

Original Article

Women's Rights and Remedies under the Constitution of India

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Abstract: Fundamentally, Indian Society is a patriarchal, where in dominance of males is the key theme. But in the present scenario that concept is no more acceptable by the rapidly changing modern society. This article contains important aspect of judicial pronouncements made by the Supreme Court and High Courts such as women's fundamental rights, equality and remedies with regard to gender inequality and other issues. Women's in India is a gloomy picture of the changing perceptions of the status and role of women at the threshold of the Constitution of India. The Constitution of a country provides not only the structures of governance but also the legal, political and social framework within which individuals and groups exist and interact with each other. The discussion on women's fundamental rights and remedies is therefore situated within our constitutional framework. Indian Constitution-makers aware of the subordinate and backward position of women in Indian society, 'were alive to the social problems associated with the emancipation of women. They had seen prevailing gender inequality during their time and had visualised that the sex-equality was crucial to the development of the country. In order to do away with the inequality and to promote with special care, the educational and economic interests of women too, they tried to provide necessary protection from social injustice and exploitation. The principle of gender equality is enshrined in the Indian Constitution in its Preamble Fundamental Rights, Fundamental Duties and Directive Principles of State Policy. The Preamble to the Constitution sets out the basic Constitutional goals. It promises equality of status and opportunity to its citizenry. The Constitutional goal of equality enshrined in the Preamble of the Constitution is wide enough in its import to enhance both the concept of formal and substantive equality. The spirit of equality pervades through the framework of Indian Constitution. Notwithstanding formal guarantees of equality, Indian women's lives continue to be characterized by discrimination and inequality. The social laws that sought to mitigate the problems of women in their family life, have remained unknown to a large mass of women in this country, who are ignorant of their legal rights today as they were before independence. It is the law which has been and still expected to be effective as an instrument of social change, a strategy to free women from the shackles of inequality and subjugation.

Keywords: Women, Constitution, Gender equality, Preamble and Fundamental.

I. INTRODUCTION

The Constitution of India is a manuscript having a special legal sacredness; not only sets out the framework and the principal functions of the basic organs of the Government of a State and declare the ideology governing the operation of those organs; but also, describes their structure powers and functions and deals with their inter-relationships, inter se and regulates their relationships with people. The preface to the Constitution of India assures the people to make safe, for all citizens, Social, Economic and Political Justice and Equality of Opportunity and Status without any kind of discrimination. The Preamble of the Constitution has been framed with great care and forethought so that it reflects the high purpose and righteous objectives of the Constitution makers. Concurring India's Constitution, women are lawful residents of the country and have equivalent rights with men. In light of absence of acknowledgement from male prevailing society, Indian women suffer enormously. There are instances where women are tortured in their domestic home and harassed in workplace. The Constitution of India has given certain rights to the women.

II. FUNDAMENTAL RIGHTS

Part III of the Constitution of India ensures fundamental rights some of which are given to all people and some to the residents as it were. Fundamental rights are the inalienable rights of the people in the Constitution of India, these fundamental rights and obligations apply to all citizens of the country, regardless of religion, sex, caste, race, etc.

Article 14 states about the equality under the steady gaze of the law and equivalent protection of laws. Article 14 includes two ideas- uniformity under the watchful eye of law and equivalent protection of laws. Equal assurance doesn't mean equivalent treatment of all people without differentiation. It implies equal treatment in equivalent conditions. It indicates equality among equals. Equality and fairness under the steady gaze of the law is a unique idea and shows that nobody will be exempt from the laws that apply to everyone else. Fairness is identified with the idea of Rule of law. An essential propose of Rule of law is that equity ought to not exclusively be done however it should likewise be believed to be



accomplished. The principle point of Article 14 is to secure people comparatively positioned against oppressive treatment. Article 15 states that State will not victimize any resident on grounds just of religion, race, standing, sex, place of birth or any of them. Article 15(1) is a feature of Article 14 and is an expansion of it. While Article 14 allows any reasonable classification based on any objective standard however Article 15(1) specifies certain grounds which can never frame the premise of grouping. Clause (3) of Article 15 establishes that state shall empower to enact any legislation with regard to woman and children. As aforesaid under Article 15 of the Constitution the State is empowered to make special provisions for women and children. For instance, making special seating arrangement in trains and buses is in no way unconstitutional. The Bombay High Court held that reservation of some seats in women's colleges is not unconstitutional. The court observed that establishment of educational institution exclusively for women is not hit by article 15(1) of the Constitution. In this manner, the object is to fortify and improve the situation of women. It implies that for the empowerment of women reasonable classification can be made by the State.

