



**ORIGINAL RESEARCH PAPER**

**Law**

**SUBSTANCES AND SHADOWS OF THE WOMEN UNDER THE CONSTITUTION OF INDIA**

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**ABSTRACT**

Ever since the enactment of the constitution of India women have been guaranteed fundamental rights like all the other citizens of the nation. However, despite incorporating articles on equality and right to livelihood women even today need legislative help to carve out their journey in this world. Most of this stems from the behavioral pattern in the society. The subservient position granted to women is more so because of the social behaviors and tolerance towards women abuse and exploitation. The economic, social and political rights granted to women and the international convention enacted for them can only be successful in enhancing their status if there is a change in the behavior of the society towards its women and zero tolerance towards discrimination and gender oriented crime.

The concept of fundamental right as enshrined in the constitution of India has stemmed from the struggle for the individual liberty and equality. These fundamental rights are basic inalienable human rights which are never static and necessary for the individual for his development to full potential and dignity. Equality and freedom are two essential attributes of human life. While the fundamental freedoms aim to guarantee to the people the enjoyment to live a dignified life, equality on the other hand ensures that these rights are uniformly enjoyed by all and denied to none. The concept of equality is an antithesis to arbitrariness. The arbitrariness of the society of the society for its gender discriminative rules, policies, customs and attitudes. Both, the concept of equality and fundamental rights are essential for a democracy like India where the ultimate sovereignty rests with the people. Therefore, it is imperative that all are treated equally. The gender defined roles, discriminative attitudes have made the concept of equality particularly for women. It is to be noted that gender discrimination is a universally recognized phenomenon. At international levels, these discriminative attitudes are condemned. The Universal Declaration of Human Rights demands equality for all and we see its reflections embedded in the Constitution of India where equality has been generated as a fundamental right for all thereby condemning any discrimination based on gender. Reiterating the importance of universal declaration of human rights the Supreme Court of India has observed that human rights are derived from the dignity and worth inherent in human beings. Human rights and fundamental freedoms are interdependent and have mutual reinforcement. The human right of women, including girl child, are therefore inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedoms of women and their equal participation in political, social, economic and cultural life are concomitants for national development, social and family stability and growth; culturally, socially and economically. All forms of discrimination on grounds of gender are violative of fundamental freedoms and human rights. The general concept of equality is enshrined under Article 14 which states that 'the State shall not deny to any person equality before the law or equal protection of laws within the territory of law.'

Article 14 is the genus which has various species in form of other rights which are grouped under the heading 'Right to Equality'. Article 15 prohibits discrimination on a number of grounds and sex is one of the, while clause 3 particularly talks about making special provision for women and children.

However, condemning gender oriented discrimination does not remedy the age old behavioral patterns of gender gaps. It is equally important for the legislature to enact enabling provisions for attaining equality and help the judiciary as well for its progressive judgments on attaining gender equality. Article 15 serves this purpose firstly by prohibiting gender discrimination and secondly by permitting the State to make

'positive discrimination' in favor of women by making special provisions in favor of women and children and work for their social, political and economic justice.

Social and economic justice for woman has become most important in today's time. The social, economic and political justice of women depends upon firstly granting and ensuring them the basic right to equality. This right to equality forms the basis of all the other rights that aim to ensure gender equality and it is from here that all the other fundamental freedom flow. Though the Indian constitution contains these provisions explicitly as fundamental rights it is the judiciary which has done a commendable work in making the concept of gender equality a concept of reality. It has interpreted the concept of gender parity in its widest amplitude and has from time to time curbed any gender discriminative attitudes, laws, policies and practices.

In the case of *C.B.Muthamma v. Union of India* the court has observed that 'whether article 14 and 16 belong to myth or reality the sex prejudice against Indian womanhood pervades the service rules even a third of a century after freedom. If high official lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to us. In the instant case Ms.Muthamma was a senior member of the Indian Foreign Services and was denied promotion to Grade I because of the service rules which were gender discriminative. On her joining the service she was required to serve an undertaking that if she married during the course of her job she would resign from the service which was in the light of rule 18 Of the IFS (Recruitment, Cadre, Seniority and Promotion) Rule, 1961 which provided that no married woman shall be entitled as of right to be appointed to the service. Further, Rule 8(2) of IFS (Conduct and Discipline) Rule 1961 provided that a woman member of the service was required to obtain permission of the government in writing before the marriage was solemnized. These rules were glaring examples of gender biasness and condemning these court sternly observed that 'discrimination against women in traumatic transparency is found in this rule. If a woman member shall obtain the permission of government before she marries, the same risk is run by the government if a male member contracts a marriage. In these days of nuclear families, inter-continental marriages and unconventional behavior, one fails to understand the naked bias against the gentler of the species.

