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LEGAL FRAMEWORK FOR THE LIBERATION OF WOMEN AND GENDER EQUALITY

KEY WORDS:

P. Mangayakarasi

M.A., M.Phil., Ph.D Research Scholar, Department of History, Rani Anna Govt College for Women, Tirunelveli – 627 008. Manonmaniam Sundaranar University, Tirunelveli - 627 012.

Dr. V. Kathiresan

M.A., M.Phil., Ph.D., Supervisor and Guide, Assistant Professor, Department of History, Rani Anna Govt College for Women, Tirunelveli – 627 008.

Introduction

Women empowerment refers to the liberation of women from religious, legal, economic, and social oppression and their escape from narrow gender roles. The struggle for gender equality has a long history and is likely to continue for some time. In traditionally patriarchal societies any improvement in the status of women has far-reaching consequences and produces fundamental political changes. Therefore it is always resisted by the established powers. However, it seems certain that they will ultimately have to relent, because the emancipation of women is both necessary and desirable. It will provide for a greater degree of social justice and thus benefit everyone. Indeed, from the beginning, the great "feminists" or champions of women's rights have always insisted that they worked in the interest of the whole human race. The feminist movement therefore has always been a humanist movement. Some of its representatives were reformers, others revolutionaries, but virtually all of them worked for a better, more equitable and more humane world. Much can be learned from their experiences. They often suffered ridicule, persecution, and defeat, but also won admiration, support, and victory. Gradually, they achieved many of their goals. Their opponents, on the other hand, learned that a just cause cannot be suppressed forever. About 50% of the population consists of women. They could bring about qualitative change in the governance of the country. Therefore, they need to be empowered to improve the status of women and gender equality. In this paper an attempt has been made to enlighten the legal provisions that have been made for the liberation of women and gender equality. **Important Constitutional Provisions for the Protection and Development of Women in India**

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favor of women. Within the framework of a democratic polity, our laws, development policies, Plans and programs have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women in 1993.

Constitutional Provisions

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favor of women for neutralizing 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 citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

Constitutional Privileges

The Constitutional Privileges provided to women include equality

before law for women (Article 14); the State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them (Article 15 (i)); the State to make any special provision in favor of women and children (Article 15 (3)); equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16); the State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women (Article 39(d)); to promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme 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 A); the State to make provision for securing just and humane conditions of work and for maternity relief (Article 42); the State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (Article 46); the State to raise the level of nutrition and the standard of living of its people (Article 47); to promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A) (e)); 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(3)); not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women (Article 243 D (4)); 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 to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3)); and reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4)).

Legal Provisions

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to women. They are the Employees State Insurance Act, 1948, the Plantation Labour Act, 1951, the Family Courts Act, 1954, the Special Marriage Act, 1954, the Employees State Insurance Act, 1948, the Plantation Labour Act, 1951, the Family Courts Act, 1954, the Special Marriage Act, 1954, the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956 with Amendment in 2005, Immoral Traffic (Prevention) Act, 1956, the Protection of Women from Domestic Violence Act 2005, the Maternity Benefit Act, 1961 (Amended in 1995), the Dowry Prohibition Act, 1961, the Medical Termination of Pregnancy Act, 1971, the Contract Labour (Regulation and Abolition) Act, 1976, the Equal Remuneration Act, 1976, the Prohibition of Child Marriage Act, 2006, the Factories (Amendment) Act, 1986, Indecent Empowerment of Women (Prohibition) Act, 1986, the Commission of Sati

(Prevention) Act, 1987, the Code of Criminal Procedure, 1973, the Minimum Wages Act, 1948, the Guardians and Wards Act, 1860 (8 of 1890), the Indian Penal Code, 1860, the Prohibition of Eve Teasing Act 1998, the Hindu Adoptions and Maintenance Act (1956), the Christian Marriage Act, 1872 (15 of 1872), the Bonded Labour System (Abolition) Act, 1976, the Inter-State Migrant Workmen 1979, the Muslim Personal Law (Shariat) Application Act, 1937, the Hindu Minority and Guardianship Act 1956, the Indian Evidence Act 1872, the Child Marriage Restraint Act, 1929 (19 of 1929), the Foreign Marriage Act, 1969, the Indian Divorce Act, 1969 (4 of 1969), and the Juvenile Justice Act 2000.

