

Constitutional Rights of Women in India

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Article Info

Volume 82

Page Number: 435 - 442

Publication Issue:

January-February 2020

Abstract:

In Indian patriarchal society violence against women is a common phenomenon. In spite of women contribution in all spheres of life, they are the most deprived group in Indian society. In fact, women constantly suffer from discrimination in all areas of her life before and after coming on this earth. In recent years there has been an alarming increase of dowry deaths, sexual violence, domestic violence and harassment of women etc. which reveals a large scale societal breakdown. It has been estimated that more than ten million married women undergo from pain and serious injury from their husband and in-laws every year in India. Numerous laws have been enacted by the legislature but the position of women in society remains unchanged. Thus, in this paper, an elaborate discussion is made to understand the constitutional protection and responses to prevent violence against women.

After independence, India has taken the responsibility to make laws for the protection of women. The Constitution makers while drafting the Constitution were sensitive to the problems faced by women and made special provisions for them. The Constitution provided equal rights of men and women and also entrusted the duty upon the state to adopt measures of positive discrimination in favour of women. As a result, in India various central as well as state laws, development policies and Plans and programmes have been formulated for development of women in every sphere.

Objective:

Constitutional protection and responses to prevent violence against women in India.

Key words: Constitution, Protection, Violence, Women, Rights

Article History

Article Received: 14 March 2019

Revised: 27 May 2019

Accepted: 16 October 2019

Publication: 02 January 2020

1. Introduction

In Indian patriarchal society violence against women is a common phenomenon. In spite of women contribution in all spheres of life, they are the most deprived group in Indian society. In fact, women constantly suffer from discrimination in all areas of her life before and after coming on this earth. In recent years there has been an alarming increase of dowry deaths, sexual violence, domestic violence and harassment of women etc. which reveals a large scale societal breakdown. It has been estimated that more than ten million married women undergo from pain and serious injury from their husband and in-laws every year in India. Numerous laws have been enacted by the

legislature but the position of women in society remains unchanged. Thus, in this paper, an elaborate discussion is made to understand the constitutional protection and responses to prevent violence against women.

After independence, India has taken the responsibility to make laws for the protection of women. The Constitution makers while drafting the Constitution were sensitive to the problems faced by women and made special provisions for them. The Constitution provided equal rights of men and women and also entrusted the duty upon the state to adopt measures of positive discrimination in favour of women. As a result, in India various central as well as state laws,

development policies and Plans and programmes have been formulated for development of women in every sphere.

The constitution of India guarantees to all citizens equality before law and the equal protection of the law within the territory of India. The basic principle is that all men and women are equal before the law therefore law protect them all. Under Article 15(1) of the Constitution prohibits the State from making discrimination against any citizen on the ground of religion, race, caste, sex, place of birth or any of them. In *Anjali Ray vs. State of West Bengal*, the court held that Article 15(3) enables the state to make special provisions favouring women, it cannot be interpreted in a manner so that it denies the right already guaranteed to them under Article 15(1). Secondly, Article 15(1) discrimination only against women will be unconstitutional. Thirdly Article 15(1) be read as supplementary to Article 14, hence, it cannot deviate from the Principal guarantee Keeping this in view a number of laws have been enacted relating to prohibition of female infanticide, dowry, exposure of women in advertisement, female child marriage, atrocities and molestation, abduction and rape, maternity benefits, medical termination of pregnancy, prohibition of prostitution and trafficking in women, protection in employment etc. Even the courts in India have served as a stimulus for the Indian legislation to enact new laws or bring changes in the existing legislation with a view to afford better and effective protection to the women. Even the Supreme Court has exhibited a welcome judicial activism in recognizing, popularizing and enforcing these rights. In this reference some cases like the *Vishaka and Others vs. the State of Rajasthan and Others case*, the *Anjali Ray vs. State of West Bengal case*, the *C.B.Muthamma vs. Union of India case*, the *Bandhua Mukti Morcha v. Union of India case*, the *Chairman, Railway Board vs. Chandrima Das case*, the *Delhi Domestic Working Women's Forum vs. Union of India cases* are noteworthy.

