



Constitutional provisions made for the improvement of the status of women

Dr. Anjan Kaur

Department of Public Administration, Himachal Pradesh University, Summer Hill, Shimla, Himachal Pradesh, India

Abstract

The Indian women gained their equality of status in the Constitution after independence. But custom to the dies hard; and today full equality is yet to be realized, it is solely due to the fact that social and economic backwardness are realities which have to be tackled and eradicated in order to realise the goals paid down in the Constitution. The Constitution of India not only grants equality of women but also empowers the state to adopt measures of positive discrimination in favour of women for neutralising the cumulative socio-economic, educational and political disadvantages faced by them. The preamble to the constitution resolves to secure to all its citizens, justice, social, economic and political, liberty of thought, expression, belief, faith and worship, equality of status and of opportunity and to promote among them all, fraternity, assuring the dignity of the individual and the unity and integrity of the nation. The Constitution of India not only grants equality to women but also empowers the state to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio-economic, education and political disadvantages faced by them.

Keywords: Indian constitution, women equality, constitutional provisions, women empowerment, socio-economic and political discrimination

Introduction

The Constitution of free India gives democratic rights to all citizens without distinction of sex. It declares, "There shall be equality of opportunity to any office under the state. Further no citizen shall on grounds 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." Thus now theoretically no office is closed to women. This legal prerequisite will help women to secure higher posts and contribute to greater social well-being^[1]. Indian women have more rights than women of other countries, but there are large areas wherein women are suffering, where, may be they are not conscious of their rights, said Gandhi, Prime Minister of India, in April 1975. The Preamble to the Constitution speaks of securing to all citizens of India equality of status and of opportunity as well as justice-social, economic and political. One of the directive principles of state policy prescribes that the state should direct its policy towards securing equal play for both men and women^[2]. Along with certain negative rights, prohibiting discrimination or denial of equal protection of law, are also guaranteed. As equal citizens of India, women benefit from these rights equally with men. However, since the constitution recognized the unequal social provisions for women and children even in violation of the obligation not to discriminate among citizens. This power has been used to enact special laws for the protection of women workers in factories, mines and plantations, and to provide maternity relief to women

workers in the organised sector^[3]. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibit discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard^[4].

Constitutional provisions made for the improvement of women's status

A Constitution means a document having a special legal sanctity which sets the framework and the principal functions of the organs of the government of a state and declares the principles governing the operation of these organs. The Constitution of India is an organic and dynamic socio-political and legal written document which is the guiding polestar for the destiny of the world's largest Sovereign Socialist Secular Democratic Republic. It is one of the youngest basic legal document and also the largest. It is the first and foremost protector of fundamental rights with a detailed agenda for people's welfare. People of India (both men and women) adopt, enact and give the Constitution of India to themselves. The frames of the Constitution were well conscious of the discrimination and unequal treatment meted out to the fairer sex, from time moral. They included certain general as well as specific provisions for upliftment of the status of women.

¹ Jha, Uma Shankar and Premlata Pujari, *Indian Women Today*, Vol.1 Kanishka Publishers, New Delhi, 1996, p.279.

² Ibid, pp. 195-196.

³ Roy, Kalpana, *Women and their Environment*, Vol.1 Rajat Publications, New Delhi, 1999, p.83.

⁴ Chauhan, Pradeep, *Women and Men in Himachal Pradesh*, Department of Economic and Statistics, Govt. of Himachal Pradesh, Shimla, 2014, p.6.

They provided equality of status and of opportunities explicitly at some places and implicitly in all other places on par with men as citizen of India ^[5].

Constitutional Privileges

- Equality before Law for Women (Article 14):- Article 14 of the Indian constitution permits classification which may be reasonable. It is possible to argue that classification based on sex, caste, religion, place of birth is permissible. The Indian women became the beneficiaries of these guarantees. In addition, she also became the beneficiary of the provision against discrimination and the guarantee of equality before law and equal protection of law within the territory of India ^[6].
- The State not to discriminate against any citizen on the grounds of religion, race, caste, sex, place of birth or any of them (Article 15(i)).