Outcome of the Constitutional and Legal Measures

The Outcome of the constitutional and legal measures and the initiatives undertaken under the various plans in the past for bringing improvements in the socio-economic status of women and thus achieving overall equality among men and women have certainly provided an opportunity to women to associate themselves and maximize their participation in availing the facility of education and in different categories of employment available in private as well as in public sector and various economic, social, cultural and political activities and development programs and schemes. However, the participation of women in availing different level of education, medical and health facilities and in better remunerative occupations of employment and political activities has been at lower extent as compared to men.

Women Empowerment during the 20th Century

Till 1996, on an average, only 5.41 per cent member of Lok Sabha, the lower House of Parliament, happened to be women and the highest ever share was 7.7 per cent in 8th Parliament. Up to 1991, women's average share was just 9.38 per cent in the Rajya Sabha, the upper house. Till 1997 women's average empowerment was only 4 per cent in the State Assemblies. In the Central Council of Ministers only in 1961 women could cross 10 per cent share. If this overall scene is seen against increasing number of women and near parity in exercise of franchise scenario really gets harrowing. While marginalization of women in politics seems to be a universal phenomenon, what is more distressing is that India's record is more unpalatable compared to other developing countries. Whereas the average shares of women in executive and parliamentary posts is 5 and 10 per cent respectively in developing countries the corresponding figure for India is only 3 and 7 per cent¹.

Besides legislative seats, women are also utterly underrepresented in the higher decision making bodies of all political parties - in the Working Committee of the Congress, Parliamentary Board of Bharatiya Janata Party (BJP), Central Committee of Communist Party of India (Marxist) (CPM) women's proportion lingers around 10 per cent only². In some party committees women are virtually excluded and this often germinate in grumbling, though not loudly and frequently³. Women may comprise a formidable section in the rank and file of almost all party but when their share in the decision making structure is peeped at, they become rare species. This aspect alone casts far-reaching consequences for women's ascendancy in politics.

Majority of women lack resources like economic assets and party support. In a parliamentary democracy, as elections are party based, women contestants in any type of elections has the real prospect in getting through only when they are supported and sponsored by the political parties. Because of the indifferent attitude of political parties in nominating women as candidates, women are less and less represented. Women are fewer in number in political positions simply because of lack of aspiration or their incapacity. In the party based elections, the entry of women mainly depends on the supportive gesture and ascriptive channels of parties and in these front woman candidates have to encounter apathy and disadvantages. Virtual absence of women in the policy-making Committees of the political parties obviously interdicts the possibility of woman candidates being nominated for any elections.⁴

Women Empowerment in Panchayati Raj Institutions

In the traditional caste Panchayats, Village Panchayats and in the

British scheme of local governments women remained entirely excluded. When we holistically look back at the involvement and participation of women in Panchayati Raj Institutions for the period at least up to 1993 one sordid saga unfolds. Except in Andhra Pradesh, Gujarat, Maharashtra, Karnataka and Punjab where few women sometimes got selected as members, in other States the number of woman members were either nibbling or nil.

Since the establishment of Panchayati Raj in independent India, effort to secure and enable women to participate in the rural developmental process was evident. It was the Mehta Committee (1957), which recommended the co-option of two women from amongst those who were interested to work among women and children in each Panchayati Raj body in the suggested three tiers of Panchayati Raj. Mehta Committee (1978) also persisted with the incorporation of two women either through election or if necessary through co-option. The emphasis on and suggestion of integrating women in the Panchayati Raj Institutions was to empower them to raise any issue or voice their concern if they ever so felt or desired.

