



Constitutional And Judicial Spectrum for the Protection of Women in India

KEYWORDS

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ABSTRACT Women suffered a great setback due to custom of dowry and for widow second marriage was out of question. However gradually the role of women is recognized all over world and the concept of gender justice crystallized in various International Conventions after the freedom of UNO and declaration of Universal Declaration of Human Rights (UDHR). The Constitution of India for independent India when being prepared it took special efforts to incorporate the various provisions in Constitution in the form of several fundamental rights which not only protect them from discrimination but also empowers them to the extent to bring them at par with male members of society.

Introduction

"It is impossible to think about the welfare of the world unless the condition of women is improved. It is impossible for a bird to fly on only one wing"

Swami Vivekanand

Women are not born, but made. What better than India to exemplify this statement by Simone de Beauvoir. There have been innumerable debates about gender in India over the years much of it includes women's position in a society, their education, their health, economic position, gender equality etc. what one can conclude from such discussion is that women have always held a certain paradoxical position in our developing country. If one looks at the status of women then and now, one has to look at two sides of the coin; one side which is promising, and one side which is bleak.¹

Traditionally the position of Indian Women in our society was always considered inferior to men and women were suppressed all the time which resulted in weakness in women. Men used to marry several times but a widow was compelled to lead a life in seclusion and was not allowed to participate in family functions and mix in society. There was a custom of 'sati' against which **Raja Rammohan Rai** stood against it and ultimately it is banned by British Ruler **Warren Hastings**³.

Women suffered a great setback due to custom of dowry and being widow second marriage was out of question. Her role was considered limited, to home so nobody thought of them for getting education. This resulted into lack of education, no financial independence and ultimately they become vulnerable class in society. Without education empowerment of women was just a dream. It is the efforts of social reformist like **Maharshi Dhondo Keshav Karve**⁴ who took initiatives in women education and remarriage of widow which were considered to a milestone towards gender justice.

Half of the Indian Populations too are women. Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.⁵

The legal language marginalizes women by saying that 'he' includes 'she'. In India society women are subject to all kinds of inequalities *de jure* and *de fact*. This situation is both caused and aggravated by the existence of discrimination in the family, in the community and in the workplace. It is perpetuated by the survival of stereotypes and of traditional cultures, religious and beliefs detrimental to women.⁶

The Parliament of India has realized the importance of a monitoring institution to examine and investigate all the matters relating to the safeguards provided for women under the Constitution and other laws. This realization has led to the enactment of **National Commission for Women Act, 1990** which came into force with effect from 31-1-1992. Justice V. R. Krishna Iyer, aptly remarked that a National Commission for Women has "**hardly any teeth and nail**". It is high time that the commission has been given the Judicial Powers and also conferred the Constitutional status.⁷

Constitutional safeguards for women in India

The role of Constitution in ensuring gender justice is being recognised in modern times. Constitution of India has done a magnificent job in ensuring gender justice in the supreme law of the country.

Preamble:

The preamble to the Constitution, inter alia, assures justice, social, economic and political, equality of status and opportunity and dignity of the individual.

Fundamental Rights:

- Art. 14: Women have right to equality before law and equal protection of laws.
- Art. 15(1): It specifically prohibits discrimination on the basis of sex.
- Art. 15(3): The state is empowered to make any such provisions and it shall not be violative of Article 15.
- Art. 16: It forbids any kind of discrimination on the ground of sex in matters relating to public employment or appointment to any office, and specifically forbids discrimination *inter alia* on the ground of sex.
- Art. 21: It guarantees everyone right to life and personal liberty.
- Art. 23: It prohibits traffic in human beings and any kind of forced labour.

Fundamental Duties:

Under Article 51(A) (e) our natural obligation to renounce practices derogatory to the dignity of women has been elevated to the status of fundamental duty by Article 51-A.