Article 15 of the Indian Constitution permits discrimination, subject to certain exception. Article 15(ii) says that no citizen shall on ground of religion, caste, sex, place of birth or any of them be subject to any disability, liability restriction or condition with regard to (a) access to shop, public restaurants, hotels and places of public. Entertainment; (b) the use of well, tanks, bathing ghats, roads and places of public resort, maintain wholly or partly out of fund ^[7].

- Article 15 (3) Nothing in this Article shall prevent the state from making any special provision for women and children. The U.S. Supreme Court in Muller v/s Orgean has laid down the reason for making special provision for women in the following words, “Women physical structure and performance of maternal function place her at a disadvantage for subsistence and her physical wellbeing becomes an object of public interest and care in order to preserve, strengthen and vigour of the race.

The exception made by Article 15(3) applies to existing laws and also to laws, a state may make in future.

- Article 16
- 1. Equality of opportunity for all citizen 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, decent place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.
- 3. Nothing in this Article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office/under the Government of, or any local or other authority within, a state or Union Territory, any requirement as to residence within the State or Union Territory prior to such

employment or appointment.

4. Nothing in the Article shall prevent the State from making any provision for reservation of appointments or posts in favour of any backward class of citizen which, in the opinion of the state, is not adequately represented in the service under the state.
5. Nothing in this Article shall prevent the state from making any provision for reservation in matter of promotion of any class or classes of posts in the services under the state in favour of Scheduled Castes and Scheduled Tribes which, in the opinion of the state are not adequately represented in the service under the state.
6. Nothing in this Article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body there of shall be a person professing a particular religion or belonging to a particular religion or belonging to a particular denomination ^[8].
- Under Article 19(1) of the Constitution of India, all citizen shall have the right (a) to freedom of speech and expression; (b) to assemble peaceably and without arms; (c) to form associations or unions; (d) to move freely throughout the territory of India; (e) to reside and settle in any part of the territory of India and (f) to practice any profession, or to carry on any occupation, trade or business. These six ‘freedom’ are, however, not absolute. These freedoms are restricted by the Constitution itself in clause (2) to (6) the restriction which may be imposed by the state under any of the clauses must be reasonable restrictions and not arbitrary ^[9].

In Meneka Gandhi v/s Union of India, the Supreme Court laid down that the ‘freedom of speech and expression’ under Article 19(1) (a) had no geographical limitations. The freedom carried with it, the right to gather information as also to speak and express oneself, at home and abroad and no exchange thoughts and ideas with others, not only in India but also outside ^[10]. Again, in State of U.P. v/s Kaushaliya, under the U.P. Suppression of Immoral Traffic in Women and Girls, Act, 1956, the Magistrate could compel a prostitute to remove herself from the place of her residence. The Act was upheld by the Supreme Court as imposing reasonable restrictions on the freedom of movement or residence of prostitutes, on the ground of public health and in the interest of public morals i.e. to protect from the harmful effects of prostitution ^[11]. In Vishaka v/s state of Rajasthan, the Supreme Court observed that sexual harassment of working women in work places would be violation of the victims, fundamental rights under Article 19(1) (9). In this case, a social worker was brutally gang raped in a village of Rajasthan. The court took a serious note of the matter and issued binding directions for the prevention of such incidents. The directions were to be applicable to both public and private sector. In another case

⁵ Narayana, P.S, *Women and Law*, S.P. Gogla Publishers Haritha Graphics, Hyderabad, 2008, p.14.

⁶ Mukherjee, Rama, *Women Law and Free Legal Aid in India*, Deep & Deep Publications, New Delhi, 1998, p.97.

⁷ Narayana, op. cit., p.16.

⁸ Mukhrjee, op. cit., p.99.

⁹ Narayan, op. cit., p.16-17.

¹⁰ Kumar, Narendra, *Constitutional law of India*, Asian Offset Printers Faridabad (Haryana), 2004, p.205.

¹¹ Ibid, p.218.

Apparel Export Promotion Council v/s A.K. Chopra, Supreme Court said that the violation of the Fundamental Right to Gender Equality and the right to life and liberty, the two most precious Fundamental Rights guaranteed by the Constitution [12].

- Article 20 provides protection in respect of conviction for offences.