In establishing Panchayats, most State Governments appended the provision of co-option of two women in case no woman could come through direct elections. Prevalent practice during 1960's and 1970's was the co-option of two women at best for each Panchayati Raj body, as women could not come through elections. Co-option of few women was the only available option for women to participate. It, instead, resulted in proverbial patronage of the dominant political and social groups and families. Those nominated women could not, nor were expected to free themselves from the clutches of the males who inducted them. As the family or the group utilized the co-option method to establish, further or retain their vested interests, it provided one convenient scope for the dominant caste/class leaders to install their family women such as wife or mother as their yoke and the very purpose of empowering women was led to fall flat.

Woman members consequently could not get any real occasion to take up the task or stamp their distinctiveness in the process. Those women were neither aware of their role or rights nor they could grasp the intricacies of Panchayati Raj process. They could not acquire political experience, take up issues/programmes concerning women, articulate demands or represent their gender. Seen in overall perspective, women's contribution to the Panchayati Raj decision-making remained out-and-out inconsequential. Eventually the trifling number of woman members could not exercise power or gain political experience.

Reservation and Women Empowerment in Panchayati Raj Institutions and Urban Local Governments

Consequent upon the shift in emphasis on the women's question and the recommendation of the National Perspective Plan for Women (1988) reservation of one-third seats and posts in the local governments received impetus and legislative approval. Stipulating one-third reservation, the 64th constitutional Amendment Bill was introduced in the Indian Parliament on May 15, 1989. But the Bill was defeated in the upper house. Another Bill was introduced in September 1990 but it could not be taken up as the Government that introduced the Bill fell. After the general elections, new government came to power and introduced the 73rd Constitution Amendment Bill. This Bill was referred to Joint Committee of Parliament and after incorporating suggestions of the Joint Committee the Bill was finally passed in Parliament on December 23, 1992 and came into force from April 24, 1993.

Article 243D of the 73rd Constitutional Amendment Act has made provision for reservation of seats in Panchayati Raj Institutions for the Scheduled Castes, Scheduled Tribes and women. It lays down that in every Panchayat the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the SC or of the ST in that Panchayat area bears to the total population of that area and such seats shall be allotted by rotation to different constituencies in a Panchayat. Not less than 1/3 of the total number of seats reserved under the above category shall be reserved for women belonging to such categories of

people. Not less than 1/3 of the total number of seats (including the number of seats reserved for women belonging to the SC and ST) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat. The offices of the Chairpersons in the Panchayats at any level shall be reserved for the SCs, STs and women in a manner as given in a law of the State, provided that the number of offices of Chairpersons so reserved shall bear, as nearly as possible, the same proportion to the total number of such offices in the Panchayat at any level in proportion to the population of such people to the total population of the State. It is further provided that not less than 1/3 of the total number of the offices of Chairpersons in the Panchayats at each level shall be reserved for women and that the number of offices so reserved shall be allotted by rotation to different Panchayats at each level. But the State Legislature shall have the power to extend this system of reservation for 'backward classes of citizens' at any level covering the members and Chairpersons of Panchayats at each level. All such reservations shall cease to have effect after the expiration of period of reservations as specified in Article 334 of the Constitution.⁵

With the statutory reservation provision more than one million women have now assumed seats as Members and one-third of them as Chairpersons in almost all the States and the Union Territories. The induction of women in Local Governments is in sharp contrast to their empowerment in other political strata as well as in earlier Panchayat institutions and Urban, Local Governments.

Women's Empowerment in the Legislatures

The ugly scenes and stalemate over tabling the Women's Reservation Bill in parliament have had a very beneficial effect. They have finally brought the grim truth into sharper focus that politics has proven to be very inhospitable for women in independent India. What we are witnessing today is a worrisome phenomenon of further decline in the participation of women, not only in our legislatures, but in many other of our political and public spaces. Most countries in the world have failed to give due space and empowerment to women in their political life. Women are moving in the direction of near equal participation in only a handful of countries, such as Germany, Sweden, Norway, Denmark and Finland. In these societies women have begun to seriously alter the very nature of politics, making enduring, and substantial gains in every field. However, in all other countries, including the supposedly advanced democracies of western Europe and North America, where women exercise certain freedoms and have acquired the wherewithal for economic independence, female presence in legislatures remains small and relatively insignificant.

