

# Constitutional and Legal Protections to Women in India - A Study

Abdul Basit Ansari

Date of Submission: 14-06-2023

Date of Acceptance: 24-06-2023

## I. INTRODUCTION

From time immemorial, the women in this world were treated as a sort of thing. Her placing in the society was not at par with other human being. She was not conferred any sort of rights even to move to do anything at her will. One may easily draw inferences as to what status has been granted to woman in the entire world in general and India in particular. In 'Manusmriti' the status granted to women is quite visible and she was put to the lowest rung of humanity as she was treated not on par with men. Such was the placement earmarked to the woman in the colonial era and even to some extent in the contemporary world.

To overcome the problem of discrimination, inequality and other forms of discrimination against the woman in the colonial era attracts the attention of Dr B.R.Ambedkar for establishment of a just and equitable law, where no woman can be ill-treated or exploited. The incorporation of special provisions for the protection of the woman under the constitutional law is the major contribution to overcome the past discrimination and exploitation of woman. Since Ambedkar was well convinced about the status of women, as the Chairman of the Drafting Committee of the constituent Assembly, he tried an adequate inclusion of women's rights in the political vocabulary and constitution of India. Therefore, by considering women's equality both in formal and substantial senses he included special provisions for women under the constitutional law. Hence, there are Articles 14, 15(1), 15(3), 16(1), 16(2) 16(4) 51(A)(c), and so on has been incorporated under the constitutional law to protect the interest of the woman in India.. His key work in the preparation of Indian Constitution made it to be known as a New Charter of Human Rights. He looked upon law as the instrument of creating a sane social order in which the development of individual should be in harmony with the growth of society. He incorporated the values of liberty, equality and fraternity in the Indian Constitution.

## II. EMPOWERMENT OF WOMAN UNDER THE CONSTITUTIONAL LAW:

Empowerment is a multidimensional approach and of the same time it is an indivisible concept. As a process it refers to sensitisation about empowerment and at the same time it is the outcome of sensitisation. The empowerment of a person or a group of people is the process of giving them the power and status in a particular situation. According to UNDP empowerment is a process which enables the individuals or groups to change the balance of power in social, economic and political relations in the society. One of the most important instruments for empowering the woman is to allow them dual access to and control over productive resources such as land, capital, technology, credit as well as marketing outlets, information, education, training etc., without any discrimination. Education and employment is the most powerful instrument of changing the position of the woman in the present contemporary era. Education and representation in the public employment brings about the reduction in inequalities and also acts as a means to improve the status woman. With the intention of providing the equality of Status to the woman the founding father of the nation Dr.B.R.Ambedkar and the several members of the constituent assembly made several efforts and incorporated under the constitutional law various provisions for providing the protections to women, children and other socially, educationally and economically backward class of peoples in India.

## III. RIGHT TO EQUALITY:

The preamble to the Constitution emphasises upon the principle of equality as basic to the Indian Constitution. Among the Constitutional provisions Article 14 is the genus while Article 15 and 16 are the species. Article 14 of the Indian Constitution consists of two concepts, 'equality before the law' and 'equal protection of law'. The equality before the law ensures that there, is no special privilege in favour of any one, that all are equally subject to the ordinary law of the land and

that no person whatever may be his rank is above law. The concept equal protection of law ensures that the law should be applied to all persons who are similarly situated. It means that among equals the law should be equal and equally administered. The Article 14 permits classification but forbids class legislation. The classification must be reasonable, however not to be arbitrary. The State is empowered to make legitimate and reasonable classification for empowerment of woman. In the process of classification the differentia adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved. The State is legitimately empowered to enact the law for the benefit of the woman to achieve the ends of social justice.

It is in Article 15(1) of the Indian Constitution prohibits discrimination on the ground of religion, race, caste, sex or place of birth, but at the same time the state is not prevented from making any special provisions for women and children or for the advancement of any socially and educationally backward class of citizens or of the scheduled caste and scheduled tribe. The intention of providing the special protections to the women, children and Scheduled Caste, Scheduled Tribes and backward classes is to achieve equality among all the people of India.

Article 14, 15 and 16 of the Indian Constitution underline the principles of equality. The provisions of any law which are against the woman or discriminatory and were challenged, the Courts have held that such provisions are unconstitutional and have upheld the principle of equality. The Hon`ble Supreme Court of India in **C.B.Muthamma Vs Union of India** held that Rule 8(2) of the Indian Foreign Services (Conduct and Discipline) Rules, 1961 which requires a female officer to take permission to marry and Rule 18(4) Indian Foreign Services (Recruitment, cadre, Seniority and Promotion) Rules, 1961 which provides no married was entitled for appointment in the service, were declared illegal and against the Fundamental Right of Equality. Further in case of **Air India Vs. Nergesh Meerza** held that, the condition that the services of the air hostesses could be terminated on the first pregnancy as unconstitutional. Further the High Court of Delhi in **Swaraj Garg Vs M.K.Garg** held that the wife`s right to stay away from her husband because of her employment and thereby recognising not only the wife`s right to work but also her right to choose the place of matrimonial home. The Hon`ble Supreme Court of India in **Ms.Githa Hariharan Vs Reserve Bank of India** held that the father cannot claim that, the father alone was the natural guardian. The Court

observed that the expression natural guardian as defined under section 4(c) of Hindu Minority and Guardianship Act as any of the guardian mentioned in section of the Act.

#### IV. PROTECTIONS UNDER DIRECTIVE PRINCIPLES OF STATE POLICY

The Constitution of India empowers the state to adopt measures of positive discrimination in favour of woman. Though the provisions in the Directive Principles of the state policies are not enforceable as that of the Fundamental Rights in the Court of Law they are fundamental in governance of the country and provide for the welfare of the people in general and woman in particular. There are some special provisions provided for the welfare of the women under Article 39, 42 and 44 of the Constitution.