In case *Soni Devrajbhai Babubhai v/s State of Gujarat*, it was held that section 304 B inserted in the Indian penal code, 1860, on November 19, 1986, creating a distinct offence of dowry death and providing a minimum sentence of seven years, imprisonment, could not be applied to such death caused before the insertion of the section, because of the prohibition contained in Article 20 (1), and the Apex Court in *Sarla Mudgal v/s Union of India* holding that the second marriage of a Hindu husband after conversion to Islam without having his first marriage dissolved under law, should be invalid, the second marriage would be void in terms of the provisions of section 494, IPC, 1860 and the apostate-husband would be guilty of the offence under section 494, IPC, 1860.

- Article 21 provides “No person shall be deprived of his life or personal liberty except according to procedure established by law.” It secures two rights:

(a) Right to life and (b) Right to personal liberty. The Supreme Court in case of *Smt. Kiran Bedi v/s Committee of Inquiry*, held that a good reputation was element of personal security and was protected by the Constitution, equally with the right to the enjoyment of life, liberty and property. The court affirmed that the right to enjoyment of a private reputation was of ancient origin and was necessary to human society. In case *Mohini Jain v/s State of Karnataka*, the court held that “right to life” was compendious expression for all those rights which the courts must enforce because they were basic the dignified enjoyment of life. The court thus declared; the right to education flows directly from right to life [13].

- Article 39 (a); declares that the State to direct its Policy towards securing for men and women equally the right to an adequate means of live hood and equal pay for equal work for both men and women (Article 39(d).

(Article 39A) declares to promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme 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 [14]. In centre for legal Research v/s State of Kerala, it has been suggested that in order to achieve the objective of Article 39A, the state must encourage and support the participation of voluntary organisations and social action groups in operating the legal aid programme. The Government should set up a “Suitors fund” to meet the cost of defending a poor or indigent. The Court held that although the mandate in Article 39A is addressed to the legislature and the executive, yet the Court

too are bound by the mandate contained therein [15].

- (Article 42) requires that, “the state shall make provisions for securing just and humane conditions of work and for maternity relief”.

It has been held in *P. Shivaswamy v/s State of Andhra Pradesh*, that Rs. 738/- paid per family as financial from bonds, were inadequate and not in conformity with Article 42 which required the State to make provisions for just and humane conditions for work. Recently, in *M.C. of Delhi v/s Female Workers (Muster Roll)*, the Maternity Relief has been extended to women (muster roll) employees, working daily wages.

- (Article 46) enjoins: ‘The State shall promote with special care the educational and economic interests of the weaker section of the people, and, in particular, of the scheduled castes and scheduled tribes, and shall protect them from social injustice and all forms of exploitation.’

In *Indian Sawheny v/s Union of India*, commonly known as *Mandal Commission Case*, the Court laid down that the expression ‘weaker section of the people’, was wider than the expression “backward classes of citizens” or socially and educationally backward classes” or “Scheduled Castes and Scheduled Tribes”. The expression included all sections of the society, who were rendered weaker due to various causes including poverty and natural and physical handicaps.

- (Article 47) the state to raise the level of nutrition and the standard of living of its people.

The essence of Article 47 is the raising the level of nutrition, the standard of living and the improvement of public health. The state is required to promote the Directive Principles and not to go against them. Since the state under Article 47 is under an obligation, to take all steps for the improvement of public health, the *Andhra Pradesh High Court*, in *M. Vijaya v/s Chairman, Singrani Collieries*, held that it was necessary for the state to identify HIV+ ive cases and any action taken in that regard could not be termed as unconstitutional.

- (Article 51A) to promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women.

In *Chandra Rajakumari v/s Police Commission, Hyderabad*, the *Andhra Pradesh High Court* has observed that holding of beauty contest by depicting in only manner the figure of a women, form, body or any part thereof in such a way so as to have the effect of being in decent or derogatory to or denigrating women, offended Article 14, 21 and 51 A (e) [16].

Though, the conational recognition of equal status for women and progressive legal enactments has undoubtedly empowered Indian women with juridical equality. The relative ease with which Indian women secured juridical equality, entered professions and occupied positions of power has led to the myth that Indian women enjoy a very high status and that they wield power naturally. This myth has been eroded during the last ten to fifteen years. There is a growing awareness that

¹² Ibid, p.228.

¹³ Ibid, pp.313, 320,340.

