



RIGHTS OF WOMEN-A CONCEPTUAL FRAMEWORK

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Abstract: *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 (CEDAW) in 1993.*

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THE VARIOUS CONSTITUTIONAL PRIVILEGES CAN BE STATED AS FOLLOWS:

Government cannot segregate people on the basis of colour, creed, race and others. All are equal before the eyes of law be it a guy or a gal. And this should not be an accounting factor when we consider persons for employment. Another problem we see now is men getting paid higher salary compared to women. This is a crime punishable by law. There should be no discrimination in the salary paid. Further in case of the jobs there should be provision for taking leave during marriage and maternity which is guaranteed by our law. Further the government has been diligently working to protect the rights of women against eve teasing and to protect their dignity by promoting brother hood. The recent example included the Delhi gang rape. It may seem an epic fail of Women's rights but if we look closely you can see the entire nation gathering under one roof and shouting their lungs out for a single girl, the daughter of the nation. And as stated above the seat allocation (including scheduled castes and tribes) in Panchayats serves as a reminder of changing tides in the favor of women.

The crimes committed against women vary to a large extent and enclose several subjects like murder, rape, robbery, cheating, dowry, bride burning, and female infanticide. So starting from the day a doctor confirms a baby girl in the mother's womb till the day she dies there are varieties of problems that need to be tackled by women. These crimes are broadly classified under two categories.

- The crimes listed under IPC
- The crimes under special laws

If the principle of gender equality is enshrined in the Indian Constitution, then why are Indian women treated as second citizens in their own country? The Constitution officially grants equality to women and also empowers the State to adopt measures of positive discrimination in favour of women. However, the varied forms of discrimination that women in India are subject to are far from positive.

It is claimed that from the Fifth Five Year Plan (1974-78) onwards, there has been a marked shift in the approach to women's issues from welfare to development. Where is the development? Yes, the status of the urban woman has shown some improvement but the changes in their lifestyle were not coupled by changes in the general mindset of the people in our patriarchal society. Thus, some laws should have been framed for the protection of



the newly emancipated and urbanized Indian women. What is the percentage of urban women in India, anyway? What about the rest? These privileged few would have prospered with or without the laws. Has there been any significant change in the status of rural women after the Fifth Five Year Plan?

The National Commission for Women was set up by an Act of Parliament in 1990 to safeguard the rights and legal entitlements of women. "The 73rd and 74th Amendments (1993) to the Constitution of India have provided for reservation of seats in the local bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision making at the local levels." These reserved seats often go unoccupied or are taken up by male candidates because women rarely contest for such seats. Why? The mere existence of laws cannot automatically bring about a revolutionary change in the society. In a country where women have no control over their own lives and do not even have the decision-making power in their own household, do you think they will be encouraged to join local governing bodies?

In India gender disparity is found everywhere. The declining ratio of the female population, in the last few decades is a proof of this. The stereotypical image of a woman haunts her everywhere. Domestic violence is commonplace. The underlying causes of gender inequality are related to the socio-economic framework of India. As a result, the women belonging to the weaker sections of the society i.e. the Scheduled Castes/Scheduled Tribes/ Other backward Classes and minorities, do not have easy access to education, health and other productive resources. Therefore, they remain largely marginalized, poor and socially isolated.

The following are some of the provisions made in favour of women, in our constitution:

Article 14 in the Indian Constitution ensures equality in political, economic and social spheres. Article 16 provides for equality of opportunities in matters of public appointment for all citizens. However, the ratio of women in Politics is far less as compared to men. How many women hold positions of power in government run institutions? Single women do not get jobs easily because the employers fear that they might get married and quit. They also find it hard to get rented accommodation whereas that is not the case with single men. Cricket is a religion in India. Is the government promoting cricket for women or any other form of team sport for women for that matter?



Article 15 prohibits discrimination against any citizen on the grounds of religion, race, caste, sex etc. There are certain places of worship in South India where women are not allowed entry. Advertisements of 'Fairness' creams are aired on television without any restrictions. It is shown in these ad-films that the 'brown' Indian woman can't get a job, can't find a man and is generally looked down upon by everyone but when she becomes fairer, the story changes.