In the case of *Gita Hariharan* the court once again invalidated the provisions of gender discriminative provisions of Hindu Marriage and Guardianship Act 1956. Section 6(a) of the act lay down that the other was the guardian of the child only after the father. Here the word 'after' was taken into consideration by the court and interpreting it literally, the court held that mother was very much the natural guardian of the child even if the father was alive and the word 'after' did not necessarily and compulsorily means after the death of the father. It means

in the absence of the father.' Holding up the constitutional principle of gender equality, the court held that 'the father by reason of dominant personality cannot be ascribed to have a preferential right over the mother in the matter of guardianship since both fall within the same category and in that view of the matter, the word 'after' shall have to be interpreted in terms of constitutional safeguard and guarantee so as to give a proper and effective meaning to the words used.'

In another case of Savita Samvedi the apex court yet again invalidated gender discriminative rules of the Railway Board Circular of 1982. This circular debarred a married daughter of a retiring official for out of turn allotment of a house in situations where the official had no son and where the daughter was the only person to maintain them or the sons were not capable to maintain them. The said rule was struck down in the light of gender equality.

The landmark case that ignited the debate of gender equality at workplace was the case of Narges Meerza. The concept of gender equality with the changing times was discussed in length and breadth by the courts in this case. A rule of Air India Employees Regulations was challenged and condemned. This particular rule stated that air hostess shall retire from service of the Air India Corporation upon attaining the age of 35 years or upon marriage or on first pregnancy whichever happens earlier.

These discriminative practices have been responsible for holding the women back and to a certain extent also responsible for preparing the grounds for gender oriented exploitation and crimes.

At international sphere many convention have been brought in to grant equality of status to women around the world. Gender discrimination and gender oriented crimes are globally recognized issues thereby attracting attention of the nations at large. The Beijing Conference of 1995 recognized certain critical issues that needed immediate attention around the world.

**The issues were:**

1. Poverty
2. Education
3. Health
4. Violence
5. Armed and other conflicts
6. Economic participation
7. Power sharing and decision making
8. National and international machineries
9. Human rights
10. Mass media
11. Environment and development
12. The girl child

Similarly the United Nations Millenium Declaration, 2000 recognized certain principles of human dignity that should be recognized collectively by all the states.

**These principles of dignity were:**

1. Freedom
2. Equality
3. Solidarity
4. Tolerance
5. Respect for nature
6. Shared responsibility

The constitution of India envisages the concept of ensuring political, social and economic justice to its women for which it has incorporated various provisions. Political rights has been ensured to the women by incorporating the concept of equality. However, despite the fact that women have actively participated in the freedom struggle of the country yet their

representation in the constituent assembly was meager. There were only seven women members in the assembly which too later decreased. In order to encourage women participation and to effectively implement their political rights a demand to grant thirty three percent reservations to the women was demanded in Lok Sabha and Vidhan Sabha. Consequently this led to the insertion of 73<sup>rd</sup> and 74<sup>th</sup> Amendments in the Constitution of India thereby reserving seats for women in gram panchayats and municipal bodies. It was believed that these enabling provisions in the constitution would held women defy the age old evils of illtracy, discrimination, political illiteracy and economic dependency and give them a wider avenue to consider their rights and participation in one of the largest democracy of the world.

Most of the times economic dependency is a major factor for gender suppression. It is because of this attitude that the girl child and women have always been considered as liabilities on families. These attitudes give rise to other evils which stem from these behavioral patterns which are dowry and domestic violence. Therefore it was imperative for a state to establish and guarantee economic rights to its women which would then serve for much gender oriented crimes in matters of employment. These can be said to be some humble efforts go grant economic independence to the women in India.

The last and the most important justice that needs to be granted to women in social justice but in order to guarantee this to the women what is more needed than legislations is a radical change in the behavioral patterns of the people who constitute the society. Penal consequences of crimes have never guaranteed a lower crime rate of gender oriented crimes but rehabilitation, psychological and behavioral patterns support mechanism, counseling at grassroots levels are some effective measures through which the position of women can be altered for better.

Laws and amendments in turn have not been able to guarantee a safe environment to the women neither have they been successful in curbing the crime. Rather we have seen a drastic rise in heinous crimes against women. This is clearly suggestive in nature that an all-inclusive policy oriented development is the need of the hour because it is a collective responsibility and not only about an individual.

**REFERENCES**

1. Valsamma Paul v. Cohin University (1996) 3 SCC 545
2. (1979) 4 SCC 260
3. AIR 1999 SC 1149
4. Air India v. Nargesh Meerza, AIR 1981 SC 1829.