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RIGHT'S OF WOMEN WITH SPECIAL REFERENCE TO THE CONSTITUTION OF INDIA

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Abstract:

Woman enjoys a unique position in every society and country of the world. Despite their contribution in all spheres of life, they suffer in silence and form a class which is in a disadvantaged position because of several barriers and impediments. No doubt India is paradox country. In ancient history women were considered an epitome of Shakti. But still every time violation of women's fundamental rights are observed. However equality and empowerment are based on gender sensitization of society towards their problem. Gender equality has mostly emphasized through constitution of India under its different provisions. In our country the constitutional makers while drafting the constitution were sensitive to the problems faced by women and made specific provision relating to women and their upliftment.

Therefore the author through this paper wants to emphasize on the constitutional provisions and landmark judicial pronouncement relating to protection of women's rights and their protection.

Keywords: *Historical Background, Discrimination against women, other provisions under the Indian constitution, judicial pronouncement.*

Introduction:

A constitution means a document having a special legal sanctity which set the framework and the principal functions of organs of the government of state and declares the principles governing the operation of those organs. Constitution is one of the youngest basic legal document and also the largest. In India, male domination with complementary suppression of women has been continuing since pre-historic times. There has been discrimination between the male and female child between men and women. So the framers of the constitution were well conscious of the discrimination and unequal treatment meted out to the Fairer sex from time immemorial. They included certain general as well as specific provisions for upliftment of status of women. They provided equality of status and

of opportunities explicitly at some places and implicitly in all other places on par with men as citizen of India.

Though the Indian constitution provides equality of status and of opportunity two women, discrimination is persisting in one form or the other. Discrimination against women continues to exist even today as it is so deep rooted in the tradition of Indian society. Therefore in this chapter of woman and constitution of India author described in detail provisions of Indian constitution deals with fundamental right and protective freedom of women in India.

Historical background regarding women in India:

Women enjoy a unique position in every society and country of the world. Despite their contribution in all spheres of life, they suffer in silence and form a class which is in a disadvantaged position because of several barriers and impediments. India, being a country of paradoxes, is no exception. Here too women, an epitome of *Shakti*, once given exalted status, are in need of empowerment-legal, social, political and economic. However, empowerment and equality are based on the gender sensitivity of society towards their problem.¹

In historical era women are considered as goods and chattels. They are considered as objects of sense of gratification. The history of suppression of women in India is very long. *Justice K. Ramaswamy* in *MadhuKishwar v. State of Bihar*² rightly stated that, Indian woman “*have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequalities, dignities, inequality and discrimination*”.

It is most pertinent to note here that, our Indian constitution provides protection to women enlightened of different provision so as to empower the woman and give them equal status with men in this patriarchal society. So, under this chapter author is going to highlight different provisions of Indian constitution which protect the rights of women in India by protecting their fundamental rights.

Constitutional provisions Relates women:

1. Preamble:

The preamble starts by saying that we, the people of India, give ourselves the constitution. The source of the constitution is thus traced to the people i.e. men and women of India, irrespective of caste, community, religion or sex.

The framers of the constitution were not satisfied with mere territorial unity and integrity. If the unity is to be lasting, it should be based on social, economic and political justice. Such justice should be equal for all. The preamble contained the goal of equality of status and opportunity to all citizens. This particular goal has been incorporated to give equal rights to women and men in terms of status as well as opportunity.³

2. Fundamental rights and women:

Part-III of Indian constitution consisting article 12 to 35, relating to the fundamental rights, is the heart of the constitution. The fundamental rights are regarded as fundamental because they are most essential for the attainment by the individual or his full intellectual, moral and spiritual status.⁴

Human rights, which are the entitlement of every man, woman and child because they are human beings, have been made enforceable as constitutional or fundamental rights in India. *Justice bhagwati* in *Maneka Gandhi v. union of India*⁵ rightly stated that, “these fundamental rights represent the basic values cherished by the people of this country since the vedic time and they are calculated to protect the dignity of the individual and create condition in which every human being can develop his personality to the fullest extent”.

i. Principle of equality and women:

a. Article 14 - equality before law-

The state shall not deny to any person equality before the law or equal protection of the law within the territory of India.

b. Article-15 - prohibition of discrimination against women-

This article speaks about prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth.