Here we discusses about Article 16, 23, 24, 37, 39, 40, 44, 51-A (e) which also provides safeguard to women and children. Besides these constitutional provisions other provisions have been made under various legislations. Several commissions have been set up by the government to look into the matters of status of women in the Indian society like the National Commission for Women Act, 1990, the Protection of Human Rights Act, 1993 etc. It is crystal clear that the Constitution of India provides DPSP which are fundamental in the governance of the state. These provisions provide special favour to women and direct the state to treat male and female equally. But unfortunately, today besides these provisions and special enactment, in the country like India, women are subjected to all kinds of discrimination and humiliation. It is now the right time to give proper consideration to these issues and the law relating to them needs second look, so as to implement these provisions for the proper upliftment of women in the country like India.

Women Protection under Constitutional Law: The Indian constitution is a basic document which provide for equal rights and opportunities irrespective of their sex, community or place of birth. 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 guarantees equality to women, but also empowers the State to adopt measures for overall development of women. The constitution contains many provisions for women.

Preamble: The Preamble contains the essence of the Constitution and ensures the principles of quality for all. The Preamble starts with "We, the people of India", which reflects that the source of our Constitution is the people, both men and women of India. The Preamble contains the goal of Equality, Liberty, Justice and Fraternity to all

citizens irrespective of sex, caste, class and place of residence. These goals have been incorporated to give equal rights to women and men in terms of status as well as opportunity.

The Fundamental Rights: Fundamental Rights guaranteed under Part-III of the Indian constitution ensures Justice for all the citizens irrespective of sex. There are six groups of fundamental rights which are available to every citizen of India irrespective of caste, class, race, religion and gender. In this study we are concerned only with the question of gender. *Justice Bhagwati* stated “These fundamental rights represent the basic values cherished by the people of this country (India) since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent”.¹

Article 14:Article 14 expressly states that there shall be equal protection of the law and equality before the law.² That is to say that whenever a woman approaches a law enforcement officer or the judicial court then she should receive the same protection as any man. None of the laws make a distinction between who commits a crime and against whom. If a stranger beats up a woman or her husband beats her up neither the Constitution nor the law make a distinction. Under the Indian Penal Code it is still a crime when the husband of a woman beats her up, injures or harms her in any way. When the Constitution guarantees equal protection of the law it simply means that when she approaches a police station to register her complaint the officer on duty has to record it as he would if a wealthy man from the upper caste were to come of the police station to register a first information report (FIR) against a stranger who had caused him physical harm or injury. This is what is meant by equal protection of the law and

equality before the law. There cannot be a different standard of justice or even denial of justice on the basis of the gender of the complainant. This right to equality is the touchstone against which all the laws and practices in India have to tested. Any law or practice which is not in consonance with this provision of the Constitution can be challenged in a court of law as it would be unconstitutional and violation of a Fundamental Right guaranteed by the Constitution of India.³ The Supreme Court in the case of *G. Dasaratha Rama Rao*, Stated that Article 14 is available to all, irrespective of whether the person claiming it is a citizen or not.⁴

Article 15:Article 15 guarantees the right against discrimination.⁵ Reading the Right to Equality with this right will necessitate the striking down of any law or practice that is discriminatory in character. This is the context in which the *Vishaka and Others vs. the State of Rajasthan and Others (1997) case* is noteworthy. The Supreme Court declared the offence of sexual harassment at the workplace as violation of the Right to Equality and Right against Discrimination.⁶

Article 15 (3): Nothing in this article shall prevent the State from making any special provision for women and children.⁷ However, in spite of the right to equality and the right against discrimination the members of the constituent assembly thought it necessary to provide for special protection for women in Article 15(3) of the Constitution. They realized that a mere formal equality and right against discrimination guaranteed in the Constitution would not

³Internet Source:

http://www.lawyersclubindia.com/profile.asp?member_id=4450/ Eveenzar, A review of Gender Justice since Independence, 28th February, 2008

