

Women Empowerment –Women Rights under the Indian Constitution and the Ironic Status of Indian Women

PANKAJ TYAGI¹ AND REEMA AGRAWAL^{*2}

^{1&2}Associate Professor

Department of Law, M.M.H. College, Ghaziabad (U.P.) India

ABSTRACT

The principle of gender equality and women empowerment is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties, Directive Principles and some other provisions. However, despite these constitutional provisions aiming at women empowerment, women in this patriarchal society are not able to enjoy an equal status and are dominated by males in every field. Our society is not ready to accept a nation where a woman can walk freely without any form of fear and where both the genders can be treated equally and enjoy an equal status and opportunities. Thus, the focus of this paper is to enlighten the constitutional provisions that aim at empowering women and to look into the violations of women rights that are taking place in this patriarchal Indian society where women are dominated by the males in almost every sphere thus defeating the concept of empowering women.

Key Words : Constitution of India, Women empowerment, Equality to women, Gender discrimination, Violation of women rights

INTRODUCTION

Women Empowerment can be defined as giving power and inculcating such habits in women that they can decide for their own lives and find a respectful position in the society where they can be treated equivalent to men.

If we will associate the Constitution of India with the empowerment of women then we would find that the Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. During the framing of our Constitution, almost all the leaders of the struggle were of the view that women should be given equal status in the free India and all types of discriminatory practices must be abolished. And for that to happen, it was thought fit to include such provisions in the Constitution of India

which would help in eliminating age-old exploitative customs and traditions and would include such provisions which would help in empowering women socially, economically and politically.

Today, the principle of gender equality and women empowerment is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles:

The Preamble:

If we have a look at our Preamble¹ then we will observe that it intends to grant equal rights and freedoms to all its citizens *i.e.* both men and women. The use of the phrases “we the people”, “to secure all its citizens”, “to promote among them all”, “ourselves” clearly highlight that the Preamble contains the goal of ensuring justice, liberty and equality of status and opportunity to all its

1. The Constitution of India, Preamble: “We the people of India having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic Republic and to secure all its citizens justice, liberty, equality and to promote among them all fraternity do hereby adopt, enact and give to ourselves this Constitution”.

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citizens *i.e.* to both men and women irrespective of their caste, community, religion or sex. Thus, it can be said that in the eyes of our Constitution, both men and women are equivalent to each other and neither gender is superior to the other. Thus, it ensures that both the genders are treated equally and neither of them is exploited by the other.

Fundamental Rights :

Part III of the Constitution deals with the fundamental rights. The Constitution through these rights ensure equality and freedom among all its citizens *i.e.* both men and women and also emphasises on women empowerment. The following articles of the Constitution deal with the issue of women empowerment:-

- Article 14 states that “the state shall not deny to any person (man or woman) equality before the law or equal protection of the laws within the territory of India”². Thus, in the eyes of our constitution, both men and women are equal before law and it excludes the scope of any form of discrimination on the basis of caste, sex, religion or community. In the case of “Air India v. Nargesh Meerza (1981), the air-hostesses of the Air-India International Corporation had approached the Supreme Court against the discriminatory service conditions in the Regulations of Air-India. The Regulations provided that an air-hostess could not get married before completing four-years of service. If she married earlier, she had to resign and if after 23 years she got married, she could continue as a married woman but had to resign on becoming pregnant. If an air hostess survived both these filters, she will continue to serve until she reaches the age of 35 years. It was alleged on behalf of

the air-hostesses that those provisions were discriminatory on the ground of sex, as similar provisions did not apply to male employees doing similar work and thus a writ petition was filed by Nargesh Meerza. The Supreme Court upheld the first requirement that an air-hostess should not marry before the completion of four years of service as it was a sound and salutary provision. Apart from improving the health of the employee it helps a great deal in the promotion and boosting up of our family planning programme. But the Supreme Court struck down the Air-India Regulations relating to retirement and the pregnancy bar on the services of Air-hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary as a woman should not be denied employment merely because of the fact that she is a woman which is in fact a violation of Article 14 of the Indian Constitution which talks about equality before law”³.

