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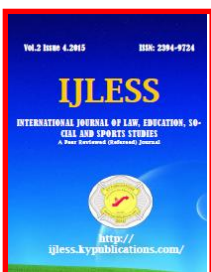
(Law)

## A CRITICAL STUDY ON WOMEN'S RIGHTS IN INDIAN CONSTITUTION

## RESEARCH ARTICLE

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**ABSTRACT**

The Indian constitution was adopted on 26<sup>th</sup> November 1949. The framers of the constitution, while drafting the constitution were well aware of the unequal treatment meted out to the women and made special provisions relating to their emancipation<sup>1</sup>. The principle of gender equality is enshrined in the Indian constitution in its preamble. Fundamental Rights and Duties. Directive principle of state policy and under the other provisions.

Constitution is a comprehensive document enshrining various principles of justices liberty, equality and fraternity. These objectives are specified in the preamble with regard to women. The constitution contains many provisions which go a long way in securing gender justice while incorporating all these provisions.

The framers of the constitution were well conscious unequal treatment meted out to the fairer sex, from immemorial. The history of suppression of women in India is very long and the same has been responsible for including certain general as well as specific provisions for the upliftment of the status of women and in some cases the women have been allowed to enjoy the benefit of certain special provisions under section- 497 of Indian penal code, a special provisions for women has been made Yusuf Abdul Aziz V. State of Bombay.<sup>2</sup> where in only a male is penalized for an offence of adultery and not a woman who would have been an abettors for that offence. Anjali Roy V. state of West Bengal<sup>3</sup>. The State may make Laws containing special provisions for the benefits of women and children and does not require that absolutely identical treatment as those enjoyed by males in similar matters must be afforded to them.

“Women like men, should try to do the impossible. And when they fail, their failure should be a challenge to others” – by Amelia Earhart.

**The Preamble :** The Preamble to the Indian constitution contains various goals including “the equality of status and opportunity” to all the citizens. This particular goal has been incorporated to give equal rights to the women and men in terms of the status as well as opportunity. It has been that the basis for many legislations like the Modern Hindu laws which aim at giving status and rights to the women<sup>4</sup>.

**Protection of women's Rights enshrined in part III of the constitution :** Fundamental rights are the basic rights conferred on the citizens by the constitution of the country and which are the essential for a man to lead a decent and respectable life

and to attain the fullest development of his human personality. These rights are essential to protect the rights and liberties of the people against encroachment by the state<sup>5</sup>.

The Indian constitution seeks to protect the interest of women mainly through fundamental rights and directive principles of state policy (DPSP). It makes certain provisions relating to women in two streams and some are included in part – III under the constitution as Fundamental rights which are enforceable in a court of law part-III consisting Article 12 to 35 relating to the Fundamental Rights, is the ‘heart of the constitution’. and others, have been incorporated in a part –IV under DPSP. Which are not enforceable in a court of law<sup>6</sup>. The Fundamental Rights are applicable to all the citizens irrespective of sex, which are given to the citizens as against state action but not against private parties *Maneka Gandhi v. Union of India*<sup>7</sup> Justice P.N Bhagawati has observed that “These fundamental rights represent the basic values cherished by the people of this country, since the vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave a “pattern of guarantees on the basic structure human rights, and impose negative obligations on the state not to encroach on individual liberty in its various dimensions”. *Sharda v/s Dharmpal*<sup>8</sup> court held that allowing medical examination of a women for her virginity amounts to violation of her right to privacy and personal liberty enshrined under Art-21 of the constitution.

**Gender Justice and the Indian constitution :** The elimination of gender – based discriminations is one of the fundamental of the constitutional edifice of India. In fact the constitution empowers the state to adopt measures of positive discrimination in favor of women for neutralizing the cumulative discrimination and deprecations which women face.

constitution of India has done a magnificent job in ensuring gender justice in the supreme of law of the country. The preamble to the constitution, interalia, assures justice, social economic and political, equality of status and opportunity and dignity of the individual. It recognizes women as class by itself and permits enactment of laws and reservations favoring them. several articles in our constitution make express provision for affirmative action in favor of women. It prohibits all types of discrimination against women and lays a carpet for securing equal opportunity to women in all walks of life, including education, employment and participation.

The commitment to gender equality is well entrenched at the highest policy making level – the constitution of India<sup>9</sup>. The state shall not deny equality to any person before the law or the equal protection of the laws with in the territory of India<sup>10</sup>. Art-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 law or equal protection of the law. These equality between genders and equality before law are based on Human Rights of U N declaration. Certain fundamental rights contain specific and positive provisions to protect the rights of women *C.B Muthamma v. Union of India & others*<sup>11</sup> Supreme court held a rule that “If a woman member shall obtain the permission of Government before the marriage, the same risk is run by Government if a male member contracts a marriage. If the family and domestic commitments of a women member of the service is likely to come in the way of efficient discharge of duties, a similar situation may well arise in the case of a male member – If a married man has a right, a married woman, other things being equal, stands on no worse footing. Freedom is indivisible, so is justice”. In *Air India v. Nargesh Mirza*<sup>12</sup> The supreme court struck down discriminatory service conditions requiring female employees to obtain government permission before marriage and denying married and pregnant women the right to be employed. Article – 15 clearly states that 1. The state shall not discriminate against any citizen on the grounds only of religion, race, caste, sex or place of birth or any of them. It prohibits gender discrimination. 2. No citizen shall on ground only of religion, race, caste, sex or place of birth or any one of them be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and place of public entertainment. 3. Nothing in this Article shall prevent the state from making any special provisions for women and children<sup>13</sup>. Art 15(3) lifts that rigour and permits the state to positively discriminate in favour of women to make special provisions, to ameliorate their social economic and political justice and accords them parity.