Further article 15 clearly stated that;

1. The state shall not discriminate against any citizen on the ground only of religion, race, caste, sex, and place of birth or any of them.
2. No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them be subject to any disability, liability, restriction or condition with regards to
 - a. Access to shop, public restaurants, hotels and places of public entertainment or
 - b. The use of wells, tanks, bathing Ghats, roads or places of public resort maintained wholly or partly out of state funds or dedicated to use of general public.
3. Nothing in this article shall prevent state from making any provision for women and children.

Thus Article 15(1) prohibits gender discrimination and Article 15(3) lifts that rigor and permits the state to positively discriminate in favor of women to make special provision to ameliorate their social condition and provides political, economic and social justice.⁶

c. Article -16- Equal opportunities for all and prohibit discrimination against women

This article provides equal opportunity for women implicitly as they are applicable to all persons irrespective of sex. However the court realized that these articles reflect only *de Jure* equality to women. They have not been able to accelerated *de facto* equality to the extent the constitution intended. Therefore in case of *Dimple Singla v. Union of India*⁷ the Delhi High Court expressed its apprehension that unless attitudes changed, elimination of discrimination against women cannot be

achieved. There is still a considerable gap between constitutional rights and their application in the day to day life of most women.

In another case of *Air India v. Nargesh Mirza*⁸ the Air Hostess is approached to the Supreme Court against discriminatory service conditions in the regulation of Air India. Air Hostess is contended that, the regulations provided that an air Hostess could not get married before completing four years of service. If she gets married earlier, she had to resign. Further though she married she continued as a married woman but had to resign on becoming pregnant. If she has not married and not pregnant then she continued to serve until she reached 35 age of year. In this case the Supreme Court struck down the regulation relating to retirement and pregnancy bar on the services by declaring it as unconstitutional and entirely unreasonable and arbitrary.

d. Right to marry of choice

According to law there is a freedom to marry a person of ones choice. Local religion or Panchayat expressed their opinion to the contrary. In the case of *Lata Singh v. State of UP*⁹ court rightly stated that there is no bar to inter-caste marriage under the Hindu Marriage Act, 1955 or any other laws. The court further directed that if it found that, the relative of any person restraint that person who is major and wants to marry any another person by using physical force, if it found so criminal proceeding can be initiated against such person, as provided by law.

e. Right to livelihood

In the famous case of bar girls, i.e. *Indian Hotel and Restaurant v. State of Maharashtra*¹⁰ which has been decided by Bombay High Court and on the judgment the Apex court opined in the present case that the restriction in the nature of prohibition can be said to be reasonable in as much as there could be several alternatives available which would have been adequate to ensure the safety of women than to completely prohibit dance. It is not possible to read down the expression “any kind or type” of dance to means dances which are obscene and derogatory to the dignity of women. The closure of dance bar establishment led to unemployment of over 75,000 women workers who have been compelled to take up prostitution out of necessity for maintenance of their families. Therefore further the court held that, the impugned legislation proved to be totally counterproductive and ultra-virus of article 19 (1) (g) of the constitution of India.

f. Right to live with dignity:

Gender equality became elusive in the absence of right to live with dignity.

In case of *Surjit Singh Thind v. Kanwaljit Kaur*¹¹ and the *Zahida Begum v. Mushtaque Ahamed*¹² the court has rightly stated that to test the virginity of wife is invalid and unconstitutional which is violation of article 21 of Indian constitution.