- Article 15(1)⁴ prohibits any discrimination on the ground of sex whereas Article 15(3)⁵ overrides Article 15(1) and allows the State to discriminate on the ground of sex and make special provisions for women so as to improve their social, political and economic condition and to help them in achieving an equal status in the society as that of a man.
- Article 16(1)⁶ provides for equality in case of employment in government services whereas Article 16(2)⁷ explicitly prohibits any discrimination on the ground of sex in respect of any such employment.

In the case of “Govt. of A.P. v. P.B. Vijayakumar, a rule of providing reservation to women in state services

2. *Id.*, art. 14

3. Air India v. Nargesh Meerza, (1981) 4 SCC 335: AIR 1981 SC 1829

4. *Supra* note 1, art. 15 (1): “The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”.

5. *Supra* note 1, art. 15 (3): “Nothing in this article shall prevent the state from making any special provisions for women and children”.

6. *Supra* note 1, art. 16 (1): “There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state”.

7. *Supra* note 1, art. 16 (2): “No citizen shall, on grounds only of religion, race, cast, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state”.

was introduced by Andhra Pradesh government that gave preference to women over men. This rule was challenged being in contradiction of Article 16 of Indian Constitution. It was held by the Supreme Court that reservation to the extent of 30% made in the State Services by the Andhra Pradesh Government for women candidates was valid. The Division Bench of the Supreme Court emphatically declared that the power conferred upon the State by Article 15(3) is wide enough to cover the entire range of State activity including employment under the State. It further noted that art 15(3) is recognition of the fact that for centuries the women of this country have remained socially and economically handicapped. As a result they are unable to participate in the socio-economic progress of the country on an equal footing. Thus, making special provisions for women in employment is an integral aspect of 15(3) and thus the power conferred by Article 15(3) is not whittled down in any manner by Article 16”⁸.

- Article 21 states that “no person shall be deprived of his life or personal liberty except according to procedure established by law”⁹. The courts have interpreted this article i.e. the right to life and personal liberty very widely. In fact, in many cases, this article has provided protection and rescued the women who have been wronged or whose personal liberty has been infringed. For instance, in the case of “Vishaka v. State of Rajasthan, Bhanwari Devi, who was a social worker, was gang raped by a group of Thakurs as she attempted to stop a child marriage in their family as a part of her work. After being held by the High Court that it was a case of gang-rape which was committed out of vengeance, women groups and NGOs filed a petition in the Supreme Court of India under the name ‘Vishaka’, asking the court to give certain directions regarding the sexual harassment that

women face at the workplace. It was held by the Supreme Court that sexual harassment of women in the work place is a violation of Article 21 of the Constitution and gave detailed directions on the subject, whose guidelines are to be strictly observed by all the employees, public or private”¹⁰. Later, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted by the Legislature, acting on the guidelines of the Hon’ble Supreme Court.

- Article 23 prohibits “traffic in human beings and begar and other similar forms of forced labour and categorises the contravention of the prohibition as an offence”. Article 23 while prohibiting human trafficking and forced labour has significantly improved the condition of women in terms of forced prostitution. In the case of “Gaurav Jain v. Union of India, the condition of prostitutes in general and the plight of their children in particular were highlighted. The Court issued directions for a multi-pronged approach and mixing the children of prostitutes with other children instead of making separate provisions for them. The Supreme Court issued directions for the prevention of induction of women in various forms of prostitution. It further said that women should be viewed more as victims of adverse socio-economic circumstances than offenders in our society”¹¹.

Directive Principles:

Part IV of the Constitution deal with Directive Principles of State policy. Some of these provisions which are discussed below specifically deal with the issue of gender equality and women empowerment:-

- Article 39 under the clauses (a)¹², (d)¹³ and

8. Govt. of A.P. v. P.B. Vijayakumar(1995) 4 SCC 520: AIR 1995 SC 1648

9. *Supra* note 1, art. 21

10. Vishaka v. State of Rajasthan (1997) 6 SCC 241: AIR 1997 SC 3011

11. Gaurav Jain v. Union of India (1998) 4 SCC 270: AIR 1998 SC 2848

12. *Supra* note 1, art. 39 (a): “The State shall direct its policy towards securing that the citizens, men and women, have the right to an adequate means of livelihood”.