It’s object is to strengthen and improve the status of women. Thus it would be no violation of Article – 15 if reservations are made for women in educational institutions. Public employment and places reserved for them at public conveyance by virtue of Art. 15(3) . It is one of the exceptions to the general rule provided in clauses (1) & (2) to make special provision for the women and child. Women require special treatment on account of their very nature. In *Revathi v.*

Union of India<sup>14</sup> Supreme court held that sec. 198(2) of Cr. P.C. which gives the husband at of adulteress the right to prosecute the adulterer but does not give the wife of the adulterer the similar right, is not discriminatory following the aforementioned judgment. Dattatreya Motiram More v. state of Bombay.<sup>15</sup> Bombay High Court looked to the social, historic & economic inequality of women and upheld the reservation of seats for women in municipalities as a special provision “to raise the position of women to that of men”.

Article – 16 of the constitution of India also explicitly mentions equality of opportunities for all and prohibits the discrimination against women. It clearly states. 1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. 2. No citizen shall, on ground only of religion, race, caste, 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<sup>16</sup>.

In Mayna Devi v. state of Maharashtra<sup>17</sup> supreme court held that the requirement of husband’s consent for wife’s application for public employment was struck down as an anachronistic obstacle to women’s equality and economic justice. In Bombay Labour Union v. International Franchise<sup>18</sup>. The Supreme Court. quashed an employment rule, which required the unmarried women to give up her position when she gets married as violative of Art – 14.

In MacKinnon Mackenzie & co. Ltd v. Audrey D’ costa.<sup>19</sup> The court observed that there was discrimination in payment of wages to lady stenographers and such discrimination was being perpetuated under the garb of a settlement between the employees and the employers. The court finally not only made it mandatory to pay equal remuneration to lady stenographers as their male counterparts but also observed that the ground of financial incapability of the management can’t be a ground to seek exemption from The Equal Remuneration Act-1976.

In Gita Hariharan v. Reserve Bank of India<sup>20</sup>. The Supreme Court. construed the Guardianship legislations in the light of Articles-14 and 15 to the effect that mother was entitled to be natural guardian even during the lifetime of father, while in fact the statutes had relegated the position of women to a secondary position.

**Right to Dignified Life :** As per Article- 21 of the constitution of India “No person shall be deprived of life or personal liberty except according to procedure established by law”. The Supreme Court has made a novel use of Art-21 viz. to ensure that the female workers are not sexually harassed by their male co-workers at their places of work. In Vishaka v. state of Rajasthan<sup>21</sup> The Supreme Court has declared sexual harassment of a working women at her place of work as amounting to violation of rights of gender equality and right to life and liberty which is a clear violation of Art 14, 15 & 21 of the constitution. Art – 21 guarantees right to life with dignity. According the court has observed in this regard “The meaning and content of the Fundamental Rights guaranteed in the constitution of India are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or above”<sup>22</sup>.

Sexual harassment also violates the victim’s Fundamental Rights under Art-19(1) (g) “to practice any profession or to carry out any occupation, Trade or business”<sup>23</sup>. In the case of Apparel Export promotion council v. A. K. Chopra<sup>24</sup> In which disciplinary proceedings for sexual harassment leading to dismissal from service were upheld by the supreme court. In cases relating to public employment, The courts have quashed the discriminatory provisions that gave advantages to men and imposed disabilities on women. Rajbahadur v. Legal Remembrance<sup>25</sup> Art 23 of the constitution of India prohibits the trafficking of human beings. Traffic in human beings means, selling & buying of men & women like animal & immoral trafficking of women & children. In Vishal Jeet v. Union of India<sup>26</sup> Art 23 of the constitution specifically prohibits traffic in human beings. In this context traffic & in human beings includes “Devadasi System”. In Upendra Baxi v. State of U.P.<sup>27</sup> The Supreme court invoked Art. 21 and U.P. Suppression of Immoral Traffic in Women & Girls Rules and issued several orders for improving the conditions of the inmates of the protective home.

**Directive principles of state policy [DPSP]:** The directive principles of state policy contained in part IV of the constitution incorporate many directives to the state to improve the status of women and for their protection. As the words ‘people’ and ‘citizens’ in these directive means both men and women, all the directive principle are related to women also.