⁴*G. Dasaratha Rama Rao vs. State of Andhra Pradesh*, AIR 1961 SC 564

⁵Article 15, Constitution of India

⁶*Vishaka and Others vs. the State of Rajasthan and Others*, AIR, 1987, SC, 656 at Pp. (658-659)

⁷Article 15, Constitution of India

¹*Maneka Gandhi vs Union of India*, AIR 1978, S.C.597

²Article 14, Constitution of India

safeguard the women from being exploited and treated unequally. The members were sagacious enough to realize that thousands of years of discrimination and subordination of women will not be ended by the mere guaranteeing of equality in the Constitution and therefore they inserted this article so that the State would be given the space to make laws, policies and programmes for the enhancement of the status of women and enable them to access their rights under the Constitution. It is in this context that the 74th amendment which provided for reservation for women in the Panchayats was made possible. By such a protection it enables women who desire to stand for elections and participate in the decision making processes to do so. This was made possible by a Constitutional provision itself.⁸

Whenever controversy arises our government and judiciary come to help women by upholding the validity of special measures under Article 15(3) of the Indian constitution. Supreme Court stated that the power of state under Article 15(3) is wide enough to include the entire range of state activity. Consequently, the state has introduced provision for reserving 1/3rd seats for women in public employment, in administration to educational institutions and the legislatures at least at the local self Government level, among other schemes for their benefit. However, the power conferred upon the state under Article 15(3) cannot be whittled down in any manner by Article 16. However, Supreme Court further stated that since Article 15(1) and 15(3) go together, the protection of Articles 15(3) would be applicable to employment under the state falling under Articles 16(1) and 16(2) of the constitution.⁹ In *Anjali Ray vs. State of West Bengal*, the court held that Article 15(3) enables the state to make special provisions

favouring women, it cannot be interpreted in a manner so that it denies the right already guaranteed to them under Article 15(1). Secondly, Article 15(1) discrimination only against women will be unconstitutional. Thirdly Article 15(1) be read as supplementary to Article 14, hence, it cannot deviate from the Principal guarantee.¹⁰

Article 16: Article 16(1) provides equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16(2) provides specific grounds on which citizens are not to be discriminated against each other in matter of opportunity and office under the State. These are religion, race, caste, sex, decent, place of birth and residence or any of them. In this Article discrimination on the basis of sex has been specifically prohibited under the Constitution. Basic reason behind this is to bring the women at par with men. In the case of *C.B.Muthamma vs. Union of India*,¹¹ Justice Krishna Iyer observed that we do not mean to universalize or dogmatize that men and women are equal in all occupation an all situation and do not exclude the need to pragmatise where the requirements of particular employment, the sensitive's of sex or the handicaps of either sex may compel selectivity, but save where the difference in demonstrable, the rule of equality must govern.¹² In case of *Air India v. Nargesh Meerza*¹³ the Supreme Court struck down the Air-India Regulations relating to retirement and the pregnancy bar on the services of Air-hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary. The impugned Regulation 46 provided that an air hostess would retire from the service of the corporation upon attaining the age of 35 years or on marriage, if it took place within 4 years of service, or on first pregnancy, whichever occurred earlier. Under

⁸Internet Source:

http://www.lawyersclubindia.com/profile.asp?member_id=4450/ Evenzar, A review of Gender Justice since Indipendence, 28th February, 2008

⁹A.P. vs. P.B. Vijoy Kumar AIR1995,S.C.1648

¹⁰Anjali Ray vs. State of West Bengal, AIR1952 CAL.825

¹¹C.B.Muthamma vs. Union of India, AIR 1979 S.C. 1868

¹²*ibid*

¹³Air India v. Nargesh Meerza, AIR, 1981 4 S.C 335

Regulation 7, the Managing Director was vested with absolute discretion to extend the age of retirement prescribed at 45 years. Both these regulations were struck down as violative of Article 14, which prohibits unreasonableness and arbitrariness.

