

Protection of Women under Constitutional Law

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Abstract

In free India where democracy with universal adult suffrage has been adopted as the system of governance and the Constitution guarantees fundamental rights, including the right to equality and right against discrimination, if women are subjected to inequality and discrimination, then certainly it is a very sad state of affairs. It amounts to denying justice to almost half of the population.

On the one side our people give the best education to their sons and daughters and send them out to work in developed countries, but on the other side a large number of people, in blatant violation of the law, marry off their sons and daughters during their childhood and block their future. When we argue about our country's numerous merits and virtues, the examples of child marriages, dowry deaths, discrimination against women and their sexual harassment neutralize our claims. These contradictions will never allow our country to bring our society on a par with the advanced societies of the world. A woman who is treated as inferior creature and denied adequate opportunity to educate and develop her personality, cannot play an effective role in the development of her family and the nation. She lives like a dumb slave tolerating all sort of humiliation, harassment and appalling hardships. Most of her capabilities and potentials as human being remain unused. Thus, by hampering the full involvement and participation of women in all possible fields of human activity, we keep almost half of the human resource under-utilized.

Violence and fear of violence, especially sexual violence, prevent women from freely moving and participating in various public activities. The Supreme Court has observed: "Sexual violence apart from being a dehumanizing act is also an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honor and offends her self-esteem and dignity. It degrades and humiliates the victim and leaves behind a traumatic experience." It is most unfortunate that besides causing grave injury to her body, mind and dignity, a sexual crime also affects her reputation in the society. Instead of showing sympathy for the woman victim of rape, the society looks down upon her even if there was no fault on her part in provoking the crime. It requires an effective, strong, well organized body to organize and execute the policy of the Govt. as incorporated in the Constitution. The will implement should be a part of the new system.

Position of women through ages

While tracing the history of women through the ages, one finds that except for a short period during Rig-Veda when they enjoyed equality, freedom and place of honor mostly their position has been of inequality and subservient. They were considered inferior creatures, not allowed independence, had no rights to inherit properties and were not given opportunities to attain education and develop their personality. In the Rig Vedic period women enjoyed a high position in society. They were married at a mature age, participated in religious ceremonies and had freedom in the choice of husbands. The social condition during Rig-Veda may be summed up thus: Monogamy was the general rule, but among the princes, polygamy was also practiced. The marriage was a sacred bond which could not be broken by any human action. However, widows were allowed to re-marry particularly when they

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were without a child for the Rig-Veda recognizes in full the keen desire of the Vedic Indians for a child to perform his funeral rites. The marriage of girls was not considered to be essential and there are references to girls remaining unmarried till late age and living with their fathers and brothers. After marriage, the bride was brought to the house of the bridegroom and in her new home; she was given a place of honor. She was to have authority over her aged father-in-law, mother-in-law and the brothers and sisters of her husband. The wife was the partner of the husband at the time of religious ceremonies and no ceremony was considered to be effective without her participation. Child marriage was unknown. The choice of the father counted in the selection of the bridegroom but the girl was also given a measure of independence in that matter.

But, the above described position of women short lived and their condition declined steadily from the later Vedic period onwards. Many of the religious ceremonies which were formerly left to the wife, were now performed by the priests and she was not allowed to attend political assemblies. An ideal wife was considered to be one who was submissive, did not talk at all and took her meals after her husband. The birth of a daughter was considered to be the unhappy occasion. She was considered to be a source of misery while a son was regarded as the savior of the family.

Position of women in post-independence era

Irrespective of the great ideals of women's emancipation which inspired our freedom struggle and the Constitution of India coming into force, the position of women in the post-independence era did not improve much except some fields such as health and education. In order to ensure protection to women and to safeguard their interests certain amendments have been made in the Indian Penal Code, the Code of Criminal Procedure, and the Indian Evidence Act in post-independence era. Many women-related and women-specific laws have also been passed to govern and guide the people who have the responsibility of protecting women under their charge or in their vicinity. Such laws prescribe punishments for those who violate the 'acceptable norms of human behavior and cross the legal boundaries to attack the person or dignity of the woman. Some of the laws passed in post-independence era include The Hindu Marriage Act, 1955; The Immoral Traffic (Prevention) Act, 1956; The Dowry Prohibition Act, 1961; The Maternity Benefits Act, 1961; The Indecent Representation of Women (Prohibition) Act, 1986; The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994; The Protection of Women from Domestic Violence Act, 2005; and The Prohibition of Child Marriage Act, 2006. Thus Indian Constitution has ensured equal status to all i.e., not only between men and men, women and women but also between men and women.

