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GENDER AND CONSTITUTIONAL RIGHTS

AUTHORED BY - SUBHAGYA SINGH

ABSTRACT

Indian women have been treated differently since time immemorial. Even after independence, women were discouraged from doing various things and were deemed as caretakers of the family. This sort of inequality prevailed despite so many goddesses being worshipped in the country. Even today although there is a vast improvement regarding gender equality in comparison to how it was before independence, the mindset of the society towards this is still lacking somewhere.

Inequality and discrimination lie in the mindset the people hold and the way they approach it. Gender inequality affects everyone, be it children, women, transgenders or even men. Gender equality is a human right but there seems to be a certain gap in access to various opportunities as well as the decision-making power for women and men. Women's empowerment is an important aspect of bringing gender equality. Giving equal opportunities to women and guaranteeing them their equal share of rights, helps in not only achieving gender equality but also in a wide range of development goals.

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 favour 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.

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)**)
- xiii. 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))**
- xiv. 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 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

In my opinion, even after so many years of getting independence, we as individuals have not truly gained independence from the mindset of patriarchy and still hold beliefs that women are not equal to men as men are the sole breadwinners of the family and all women do is to feed children and nurture home. I believe that to be able to create an egalitarian society, we have to work together and have to make a broad outline of what all needs to be done in order to be at par with men or male members of the family.

Moreover, I would like to bring attention to the atrocities which are being faced by women on a regular basis. Even after living in 21st Century, it is unfortunate that we as a progressive nation have not been able to provide equal status to women in terms of education, working environment, security, sanitation and so on. It would not be incorrect to say that there are numerous instances which showcase how women in India as well as in other parts of the world are fighting daily to get equal status in the society and have constantly been denied the privilege of equal citizens in the country, they live in.

CASE LAWS

1. VISHAKHA VS. STATE OF RAJASTHAN (1997)

In this case, the court laid down 'The Vishaka Guidelines' which were later converted into the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. This case pertains to a woman Bhanwari Devi who was gang-raped by five men as revenge on her for attempting to terminate the marriage of an infant and to fight against the male ego in Rajasthan which was part of her job. The court held that sexual harassment was a clear violation of rights under Articles 14, 15, 19 and 21 of the Indian Constitution.

2. AIR INDIA VS. NARGESH MEERZA (1981)

In this case, an inclusive reading of Article 14 was done by the Supreme Court and it was decided that employment cannot be denied to any person on the grounds of sex. For inflight services, stress was laid on the height of the youth, appearance, and glamour quotient of the employees. An aviation company called Air India regulated that the air hostesses should retire if they reach the age of 35, conceiving a child, or on marriage whichever occurs earlier. These conditions were derogatory and offending and hence challenged in the court and were later struck down.

3. LAXMI VS. UNION OF INDIA (2015)

Amidst increasing acid attacks, the Supreme Court was called out to issue directives and suggest ways to prevent such attacks. The court instructed the Governments at both levels to prohibit the unauthorized sale of acids across the nation. This decision paved the way to enforce harsher punishments for people involved in such crimes.

4. VINEETA SHARMA VS. RAKESH SHARMA (2020)

In this case, the Supreme Court held that daughters will have equal coparcenary rights in the Hindu Undivided Family by their birth and cannot be excluded from inheritance irrespective of whether they were born before the amendment of 2005 to the Hindu Succession Act, 1956.

EXISTING LOOPHOLES AND POSSIBLE SOLUTIONS

India's low rank at the 'WEF's Global Gender Gap Index report' shows that there is a need for work to be done at the grass-root level. Culture and traditions play an important role in igniting gender inequality. A cultural parental preference for a son automatically leads to poor consequences for daughters. In many parts of the country today, customs like sati, child marriage

still exist and no one is even aware of all this. To achieve gender equality, solutions should be implemented targeting gender-based violence and discrimination; also creating awareness especially in the rural areas and remote villages is a must. Women have time and again proved that they are equal to men in every field. So, what can be done to strengthen gender equality?

- i. Implementing measures to strengthen women's economic independence through improving financial and employment services.
- ii. Improving gender violence prevention systems and stringent penalties to those who cause gender-based violence.
- iii. Creating awareness among vulnerable sections of society about sexual rights and sex education.
- iv. Help improve life and development skills of low-income women for a better understanding of how to manage lives.

All these measures sound ambitious and stable; however, the main crux of improving gender-based equality lies in changing the mindset and the thinking of the people.