Article 19: Article 19 guarantees the freedom of speech and expression, to assemble peaceably and without arms, to form associations and unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to practice any profession, or to carry on any occupation, trade or business.¹⁴ This civil right is essential for functioning as a human being in a democratic society. It has been considered as one of the most essential rights along with the Right to Equality. In the context of domestic violence and sexual harassment at the workplace this Fundamental Right of women is most often than not violated. Women are forced to change their jobs or seek transfers on account of Sexual Harassment. Married women subjected to domestic violence find that while the Constitution guarantees them the right to freely move throughout the territory of India their husbands and families don't recognize this right.

Article 21: The right to life is guaranteed under Article 21 of the Constitution of India. It includes everything which makes a human being's life meaningful. This article clearly stated that No person shall be deprived of his life or personal liberty except according to procedure established by law. The Supreme Court in the case of *Sunil Batra* declared that 'right to live' includes the right to live consistently with human dignity.¹⁵ In *Kharak Singh case*, Supreme Court of India held that the word life means right to live with human dignity.¹⁶ The Supreme Court has in its interpretation widened the scope of this right by

stating that the Right to Life means the right to live with dignity in the *Bandhua Mukti Morcha v. Union of India (1984)* case.¹⁷ In *Francis Mullin* case, Supreme Court of India explained. 'Right to life' includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms freely moving about, mixing and co-mingling with fellow human beings.¹⁸ In *Chairman, Railway Board vs. Chandrima Das case*, the Supreme Court awarded compensation of ten lacs to an alien woman under Article 21 of the Constitution who has been a victim of rape.¹⁹

Article 23: This Article guarantees the prohibition of traffic in human beings and forced labour-(1) Traffic in human beings and beggars and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law;²⁰ In *Gaurav Jain v. Union of India* case the condition of prostitutes in general and the plight of their children in particular was highlighted. The Court issued directions for a multi-pronged approach and mixing the children of prostitutes with other children instead of making separate provisions for them. The Supreme Court issued directions for the prevention of induction of women in various forms of prostitution. It said that women should be viewed more as victims of adverse socio-economic circumstances than offenders in our society.²¹

Article 24: Article 24 lays down the prohibition of employment of children in factories. It states that

¹⁷ *Bandhua Mukti Morcha vs. Union of India*, AIR 1984, SC 1676

¹⁸ *Francis Mullin vs. Union Territory of Delhi*, AIR 1979, SC 746

¹⁹ *Chairman, Railway Board vs. Chandrima Das*, AIR 200 SC 988

²⁰ Article 23, Constitution of India

²¹ *Gaurav Jain v. Union of India*, 1997 (8) SCC 114

¹⁴ Article 19, Constitution of India

¹⁵ *Sunil Batra vs. Delhi Administration*, AIR, 1978, SC 1575

¹⁶ *Kharak Singh vs. State of U.P.*, AIR, 1963, S.C. 1295.

no child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment;²² The Constitution of India strictly prohibits the employment of children below the age of 14 years. The provision under Mines Act, 1952 or the Factories Act, 1948 prohibits the employment of female child below the age of 14 years as well.

Under this article 23 and 24 lays down the fact that the founding fathers were concerned not only to ameliorate the condition of this lot in totality. In pursuance of the above objective, the State has enacted the Prevention of immoral Traffic in Women and Girls Act, 1986.²³ Even the Supreme Court in the case of *Bandhua Mukti Morcha vs. Union of India*, observed that the Central government is bound to ensure observance of various social welfare and labour laws enacted by the Parliament for the purpose of seeking to the workmen a life of basic human dignity in compliance with the Directive Principles of State Policy.²⁴

Article 32: However, the most important of all the Fundamental Rights is the Right to Constitutional Remedies in Article 32. This right guarantees the enforcement of the Rights enumerated in Part III of the Constitution as Fundamental Rights by providing for the right to move the Supreme Court or the High Court through a Writ Petition for enforcement of any one of the Fundamental Rights. The Supreme Court has further strengthened this right through the *Bandhu Mukti Morcha v. Union of India* case by stating that the Court can allow any member of the public acting bona fide to espouse the cause of persons who on account of their poverty or disability are unable to do so.²⁵

Thus it is not only that the Constitution has guaranteed various rights to women as citizens of India so as to protect their interests as human beings and individuals but the Judiciary in the course of its functioning as another wing of our Government has interpreted the Constitutional provisions so as to enable the implementation of the rights and also to facilitate the access to these rights in various cases that have come before it in the form of writ petitions filed by individual s or groups.