13. *Supra* note 1, art. 39 (d): “The State shall direct its policy towards securing that there is equal pay for equal work for both men and women”.

(e)¹⁴ seeks to ensure that both men and women are provided with adequate means of livelihood and should be paid equally for the equal amount of work being done by them. For this Equal Remuneration Act, 1976 has also been passed. Further, it states that the State should ensure that men, women, and children are not forced into work that is unsuitable to their age or strength due to economic necessity.

- Article 42 states that the State shall make provisions for securing just and humane conditions of work and maternity relief and thus this Article of the Constitution incorporates a very important provision for the benefit of women. The State has implemented this directive by incorporating health provisions in the Factories Act, Maternity Benefit Act, Beedi and Cigar Workers (Conditions of Employment) Act, etc.
- Article 44 states that “the State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India”. Due to absence of a uniform civil code, women are routinely exploited in the name of personal laws promulgated by religions. This fact was known to the makers of constitution and thus they urged the states to implement a Uniform Civil Code. In the case of “Sarla Mudgal v. Union of India, a Hindu husband married under a Hindu Law converted to Islam. He solemnised the second marriage without dissolving his first marriage under the Hindu Law. The Court held the accused liable for bigamy under Section 494 of Indian Penal Code, 1860 and directions were given by the Supreme Court to secure a uniform civil code under Article 44. Thus, the case was a landmark which aimed at giving a Uniform Civil

Code which can protect women from being exploited in the name of personal laws promulgated by religions”¹⁵.

Fundamental Duties:

Part IV A of our Constitution deals with the Fundamental duties which are contained in Article 51 A of the Constitution. Article 51 A(e)¹⁶, in particular, deals with the issue of gender equality and women empowerment. It puts a duty on every Indian citizen to renounce all such practices which are derogatory to the dignity of a woman and in this way, it goes on to ensure gender equality and women empowerment in the society.

Other Provisions aiming at women empowerment:

73rd and 74th Constitutional Amendment of 1993 had inserted Chapters IX and IX A in the Constitution of India and had given a very important political right to women under Article 243D (2)¹⁷ and Article 243T (2)¹⁸ which is a landmark in the direction of women empowerment in India. Under these provisions, women belonging to Scheduled Castes and Scheduled Tribes were given at least one-third reservation in the total number of reserved seats at different levels of elections in local governance *i.e.* at Panchayat and Municipality elections. Thus, these provisions ensure that there is some reservation for women at different levels of elections in local governance *i.e.* at Panchayat and Municipality, thus contributing to the empowerment of women in the Indian society.

Are women really getting empowered? Are they really enjoying equal status in the society without facing any sort of gender discrimination?:

Today, everyone is of the view that there is gender equality in our nation and that women in India are enjoying

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14. *Supra* note 1, art. 39 (e): “The State shall direct its policy towards securing that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength”.
 15. *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635: AIR 1995 SC 1531
 16. *Supra* note 1, art. 51A (e): “It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women”.
 17. *Supra* note 1, art. 243D (2): “Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes in every panchayat”.
 18. *Supra* note 1, art. 243T (2): “Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes in every municipality”.

the rights equal to men. But in reality, the women in India have been the sufferers from past. Not only in earlier times but even in today's scenario, women are facing discrimination, injustice and dishonour. The points which I will be discussing below highlight the gender inequality and continuous violation of rights of women in India:

– **Violation of Right to Equality and the continuous existence of gender discrimination in the society :**

Article 14 of our Constitution provides for right to equality, where all the citizens whether men or women are equal before law and no discrimination should take place on the ground of sex. But is this really happening in our society? Aren't the women being discriminated and treated as inferior to men? The answer to all these questions is that despite all the advancement of our society and enactment of so many provisions for empowering women, the situation remains the same. Women are still discriminated on the ground of their gender and do not enjoy an equal status in the society. If we talk about the equality when it comes to education then we will find that there is a large gap in the literacy level of men and women. Many girls in our country remain uneducated as it is believed in some parts of our country that their life is confined to the household work and the opportunity of getting education is thus given to the male community as they are supposed to earn livelihood. So, isn't it a violation of right to equality as per our Constitution? Even if we talk about passing of the ancestral property, there also, the property can be passed to the married sons, but not the married daughters. So, after seeing such discrimination on the ground of the sex of a person, can we say that in India, every citizen is equal before law? Can we say that women are given the same status in our society which is enjoyed by a man?