Part III of the Constitution of India deals with the fundamental rights. The provisions regarding fundamental rights have been enshrined in Article 12 to 35, which are applicable to all the citizens irrespective of sex. However, certain provisions protect the rights of women as set down in Article 14, 15, 16, 19, 21, 23, 25-28, 39(a), 39(d), 39(e), 42 and 47 of the Constitution.

When a working woman is sexually harassed, her right to practise any profession, occupation, or trade is violated. It was also established that the contents of international conventions and norms are important for interpreting the guarantees of gender equality and the right to work with human dignity in Articles 14, 15, 19, (1)(g), and 21 of the Constitution in the absence of domestic legislation to create effective measures to check the evil of sexual harassment of working women at all work places. To expand the meaning and content of these rules, any international treaty that is in line with the spirit of the Fundamental Rights and not in conflict with them must be read in. The ruling went on to specify what constitutes sexual harassment, how to prevent it, how to file a complaint, and how important it is to raise awareness of female employees' rights. It was emphasised that no married woman shall have the privilege to be appointed to the Indian Foreign Service (Recruitment, Seniority and Promotion) Rules, 1961. Before being married, a female member of the Service had to have official government approval in writing. It additionally stipulated that she could be called upon to rule at any point after the marriage if the government was convinced that her responsibilities to her family and home would prevent her from carrying out her duties as a member of the military in a proper and effective manner. The Supreme Court overturned the aforementioned regulations, citing a violation of women's employees' fundamental right to equal treatment in matters pertaining to public employment.

A former employee of a company filed a petition, alleging that she was paid less during her employment as a Confidential Lady Stenographer than the male stenographer in the company for performing the same and similar work, despite the fact that the female stenographer was paid more during her employment. The discrimination between male and female stenographers was solely based on sex, the Supreme Court ruled after weighing the case's facts and legal requirements. The employer was required to pay both of them the same salary regardless of where they worked, unless it could be demonstrated that the women were unfit to perform the duties of male stenographers.

The Supreme Court has given much thought to ensuring substantive equality for women in employment concerns through its interpretation of Articles 14, 15, and 16, and over time, new law on gender equity has emerged.

III. CRIMINAL LAW UNDER CONSTITUTIONAL CHALLENGES

Many constitutional challenges have been brought to adultery, maintenance, prostitution and bail provisions of the criminal law. Though most of them have been unsuccessful, what should be noted here is the formal approach to equality and 'protectionist' approach to gender difference? The Indian Judiciary, particularly the Supreme Court has played a creative role in providing justice to women victims of violence and has given far reaching and innovative judgments upholding the basic principles of equality of sexes and tried to maintain the dignity and honor of women. It has been projected in a number of landmark judgments.

A. Sexual Harassment at Work Place

When a working woman is sexually harassed, her right to practise any profession, occupation, or trade is violated. It was also established that the contents of international conventions and norms are important for interpreting the guarantees of gender equality and the right to work with human dignity in Articles 14, 15, 19, (1)(g), and 21 of the Constitution in the absence of domestic legislation to create effective measures to check the evil of sexual harassment of working women at all work places. To expand the meaning and content of these rules, any international treaty that is in line with the spirit of the Fundamental Rights and not in conflict with them must be read in. The ruling went on to specify what constitutes sexual

harassment, how to prevent it, how to file a complaint, and how important it is to raise awareness of female employees' rights.

One of the gains in post-independent India has been, an improvement in gender equality because of the various laws passed in favour of women with intervention of various women's organizations at the national and international levels. Gender issues have become central to policy arena. The 1994 international conferences on population and development placed issue of gender as the centre of discussion. Gender issues are ideologically motivated. Gender issues point to gender differences in the context of women on various social, economic, cultural, political, and psychological and health dimension. Gender issues are now central to everybody. As a consequence of feminism the importance has been steadily growing and gaining intellectual legitimacy. The politics of gender and feminist research have outlined the deprivation and unequal entitlements in the lives of women. One of the critical concerns of gender studies is the issue of women's agencies and autonomy. Both agency and human rights have a location in the material conditions of everyday life such as access to health, nutrition, education, income, safety and other indices of human development. Politics had once played a crucial role in the deprivation and unequal entitlements in the lives of women.