Directive principle of State Policy - In addition to the Fundamental Rights various other provisions of the Constitution in Part IV that deals with the Directive Principles provide directions to the State in formulating policies and programmes in the interest of women. However Directive Principles of State Policy are not enforceable in any court of law they are essential in the governance of the country and provide for the welfare of the people, including women. Some of these would be useful to consider here.

Article 38: It requires the State to secure a social order in which justice - social, economic and political - for the promotion of welfare of the people. It requires the State to strive to eliminate inequalities in status, facilities and opportunities. Clearly the intention of the makers of the Constitution was to ensure that equality would not be only of opportunity but in reality. The Supreme Court in *Delhi Domestic Working Women's Forum vs. Union of India* suggested the formulation of the scheme for awarding compensation to rape victims. The court suggested the setting up of a Criminal Inquiries Compensation Board under Article 38(1) of the Constitution.²⁶

Article 39: Article 39 puts down the principles of policy to be followed by the State which include

²²*ibid*²³Earlier to this legislation it was known as the Suppression of Immoral traffic in Women and Girls Act, 1956, SITA,²⁴*Bandhua Mukti Morcha v. Union of India*, AIR 1984, SC 802²⁵*ibid*

²⁶*Delhi Domestic Working Women's Forum vs. Union of India*, AIR 200 S.C 1697

that the State should direct its policy toward securing the right to an adequate means of livelihood, that there is equal pay for equal work, that the health and strength of workers men and women, are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. The Supreme Court said that the principle of “Equal pay for equal work though not a fundamental right is certainly a constitutional goal and therefore, capable of enforcement through constitutional remedies under Article 32 of the constitution”.²⁷ It directs the state to protect the health and strength of workers men and women.

Article 42: The State shall make provision for securing just and humane conditions of work and for maternity relief. Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity relief. The State has implemented this directive by incorporating health provisions in the Factories Act, Maternity Benefit Act, Beedi and Cigar Workers (Conditions of Employment) Act, etc.

Article 44: The State is to endeavour to secure for all citizens a uniform civil code. Its particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce a Uniform Civil Code in India, the judiciary has recognised the necessity of uniformity in the application of civil laws relating to marriage, succession, adoption, divorce, maintenance, etc. but as it is only a directive it cannot be enforced in a court of law. But, unfortunately the state has not yet made any efforts to introduce Uniform civil code in India. Our Judiciary has already recognized the importance of uniform civil laws in several cases. In *SaralaMudgal case, 192S.C.* directed the central Govt. 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.²⁸

Fundamental Duties

Parts IV-A which consist of only one Article 51-A was added to the constitution by the 42nd Amendment, 1976. This Article for the first time specifies a code of eleven fundamental duties for citizens. Article 51-A (e) is related to women. It states that, “It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religion, linguistic, regional or sectional diversities; to renounce practices derogatory to the dignity of women”

Article 51(c): The State is to respect international law and treaty obligations. The Government of India and the State Governments are obligated to the commitments contained under the Convention on the Rights of the Child.

Article 243 D (3): Under this article 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 T (3): 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.

²⁷Randhir Singh vs Union of India, AIR 1982, SC 879

²⁸SaralaMudgalvs Union of India,1995, 3 SCC 635

Conclusion: By providing all these privileges to women is not the only solution of the discrimination and exploitation against women, but also all forms of gender based discrimination should be avoided. The effective implementation of the provisions of the constitution at all levels can be an enormous action towards the all round development of women. In the words of Kofi Annan²⁹, "Gender equality is more than a goal in itself. It is a precondition for meeting the challenge of reducing poverty, promoting sustainable development and building good governance."³⁰

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²⁹ seventh Secretary-General of the United Nations, from 1 January 1997 to 31 December 2006

³⁰ Internet Source: <http://ezinearticles.com/Women-Empowerment---Myth-Or-Reality>