– **Violation of Right to equal opportunities for employment and policy to get equal wages for equal work:**

If we talk about the employment opportunities then also we will find that there is a huge difference in the no. of employment opportunities which are available to a man and a woman. Whichever is the field, males are given preference over females. The reason behind this inequality lies in the knowledge of the skills which are lacking in women due to absence of education and awareness in them. Though today, it is said that women

are reaching moon but still the harsh reality is that in most of the places, women are not even given the basic primary education. And in fact, because of the existence of the stereotyped thinking, despite possessing the adequate skills and abilities, women are not given opportunities to excel in the field of employment. Even when they are employed then in most of the part of our nation, they are paid less as compared to a man. This all points towards the harsh reality that despite the enactment of the provisions which ensure equality of opportunity in employment and equal wages for equal work, women still do not enjoy such opportunities and are far behind the males in our society.

– **Violation of political rights of women:**

Despite the 73rd and 74th Constitutional Amendment of 1993 and provisions of Article 243D (2) and Article 243T (2), the political status of women in India is very unsatisfactory, particularly when it comes to their representation in higher political institutions i.e. Parliament and State Legislature. This in turn has hampered the effective role of women in influencing the government initiatives and policies regarding women's welfare and development. In fact, there is male domination in Indian politics and almost all the parties give very little support to women in election. This all shows that though women have taken many initiatives in political participation but they have never been accepted in politics.

– **Violation of women's right to life and personal liberty and infringement of their right to live with dignity:**

The Preamble of Indian Constitution talks about the assurance of the dignity of an individual. In fact, Article 21 of our Constitution states that no person's personal liberty and right to life should be infringed. However, if we take a look on today's reality then we can find a long list stating the incidents of sexual harassment of women, rape, domestic violence, eve teasing, etc. These all are constant attacks on a woman's self respect and dignity. In fact, in today's society, be it a bus stop or a woman's work place, a woman's dignity is under great threat everywhere. She is not free to live her life freely without any sort of fear in this society. So, it is clear that though constitution specifically provides for provisions for protection of a woman's dignity and liberty but in reality women still feel like a bird trapped in a cage.

– **Poverty, trafficking and corporate leadership:**

If we look at the poverty level then we will find that women are poorer than men. “Women constitute about 70% of the world’s absolute poor population”. The reason behind such a scenario is that women’s access to resources and education is still very less if compared to a man. Women and girls are the majority of the humans trafficked (bought and sold as property) internationally every year. Women are under represented in corporate leadership as well. Thus, all this points towards the harsh reality that despite the provisions of equality in our constitution, women have not yet acquired an equal status as that of a man in this society.

Conclusion :

Thus, after studying the various provisions of our Constitution which deal with women empowerment and gender equality and analysing their adherence in today’s society, I can conclude that our Constitution provides for equal status to both men and women. In the eyes of our Constitution, no gender is superior to the other and thus it prohibits any form of discrimination on the basis of sex. The preamble, Fundamental rights, Directive Principles and Fundamental Duties ensure that both men and women enjoy equality of status and opportunities in the society. In fact, many amendments have been made and various acts have been passed for the empowerment of women. However, in this male dominated and patriarchal society, women are not enjoying an equal status in the society and are dominated by males in every field. The main reason that the women are not getting empowered lies in the thinking of our society. Our society is not ready to accept a nation where both the genders are treated equally, both enjoy an equal status and opportunities, a

place where a woman can walk freely without any form of fear. The need is for awareness, education of the various rights that women have, and most importantly the spirit of bringing such change.

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