice, without which there can be no equality at all. It is time to forever remove the chains of antiquated ideologies, and in doing so, begin to realise the immorality of forcing women - or anyone else - to live under laws that were as miserable and vile in the 7th century as they are today.

It can be said that women in India, through their own unrelenting efforts and with the help of Constitutional and other legal provisions and also with the aid of Government's various welfare schemes, are trying to find their own place under the sun. As we see, still we are not at that point to achieve equality and justice. We should educate the male with regard to women issue as to solve this problem as soon as possible.

CONCLUSION

Women who constitute half of the world's population are protected under Constitution of India which provides various development schemes and welfare programme for the protection of women in every sphere of life. The constitution of India and other legal provisions helps in the up-liftment of women and protect their rights.