In India the problem for women is more serious for several reasons. They are while in many other countries women are inching forward, in India the participation of women in politics has actually declined since the days of freedom movement, both in quantity and quality; Government and politics are more important factors in the economic, social, and power structures in India than in most other countries with stronger civil societies, and so, the effect of women's marginalization in politics is even more detrimental here the increasing violence, sexual harassment and victimization of women at the ground level in many of our political parties have made their participation extremely hazardous now; and in order to increase the empowerment of women in the legislature, the 85th Constitutional Amendment Bill, introduced in Lok Sabha in December 1999. This Bill is seriously flawed, insofar as it mechanically provides for entry of women members to fill one-third of vacancies in Lok Sabha and Vidhan Sabhas.

The Proposed Alternative Women's Reservation Bill

The important provisions of the proposed Alternative Bills are that a law should be enacted amending the Empowerment of the People Act, 1951, to make it mandatory for every recognized political party to nominate women candidates for election in one third of the constituencies; among seats reserved for SCs and STs also, one third of the candidates nominated by recognized parties shall be women; each party can choose where it wishes to

nominate women candidates, duly taking local political and social factors into account; to prevent a party from nominating women candidates only in states or constituencies where the party's chances of winning election are weak, and to ensure an even spread of women candidates, the unit for consideration (the unit in which at least one out of the three party candidates shall be a woman) for the Lok Sabha shall be a state or union territory; for the State Legislative Assembly, the unit shall be a cluster of three contiguous Lok Sabha constituencies; in the event of any recognized party failing to nominate one-third women candidates, for the shortfall of every single woman candidate, two male candidates of the party shall lose the party symbol and affiliation and all the recognition related advantages; a law amending Articles 80 and 171 of the Constitution should be enacted providing for women's reservation of one-third of the seats, elected or nominated, to Rajya Sabha or Legislative Councils. Corresponding amendments need to be made in the Fourth Schedule of the Constitution and the Empowerment of the People Act, 1950.

Conclusion

While it is necessary to institute a system of reservation for women as spelt out above, this or any other system of ensuring women's presence in legislatures is not by itself sufficient if our objective is to make women equal partners in democratic politics. The problem is not just that women in the political arena are denied tickets by political parties. The fundamental problem is that given the nature of electoral politics today, the system itself creates insurmountable obstacles for women. Proposals for reservation initiated by the Government for women must therefore be a part of a larger package of general reforms for the liberation of women and gender equality.

REFERENCES

1. United Nation Development Programme, Human Development Report, New York Oxford University Press, 1995, p.62.
2. For the elaborate position of women in the different Committees of political parties see Seminar. September 1997, p.52.
3. In the 16th Party Congress of the CPM, Brinda Karat took exception to the appallingly low representation of women in the party committees and opted herself out of newly elected Central Committees as a mark of protest.
4. Nonetheless, one critical question is: if more and more women get entry into higher adoption making Committees of the parties or even women preside over the party do women have better prospect in securing fairer candidatures in any election? Presently Congress, AIADMK, Trinamul Congress (TMC) are revolving around Sonia Gandhi, Jayalalita and Mamata Banerjee respectively. These women are unquestionably supreme, they have absolute control over party affairs and they can handpick the list of contesting candidates for any election. Have woman candidates got wider scope in these parties? Unfortunately the situation for women is no better.
5. The First Constitution Amendment Act of 1951 had fixed it for 10 years from the commencement of the constitution. It was extended again and again, each time for 10 years. The Sixty-second Amendment Act of 1990 has increased it for next 10 years