Article 39(a) of the Constitution states that State shall direct its policy towards securing the rights to an adequate means of livelihood to the citizens, men and woman equally.

Article 39(d) of the constitution provides for equal pay for equal work for both men and women. With the object of implementing the provisions of the directive principles of State policy, the parliament of India has been enacted the law in the year 1976 known as Equal Remuneration Act 1976. Further Article 39(e) specifically directs the state not to abuse the health and strength of the workers, men and woman.

Article 39-A of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes 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. With the object of implementing the mandates the Legal Services Authorities Act, 1976 enacted by the Indian Parliamentarians providing the protection that all women are entitled for free legal aids.

Article 42 of the Constitution of India further provides that, the State shall make provision for securing just and humane conditions of work and for maternity relief. With object implementing the provisions of Article 42 of the Constitution Maternity Benefit Act, 1961 was enacted and provided maternity benefit to the woman workers. The Hon`ble Supreme Court of India in **Municipal Corporation of Delhi case** has been pleased to issue the direction to the Central Government to extend the benefits of the Maternity Benefit Act, 1961 to the woman employees working on daily wages. Therefore the decision of the Hon`ble

Supreme Court was considered as the land mark decision and gives protection to all women workers working in organised as well as unorganised sector.

#### V. RESERVATION OF SEATS IN PANCHAYATHS

The representation of women in the politics in decision making process in the government is comparatively negligible, though the representation is indispensable. With the object providing the representation of women in Panchayats and Municipality, Article 243D and Article 243T has been incorporated to the Indian Constitution providing provisions for reservation seats for women.

#### VI. PROTECTIONS UNDER OTHER LAWS

Apart from the protections provided under the Constitutional law there are certain protections are also provided under various enactments enacted for the benefit of women like, The Dowry prohibition Act 1961 as amended in 1984 aims at prohibiting the evil practice of giving and taking of dowry. Section 3 of the dowry prohibition Act states that any person after the commencement of this Act, gives or takes or abets the giving or taking of dowry shall be punishable with imprisonment not less than five years and with fine shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more.

The Indecent Representation of Women (Prohibition) Act, 1986 provides in its section 3 prohibition of advertisements containing indecent representation of women and Section 4 of the Act prohibit the publication or sending by post of books, pamphlets, etc., containing indecent representation of women. Further Section 6 of the Act provides that any person who contravenes the provisions of Section 3 or Section 4 of the Act shall be punishable on first conviction with imprisonment either description for a term which may extend to two years, and with fine which may extends to two thousand rupees, and in the event of second or subsequent conviction with imprisonment of a term not less than six months but which may extends to five years and also with fine not less than ten thousand rupees but which may extends to one lakh rupees.

The Protection of Women from Domestic Act, 2005, Domestic violence” includes actual abuse or the threat of abuse that is physical, sexual, verbal, emotional and economic. Harassment by way of dowry demands to the woman or her relatives would also be covered under this definition. One of the most important features of the Act is the woman’s

right to secure housing. The Act provides for the woman’s right to reside in the matrimonial or shared household. The Act provides for appointment of Protection Officers and NGOs to provide assistance to the woman with respect to medical examination, legal aid, safe shelter, etc. The Act further provides for breach of protection order or interim protection order by the opponent is a cognizable and non-bailable offence punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both.

#### VII. CONCLUSION

The status of women and their active participation have direct influence on the development of the nation. The need of the contemporary world is to raise the status of the women. Though in the Constitutional Law incorporated the number of provisions for the protection women, many special enactments enacted by the parliamentarians provided protections and apex judiciary from time to time by delivering equitable judgement tries to raise the status women, but unfortunately till today women is suffering from inequality, harassment, torture and even degrading treatment The protections provided to through the various enactments are limited only in the statute but in reality it has not been strictly implemented. . Therefore the only solution to overcome this problem is strict implementation of the provisions of the Constitution and the special enactments.

#### REFERENCE

- [1]. B.Nimalathasan., “Empowering women through Entrepreneurship Development in Emerging Economics” Published by Victorious Publishers( India) p 2
- [2]. WE, THE PEOPLES OF INDIA, having solemnly resolved to constitute India into a SOVERIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens
- [3]. JUSTICE, social, economic and political;
- [4]. LIBERTY of thought, expression, belief, faith and worship;
- [5]. EQUALITY of status and of opportunity;
- [6]. And to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the nation;
- [7]. Equality; The state shall not deny to any person equality before the law or the equal protection of the law within the territory of India.

- [8]. Prohibition of discrimination on the ground of religion, race, caste, sex or place of birth-(1) The State shall not discriminate against any citizen on ground of only religion, race, caste, sex or place of birth or any of them Article 15(3); nothing in this Article shall prevent the State from making any special provision for women and children.
- [9]. Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of the socially and educationally backward classes of the citizen or for Scheduled Caste or Scheduled Tribes., and
- [10]. Nothing in this article or in sub clause of (g) of clause (1) of the article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of the citizens or for Scheduled Caste or Scheduled Tribes in so far as the special provisions relates to their admission to educational institutions including private educational institutions, whether aided or unaided by the state, other than minority educational institutions referred in clause (1) of article 30
- [11]. AIR 1979 SC 1868
- [12]. AIR 1981 SC 1829
- [13]. AIR 1978 Delhi 296
- [14]. AIR 1999 SC 1149
- [15]. Article 39(e): that the health and strength of the workers, men and women, and the tender age of children are not abused and that the children are not forced by economic necessity to enter avocation unsuited to their age or strength.
- [16]. Inserted by the Constitution ( Forty second Amendment) Act, 1976
- [17]. JT 2000 (3) SC 13