Article 15 (3) of the Indian Constitution allows the State to make any special provision for women and children. Wife bashing is a favorite sport in India. Women are subject to physical and mental torture by their husbands and their families. Women and children are always under the control of the 'Male' head of the family. A child is identified by his father's name in this country. Whereas in western countries, the mother's name forms, the middle name, of a child.

Article 39(a) mentions that the State will direct its policies towards securing all citizens, men and women, the right to means of livelihood while Article 39 (c) ensures equal pay for equal work. When a male government employee is transferred from one place to another, is his wife given a new job in the new place? Her career goals are of little importance to anyone. She can be displaced and uprooted anytime! The daily wages of women labourers in India are lesser than that of male menial workers. Bollywood Actresses also get less money as compared their male counterparts.

Article 42 directs the State to ensure just and humane working conditions. More often than not, women are exploited by their bosses. It is believed that women who keep their bosses happy get promotions very easily in the Corporate world! What about the others? Male colleagues never fail to make passes at women. Women have to put up with their bawdy jokes, lascivious remarks and glares, all the time. The plight of women labourers at construction sites, tea and rubber plantations etc, cannot even be described.

The constitution imposes a fundamental duty on every citizen through Article 15 (A) (e) to renounce practices derogatory to the dignity of women. What is the government doing about eve-teasing? Can a woman spend an entire day on the streets of the National capital without getting a series of comments, derogatory to her dignity? Another law that protects women against a seemingly milder crime is Section 509 of the IPC. This law punishes individuals who have insulted the modesty of a woman. Offensive language, sounds,



gestures and intrusion of a woman's privacy are punishable under this law. Outraging the modesty of a woman is also punishable under Section 354 of the IPC. Under this law, an individual who has assaulted a woman, used criminal force on her or outraged her modesty in any other way can be punished with imprisonment of up to 2 years. In fact the people who are employed by the State to ensure that people don't flout any rules, the policemen, are the ones who have given consequence to many crimes against women. Policemen are often found mouthing obscenities, glaring and passing bawdy remarks on women, not only on the roads, but also inside the police station. Many of our honourable politicians are also involved in all manner of crimes against women.

Laws such as the Immoral Traffic (Prevention) Act, Sati Prevention Act, Dowry Prohibition Act and Indecent Representation of Women (Prevention) Act protect women from the more "traditional" crimes such as rape, abduction, dowry, torture, molestation, sexual harassment and selling of girls into slavery. However trafficking of women is still very common in this poverty-stricken country. Women from economically backward families are kidnapped and forced into prostitution. Incidents of women being charred to death after their husbands' death, have been reported recently. Giving and taking dowry is officially, a crime but the practice goes on. In fact, it is taken for granted that if you want to get your daughter married you should arrange for her dowry first, even when your daughter is educated and financially independent.

Female foeticide and infanticide are common practices in this country. If at all the girl is allowed to live, she is subject to all forms of torture in her own house. She is not allowed to go to school, instead she is forced to take up menial jobs and married off almost as soon as she enters teenage. People in rural areas fear that their daughters might be raped so it is better to get them married. Ironically, The Child Marriage Restraint Act specifies the cut-off age for marriage as 18 years, protecting women from child marriage. Women, be it urban or rural, face all forms of sexual harassment throughout their lives. So what is the use of these laws?

There are many women in India, who are caught in violent marriages. Owing to the social stigma attached to divorce, not many women have the courage to break free. Housewives account for 52% of the total female suicide cases in India. Section 306 of the IPC can punish



the suicide victim's husband with up to 10 years imprisonment if found guilty. How many such men have been punished till now?

Thus, there are a number of laws to protect women, but what is the use of having these laws when no one follows them? In fact, the people whose business it is, to enforce these laws are the ones who publicly flout them. Besides, not many women are conversant with law and few are aware of the rights and privileges accorded to them by the constitution. So they suffer all forms of discrimination, passively.