Article 39(A) directs the state to implement its policy towards securing that the citizen, both men & women, equally have the right to an adequate means of livelihood. Art 39(d) directs the state equal pay for equal work for both men & women. The state has enacted the Equal Remuneration Act- 1976 to give effect to this directive principle. Art 39(e)

specifically directs the state not to abuse the health and strength of workers, men & women. In *State of Haryana v. Rajpal Sharma*<sup>28</sup>. It was held that the teachers employed in privately managed schools in state of Haryana are entitled to the same salary and dearness aided dearness allowances paid to teachers employed in Government schools.

In *Uttarakhand Mahila Kalyana Parishad v. State of U.P.*<sup>29</sup> "It has been held that female teachers are entitled to the same salary as is paid to the male teachers of the same institution with regard to Art 39(d) that there is equal pay for equal work for both men and women" Art - 39A provides Equal Justice and free legal aid to every man or women. Art- 42 of the constitution of India states that the state shall make provisions for securing just and humane conditions of work and for maternity relief. The state has tried to implement this directive by enacting The Maturity Benefit Act-1961. *Municipal corporation of Delhi v. Female workers.*<sup>30</sup> The court has stated "Art\_ 42 specifically speaks of just and humane conditions of work and 'maternity relief', the validity of an executive or administrative Action in denying maternity benefit has to be examined on the anvil of Art- 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of".

According to the Art- 46 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. Art- 47 states that the state to raise the level of nutrition and the standard of living of its people. *Arjun Das v. state*<sup>31</sup> It was held that the state to regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duty. Further, the state is required to make steps to bring about prohibition of the consumption, except for medical purposes, of intoxicating drinks and drugs."

#### **Fundamental duties: (part IV- A)**

In part IV-A of the constitution incorporated through 42<sup>nd</sup> Amendment Act- 1976, our natural obligation to renounce practices derogatory to the dignity of women has been elevated to the status of fundamental duty by Article 51-A. The Equal Remuneration Act-1956, The Maternity Benefit Act-1961, The Dowry Prohibition Act-1961 and The Immoral Traffic (Prevention) Act-1956 are some of the enactments which owe their existence to the above mentioned provisions of the Indian constitution.

Art- 51-A (e) is related to women. It states that "It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood among all people of India transcending religion, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women"<sup>32</sup>". *All India Students Union v. Union of India*<sup>33</sup>. Justice R.N. Lahoti has observed that "Fundamental duties, though not enforceable by a writ of the Court, yet provide a valuable guide and aid to interpretation of constitutional and legal issues."

**Reservation for women in Local Self – Government:** The 73<sup>rd</sup> and 74<sup>th</sup> Amendments (1993) to the Indian constitution have served as a major breakthrough towards enhancing the women's participation in democratic process. These amendments provided for reservation of 33.33 percent of elected seats for women at different levels of Local Governance. In both rural and urban areas. According to Article 243D(3) of the constitution of India, not less than one third 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. Art 243D(4) states that not less than one third of the total number of offices of chairpersons in the panchayat at each level to be reserved for women. Art 243T(3) states that, not less than one third (including the number of seats reserved for women belonging to the SC's & ST's) of the total number of seats to be filled by direct election in every Municipality to be reserved for woman and such seats to be allotted by rotation to different constituencies in a municipality. Art.243T(4) states that, the reservation of offices of chairpersons in municipalities for the S.C and S.T's and women in such manner as the legislature of a state may by law provide. *Kasam bhai F. Ghanchi v. Chandubhai D. Rajput* .<sup>34</sup> Supreme court has declared A person from the reserved category can seek election for the post of chair person under Art 243T (4) even though he was elected as member from an unreserved constituency. It is not necessary that he should be elected only from a reserved category.

**CONCLUSION :** All the wings and layers of government – legislature, executive and judiciary at central, state and local levels – have the responsibility towards empowerment of women. The intention of the framers of the constitution to improve the social, economic, educational and political status of the women. So that they can be treated with men on equal terms.

Legislation has enacted many laws in bringing about equality between men & women to fulfill the obligation not only of the international conventions but also of the constitution Of India. A combined reading of Article-14, 15, & 21 of the constitution of India categorically provides that no law can be made or can be applied which discriminates against law cannot remedy the inequalities and bring about justice, development and empowerment. It can act as a spring board of doubt of all sections of society required to achieve the ends.

Whatever the causes may be, it is the duty of human to protect the human rights of those who are victims. Even though the government is trying to take care of this natural right by formulating various policies, enacting and formulating laws. but these are not enough to tackle this problems unless a strong move to protect the rights of women is launched by the people's movement. Gender injustice is a problem that is seen all over the world. But unless there are certain attitudinal changes, Women will continue to get a raw deal. They need to be educated.

The Indian constitution was framed keeping the subversion of rights of women in mind. It contains number of provisions for removing all kinds of disparities and discrimination against women from which they were suffering. Nevertheless women have always been discriminated, and they have been subjected to all in dignities, inequality and discrimination.

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