The Directive Principles direct the State to protect following human rights of women:

- Article 39(a) right to an adequate means of livelihood
- Article 39(d) Right to equal pay for equal work for both men and women.
- Maintaining proper level of nutrition and standard of living (Art. 47)
- Promoting justice, on a basis of equal opportunity and to provide free legal aid (Art. 39 A)
- Promoting educational and economic interests of weaker sections of people.
- These articles are all justifiable, and form the basis of our legal-constitutional edifice.

Reservation in local Self Government Bodies:

The 73rd and 74th Amendments (1993) to the Indian Constitution provide for reservation of 33.33% of elected seats for women at different levels of local governance in both rural (**Panchayats**) and urban areas (**Municipality**).

Judicial Approach towards Protecting Constitutional Rights of Women:

The Apex Court of India has taken special interest in discharging its legal and constitutional obligations towards safeguarding the interests of women in changing situation and societal demands.

In *Yousuf Abdul Aziz v State of Bombay*⁸ the validity of section 497, Indian Penal Code,⁹ which punishment only the male counterpart in the offence of adultery and exempts the women from punishment was challenged as violative of Article 14 & 15(1) of the Constitution. The Supreme Court upheld the validity of the provision of the ground that the classification was not based on the ground of sex alone.

Similarly, in *Sowmitri Vishnu v Union of India*¹⁰ The Supreme Court held that the law does not violate either article 14 of 15 on the ground that the offense will be committed on by a man.

In *Revathi v Union of India*¹¹ The Supreme Court held that Section 198(2) of Code of Criminal Procedure which gives the husband of adulteress the right to prosecute the adulterer but does not give the wife of the adulterer the similar right, is not discriminatory following the aforementioned judgment.

In *Muthamma v Union of India*¹² and *Air India v. Nargesh Mirza*¹³, the Court held that the discrimination can be made on considerations of recruitment and sex and on not sex alone. Service conditions requiring female employees to obtain government permission before marriage and denying married and pregnant women the right to be employed.

In the case of *Vishaka v State of Rajasthan*¹⁴ The Supreme Court issued guidelines to ensure women have equal working conditions and are protected from sexual harassment.

Supreme Court upheld women's right to know whether her prospective husband has any deadly and communicable disease. This was held in the case of *Mr. 'X' v Hospital 'Z'*.¹⁵

In *Maya Devi v State of Maharashtra*: Provision requiring husband's consent for wife's application for public employment was struck down as an anachronistic obstacle to woman's equality and economic justice.

In *Chairman, Railway Board v Chandrama Das*¹⁶ the Supreme Court ordered payment of Rs. 10 Lakhs compensation to a Bangladeshi national who was gang raped by the railway employees.

In *Sheela Barse v State of Maharashtra*¹⁷ the Supreme Court issued directions that a woman judge should carry out surprise visits to police stations, female suspects must be kept in separate lock-ups under the supervision of female constables and their interrogation must be carried out in the presence of female policepersons.

In *Githa Hariharan v Reserve Bank of India*¹ Interpretation of the Guardianship law in the light of Article 15 by the Supreme Court in this case equated the position of mother to that of father in the matter of guardianship.

In *Air India Cabin Crew Association v Yeshaswinee Merchant*² the Court justified a special retirement age of fifty for air hostesses, using the 'but for sex' test..

The Supreme Court has recently held in the case of *Government of Andhra Pradesh v P. B. Vijay Kumar*³ that the reservation to an extent of 30% made in the State services by Andhra Pradesh Government in to women candidates is valid.

In *Union of India v K. P. Prabhakaran*⁴ the Supreme Court upheld the decision of railway administration to reserve the post of enquiry cum Reservation clerks in reservation offices in metro Politian cities of Madras, Bombay, Calcutta and Dehli exclusively for women.

Conclusion:

Law alone cannot remedy the inequalities and bring about justice, development and empowerment. It can act as a springboard no doubt but much executive initiative, change in social mindset and involvement of all sections of society is required to achieve the ends. It is not suffice to give constitutional and other legislative protection to women but what is required to be done is to give her dignity in the society and at the home also. A woman does not need to be given recognition in law but needs recognition with dignity in society.

"Yatra Nari Pujyante Ramante Tatra Devta"

(Wherever woman is respected, God resides there)