B. Adultery

The Supreme Court upheld the adultery provisions as beneficial to women and said, Since Article 14 is broad, it must be read in conjunction with the other clauses that define the scope of fundamental rights. Although discrimination on the basis of gender is prohibited generally, the Constitution specifically allows for special protections for women and children. According to the Supreme Court, it is widely acknowledged that men, not women, are the ones who seduce others. When a wife engages in an adulterous relationship, she becomes the victim of her own crime rather than the perpetrator. The male defiles the sanctity of the matrimonial household, which is the sin against its holiness. This method views women as victims, helpless, and incapable of exercising agency in sexual interactions.

C. Maintenance

It was argued that Section 488 of the Code of Criminal Procedure, 1898, violated Article 14. Using the reasonable classification approach, the court determined that the distinction between men and women was the basis for the categorization. The Court declared that "men do not suffer from several disabilities that affect women as a whole." The Supreme Court ruled once more that EC 488 fell within Article 15(3) because it was a specific provision intended to protect women and children whose husbands or fathers failed to provide for them despite having adequate means. In a different case, the Supreme Court ruled that a provision found in section 125 of the Criminal Procedure Code is a social justice measure that was specifically passed to safeguard women and children and is covered by Article 15(3) of the Constitution, which is further supported by Article 39. The rulings make it clear that the only relevant criterion is economic necessity, and that the maintenance provision is intended to ease the suffering of all wives, including divorced women, regardless of their caste or religion, until they remarry. One criticism of this is that the courts don't explain why women are economically dependent on men. The courts make the assumption that women's economic dependency is a normal and unchangeable situation.

D. Prostitution

The Suppression of Immoral Traffic in Women and Girls Child Act, Section 20, gives the magistrate the authority to eject prostitutes from any location in the public interest and to forbid the women from returning to the location from which they were taken. A prostitute contested this, claiming that it was her and her dependents' sole source of income. The court determined that the magistrate's unrestricted authority under section 20 was a violation of Article 14. In contrast, the Supreme Court ruled in a different case involving a challenge to Section 20 that the distinction between women who are prostitutes and those who are not was a legitimate classification, meaning that Article 14 was not violated. The distinction between discreet prostitutes and those operating in crowded areas served as the court's rationale in this instance. The ruling has the consequence of denying those women who fit within the problematic group their "entitlement to equality." As a result, prostitute women developed an intrinsic evil and immorality that necessitates strict legal regulations. The argument is that because of this distinction, they are not entitled to equality and their status as terrible women is maintained.

E. Matrimonial Causes and Gender Equality

According to Section 10 of the Indian Divorce Act, a husband may file for divorce only on the grounds of his wife's adultery; however, a woman may only file for divorce if her husband's adultery is combined with bigamy, cruelty, rape, desertion, or incest. It was argued that the discrimination violated Articles 14 and 15. The court determined that section 10 made sense because it distinguished between adultery committed by men and women. The explanation given was that her spouse would not have a child to support her husband. The court stated that a legitimate basis for classifying a husband and wife as admissible under Article 14 may otherwise be the inability to conceive as a result of adulterous relations. In both situations, men and women were viewed as distinct entities. The biological reproduction capacity inherent in women was the

basis for their unequal treatment. The criticism is that both decisions see these distinctions as normal and the sole basis for treating people differently. These choices combine the socially constructed gender disparities that have come to be accepted as inevitable and normal with the biological differences in reproduction. The Bombay High Court ruled that a section of the Indian Divorce Act violated Articles 14, 15, and 21 of the Constitution. As a result, the court requested that the government step in and change the Act appropriately.

IV. CONCLUSION

The significance and content of the fundamental rights protected by the Indian Constitution provide ample opportunity to address the actual aspects of gender rights. The lawful satisfaction of the constitutional plan has been necessitated by the administration of law and order for the general public. Judgmental rulings demonstrate that Indian courts have been working to reinterpret the fundamental rights enshrined in the constitution in light of international conventions and standards in order to take into account the experiences and concerns of women. As a result, their rights have been meaningfully expanded. The court's decisions in cases involving sexual harassment and rape demonstrate that it recognised the need to alter the institutional framework in order to properly enforce women's rights. In constitutional conflicts pertaining to women's rights, such as employment and seat reservations in political institutions, women have benefited from court interpretations.

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