(a) Equality of Status

Article 14 of the Constitution of India enunciates the general principle of right to equality and prohibits the State from denying to any person, equality before the law or the equal protection of the laws, The Supreme Court of India, the protector and guardian of the fundamental rights has always been the champion in maintaining and elaborating the concept of equality of status particularly when the discriminatory laws were made by the State against women. In the very first year of its working, a woman Champakam Dorairajan for claiming equality of status came before the Supreme Court and got the G.O. of the Madras Government declared unconstitutional and violative of Article 14 (Right to equality) and Article 15 (Discriminatory legislation). Article 14 of the Constitution firstly, confers on women the equality of Status and secondly, protects against any violation of this principle. The underlying principle of Article 14 of the Constitution of India is that like should be treated alike and not that unlike should be treated alike. Amongst the equals law should be equal and should be equally administered. *Bhabani Prasad v. Smt. Sarat Sundari*, the court

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has made it clear that the Section 14 of Hindu Succession Act does not discriminate between citizens on the ground of place of birth, it equally applies to the "Mitakshara" and "Dayabhaga" School of Hindu Law; The Hindu Adoption and Maintenance Act, 1956, under Section 22, provided that illegitimate daughters along with Sons can claim maintenance from those who take the estate if she has not obtained any share in the estate. This preferential treatment is not violative of Article 14 as it puts daughters equal to sons.

(b) Equality and Employment

Rule 18(4) of the Indian Foreign Service (Recruitment, Seniority and Promotion) Rules, 1961, which required permission before marriage and denial of right to employment to married women for panel employees in the government was declared discriminatory by the Supreme Court on the ground of sex and thus violate of Article 14. The Court upholding the principle of equality of status put the female employees at par with male employees. On the same lines the Allahabad High Court has declared that the condition in service that a nurse (male or female) who married while in service was required to resign, is violative of Articles 14 of the Constitution.

(c) Right to Life and Right against Exploitation

Art. 21 gives right to life and personal liberty. "Right to Life" does not merely mean animal existence but means something more, namely, the right to live with human dignity. Rape, is therefore, a crime against basic human rights and is also violative of the victims right to life contained in Art 21 Article 23 of the Constitution of India provides for prohibition of traffic in human beings and forced labour.

In view of the judicial pronouncements discussed above following observations may be made:

1. Discrimination in favor of women must be based on facts.
2. Discrimination in favor of women should not be based solely on the ground of sex.
3. Administrative convenience may be a ground for making discriminatory laws in certain circumstances.
4. Unsuitability of women for certain services may be a criterion for discrimination against women.
5. The interest of the society may be a good justification for making any discrimination in favour of women.
6. Article 15 (3) should always be a guiding force in all matters covered under Article 15 (1) of the Constitution.
7. Discrimination and classification are two different concepts. Discrimination is comparative term, but classification classifies persons in unequal position and having different points in different classes.

The judiciary in its own turn has helped in the process of equalization between men and women after independence. However, the most sacred object The Constitutional mission of equalization" could not be achieved fully due to following reasons:

1. General ignorance of law.
2. Indifferent and hostile attitude of the law enforcing agency.
3. Economic backwardness and lack of community support for women seeking justice against discrimination.
4. Ignoring the socio-economic implications of laws.

Till the end of the nineteenth century the old concept of the State was that the State is mainly concerned with maintenance of law and order and protection of life and property of its subjects. But we are living in the era of Welfare State, where a State seeks to promote the socio-economic well-

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being of the people. The policy of the State should be for social good. Pursuing this object, the Constitution of India has provided in Part IV the Directive Principles of State Policy. These principles lay down certain economic and social goals to be achieved by the various Governments in India- i.e., the Central Government and the State Governments. These directives impose certain obligations on the State to take positive action in certain directions in order to promote the welfare of the people.

(d) Equality of Opportunity

Another specific example of equality of status is the right to equality of opportunity for citizens of India provided under Article 16 of the Constitution of India. Clause (1) of Article 16 provides equality of opportunity in matters relating to employment or appointment to any office under the State.

This right to equality is only in employment or appointment under "the State" that is in matters of recruitment, promotion, wages, termination of employment, periodical increments, leave, gratuity, pension, age of superannuation, etc. But this equality envisaged under Article 16 of the Constitution is the equality amongst equally placed persons-equality amongst the same class of persons and not amongst different classes of persons.

Therefore, save in exceptional cases or the need and requirement of particular service, discrimination cannot be made on the basis of sex in State Services. The principle of equality in matters of employment has further been illustrated in the famous case of *Air India v. Nergesh Meerza & Ors*, In that case the Supreme Court declared the Air India Employees Service Regulation unconstitutional which provided for the retirement of Air Hostesses in the event of their marriages or on first pregnancy. The regulations also conferred on the Managing Director the power to extend the services of Air Hostesses from 35 to 45 years.

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References

- (i) Articles 14 to 16 of the Constitution of India.
- (ii) *State of Madras v. Champakam Dorairajan*, AIR 1951 SC 226.
- (iii) V.N. Shukla, *Constitution of India*, (7th ed. 1982), 30.
- (iv) *Jennings Law of the Constitution*, p. 94.
- (v) (1937) AC 527, *Sonubai Jadhav v. Bala Govind Yadav*, AIR 1983 Bom. 156-Sec. 15(2), 'Principally, law of succession, is a law of entitlement and also of status'. Succession to property of female is not violative of Articles 14 and 15 on the ground of sex determination.
- (vi) *C.B. Muthamma v. Union of India*, AIR 1979 SC 1868.
- (vii) (1973) I Serv. L.R. 909 (All.).
- (viii) Article 16 Clause (1). There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
- (ix) (1981) 4 SSC 335.

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