1. CONSTITUTIONAL PROVISIONS

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour 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

- (i) Equality before law for women (Article 14)
- (ii) 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))
- (iii) The State to make any special provision in favour of women and children (Article 15 (3))
- (iv) Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (Article 16)
- (v) 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))
- (vi) 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)



- (vii) The State to make provision for securing just and humane conditions of work and for maternity relief (Article 42)
- (viii) 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)
- (ix) The State to raise the level of nutrition and the standard of living of its people (Article 47)
- (x) 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))
- (xi) 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))
- (xii) 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))
- (ix) 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))
- (x) 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))

2. 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 working women.



Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc, the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. These are broadly classified under two categories.

(1) The Crimes Identified Under the Indian Penal Code (IPC)

- (i) Rape (Sec. 376 IPC)
- (ii) Kidnapping & Abduction for different purposes (Sec. 363-373)
- (iii) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- (iv) Torture, both mental and physical (Sec. 498-A IPC)
- (v) Molestation (Sec. 354 IPC)
- (vi) Sexual Harassment (Sec. 509 IPC)
- (vii) Importation of girls (up to 21 years of age)

(2) The Crimes identified under the Special Laws (SLL)

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

- (i) The Employees State Insurance Act, 1948
- (ii) The Plantation Labour Act, 1951
- (iii) The Family Courts Act, 1954
- (iv) The Special Marriage Act, 1954
- (v) The Hindu Marriage Act, 1955
- (vi) The Hindu Succession Act, 1956 with amendment in 2005
- (vii) Immoral Traffic (Prevention) Act, 1956
- (viii) The Maternity Benefit Act, 1961 (Amended in 1995)
- (ix) Dowry Prohibition Act, 1961
- (x) The Medical Termination of Pregnancy Act, 1971
- (xi) The Contract Labour (Regulation and Abolition) Act, 1976
- (xii) The Equal Remuneration Act, 1976
- (xiii) The Prohibition of Child Marriage Act, 2006
- (xiv) The Criminal Law (Amendment) Act, 1983
- (xv) The Factories (Amendment) Act, 1986



- (xvi) Indecent Representation of Women (Prohibition) Act, 1986
- (xvii) Commission of Sati (Prevention) Act, 1987
- (xviii) The Protection of Women from Domestic Violence Act, 2005

3. SPECIAL INITIATIVES FOR WOMEN

(i) National Commission for Women

In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

(ii) Reservation for Women in Local Self -Government

The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

The National Plan of Action for the Girl Child (1991-2000)

The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

(iv) National Policy for the Empowerment of Women, 2001

The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a "National Policy for the Empowerment of Women" in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

CONCLUSION-

A charter that aims to endow enshrine for women the Human Right guaranteed to them in the Constitution of the India and international Conventions such as Convention on the Elimination of All Forms of Discrimination (CEDAW) and the international Convention Civil and political Rights (ICCPR) and provide for justifiability of these numerous rights.

Every women and girl is entitled to the realization of all human rights-civil, political, economic, social and cultural-on equal terms with men, free from discrimination. Women and girls also enjoy certain human rights specifically linked to their status as women. The world has recognized that the human rights of women and of girl-child are "an Integral and



indivisible part of universal human right” Women are guaranteed equal treatment and freedom from discrimination.

The constitution of India officially grants equality to women and also empowers the state to adopt measures of affirmative action in favour of women due to the historical restrictions and marginalization on the basis of gender. The underlying causes of gender inequality are related to the socio-cultural and economic structure of India. Patriarchy is deeply entrenched in Indian society. As a result, women do not have easy access to education, health, employment and other integral resources. They remain largely marginalized, poor and socially isolated. Women belonging to the weaker sections of the society i.e. the Scheduled Castes/scheduled tribes/other backward classes and minorities are further discriminated against. Therefore, their lives are largely governed by the vicious cycle of poverty, violence and lack of access to basic services such as education and healthcare double or even triple disadvantages.

The constitution of India provides for women’s empowerment within the framework of the Preamble, Fundamental Duties and Directive principles. However, women subject to varied forms discrimination arising from their gender. It is claimed that from the Fifth Five Year Plan (1974-78) onwards there has been a marked shift in the approach to women’s issue from welfare to development. Today, the status of women has shown some progress but it has failed to bring about changes in the general mindset of the people in our patriarchal society.

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