In another case *State of Maharashtra v. MadhukarNaryanMardikar* the Supreme Court rightly stated with reference to rape, that unchastely of woman does not make her open to any and every

person to violate her person as and when he wishes even a prostitute has a right to privacy under Article 21 of Indian Constitution and no person can rape her just because she is a woman of easy virtue.

g. Prohibition of Sexual Harassment at workplace:

In case of *vishaka v. state of Rajasthan*¹³ the Supreme Court stated that, in the absence of legislation in the field of sexual harassment of working women at their place of work formulated guidelines for their protection and afterward in every working place the state government issued guidelines and directions for creation of committee related to sexual harassment of women at workplace with name “vishaka Committee”.

h. Right against exploitation:

Article 23 of the constitution specifically prohibits traffic in human being. Trafficking in human being has been prevalent in India for a long time in the form of prostitution and selling and purchasing of human being. This includes the *Devdasi* system prevalent in Andhra Pradesh. To give meaning to article 23, various laws have been passed to prevent exploitation of women being in varied form such as the Immoral Traffic (Prevention) Act, 1956 and Andhra Pradesh Devdasis (prohibition of dedication) Act, 1988. In this regard *satya Pal Anand v. State of MP*¹⁴ The victim was a school going girls belongs to poor families, were gang raped by 16 person and the compensation awarded rupees 2 Lac too each girl. Here in this case the Supreme Court has rightly stated that, the compensation awarded to the victims was too low and grossly inadequate and the court in the instant case enhanced the compensation to 10 Lac rupees each by the state.

3. Directive principles of state policy:

Fundamental rights cater to individual rights while the directive principles of state policy cater to social needs. These provisions are contained in part fourth of the constitution. Though these provisions are not enforceable in any court they are fundamental in governance of the countries and provide for the welfare of the people including women. Following are some provisions of Directive Principles State Policy deals with protection and promotion of women’s Rights:

Article- 39(a)- Direct the state to directly policy towards securing that citizen, men and women, equally have the right to an adequate means of livelihood.

Article-39(d)- Direct the state to secure equal pay for equal work for both men and women.

Article- 39(e)- Specifically direct the state not to abuse the health and strength of workers from a man and woman.

Article- 42 -Direct the state to make provisions for securing just and human condition of work and for the maternity relief.

Article- 40- Stated that the state shall take steps to organize village panchayath and ensure them with such power and authority as may be necessary to enable them to function as unity of self-

Government.

4. Fundamental Duties:

Part IV-A of the constitution relates to fundamental duties in **Article 51-A** was added to the constitution by the constitution 42nd Amendment Act, 1976. Which has been stated 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 religious, linguistic and original or sectional diversities; to renounce practice is derogatory to the dignity of women.

In **Article- 243D** of the constitution provides that the office of chairperson in the *Panchayath* at the village or any other level shall be reserved for SCs and STs Woman in such a manner as the legislature of the state may, by law, provide.

So far as municipalities reservation of seats concern **Article 253T** of the Indian constitution specifically mentioned that not less than 1/3 of the total number of the seat reserved under clause one shall be reserved for women belonging to SCs and STs Woman.

So in this way we have studied in this chapter different provisions of Indian constitution which have specifically mentioned about upliftment and empowerment of women.

Conclusion:

On the basis of above points here the author conclude the chapter that, our Indian constitution is considered to be the largest constitution in the world and through this constitution and our framers of the constitution tried their level best to give justice to the woman by providing equality of status and equal opportunity in every sector of life. In this patriarchal society the provisions of Indian constitution works like a Ray of light for the woman to give equal status to them with man in society but still the crime against women is going to be rampant in our so called modern society. If we want to stop it or to remove it from our society we have to change first of all our mindset and our thinking towards women and strictly implement the provisions of the Indian constitution then definitely in future we will succeed to really empower our woman throughout in the world.

Reference:

1. Mamta Rao, *Law Relating to Women and Children*, EBC Publication, 4th Ed., p. 65
2. (1996) 5 SCC 148
3. S. Alladi Khuppuswami, *The Constitution: What it means to the People*, (Gogia And Company) Hyderabad Publication 2000
4. Dr. S. R. Myneni, *Women & Law*, Ashia Law House Publication, ed. 2002, p. 15
5. (1978) 1 SCC 248
6. Mamta Rao, *Law Relating to Women and Children*, EBC Publication, 4th Ed., p. 68
7. (2002) 2 SLJ 161
8. (1981) 4 SCC 335

9. (2006)5 SCC475
10. (2006)3 Bom CR 705
11. AIR 2003 P&H 353
12. AIR 2006 Kar. 10
13. (1997) 6 SCC 241
14. (2014) 4 SCC 800