¹⁴ Op.cit. Department of Economics and Statistics, govt. of Himachal Pradesh. p.7.

¹⁵ Kumar, op. cit., pp. 395-396.

¹⁶ Ibid, pp. 403-411.

men and women suffer from discrimination and disabilities operate in more subtle and covert ways. Thus the dual existence of women holding high positions and yet undergoing various types of suffering continues ^[17].

Conclusion

Such achievements, notwithstanding, women still comprise the largest section of population living in absolute poverty and they represent the poorest of the poor. Gender discrimination today, though amongst the most subtle, is one of the most all-pervading forms of deprivation. Women continue to be in marginal employments and low level of skills, their contribution being largely "invisible". The prevailing women to the inside sphere. Reproduction and responsibilities of nurturance, management of a fragile environment, and low paid or unpaid but heavy work responsibilities in agriculture, animal husbandry and other traditional sectors create a syndrome of gender stereotypes, marginalisation, alienation and deprivation. Women are thereby the situation of deprivation. Women are thereby excluded not merely from political, social and economic power but knowledge power as well. Therefore, while comprising half of humanity, "contributing 2/3rd of the world's work-hours, They earn only 1/3rd of the total income and own less than 1/10th of the world's resources". If the objectives of development are to enlarge people's choices, and increase people's capabilities to exercise such choices, nowhere is the challenge more stark and daunting than in the case of poor women. What makes the situation most complex is a general societal inability to be able to discern this aspect of inadequacy of the development response. Many women themselves are often conditioned and brow-beaten into insensitivity and unquestioned submission to biases and discriminations which they tend to view as socially ordained and irrevocable. As for men, they go around blind, seeing and yet not seeing anything.

In short, legislation enacted so far, though indicating a progressive trend, has not become the striking arm of justice and Equalitarian Ethics to aggressively and effectively wipe out the inhuman indignities and hardships suffered by women. The facts mentioned above convincingly establish that legislative measures have not left their decisive imprint upon the social life of women ^[18].

In order to eliminate the weakness point of the present legislative measures and to make laws as effective instruments of protection and agencies of welfare of woman, it is necessary to make drastic alterations both in the spirit and the content of legislation.

The first step in this direction could be made only if the basic attitude which underlies all the legal enactments pertaining to women is changed.

In this connection it is very essential to redefine the attitude towards work done by women particularly at home which moulds the policy of the State. The National Planning Committee had also pointed out, how this changed attitude is

necessary and would generate legislative and other measures which would make the life of the women working at home more bearable and significant. Secondly, the machinery to implement extant legislation requires to be made efficient, cheap and simple. Thirdly, the need to enact a comprehensive, common and uniform civil code based on a thorough understanding of the problem of Indian women has become urgent.

However, the roots of the women's disabilities lie deeper in the social structure. Legislation in itself is not enough. The legislation itself is the product and reflection of the dominant ideology of society. Further even a good law would remain unutilized in the general climate of social life would not be conducive for its implementation. Women should first of all develop consciousness of their own rights. They should also ceaselessly strive to actualize the rights granted to them and also carry on struggle to secure further rights.

The Constitution of Indian Union has proclaimed that women are equal to men. However to fight against all the obstacles which still prevent the realization of this principle into real social life, women shall have to carry on continuous, heroic and organized struggles for a long time.

References

1. *ibid*, 279.
2. *ibid*, 195-196.
3. Roy, Kalpana, *Women and their Environment* Rajat Publications, New Delhi. 1999; 1:83.
4. Chauhan, Pradeep. *Women and Men in Himachal Pradesh*, Department of Economic and Statistics, Govt. of Himachal Pradesh, Shimla, 2014, 6.
5. Narayana PS. *Women and Law*, S.P. Gogla Publishers Haritha Graphics, Hyderabad, 2008, 14.
6. Mukherjee, Rama. *Women Law and Free Legal Aid in India*, Deep & Deep Publications, New Delhi, 1998, 97.
7. Narayana. *op. cit.* 16.
8. Mukherjee, *op. cit.*, 99.
9. Narayan, *op. cit.*, 16-17.
10. Kumar, Narendra. *Constitutional law of India*, Asian Offset Printers Faridabad Haryana, 2004, 205.
11. *Ibid*, 218.
12. *Ibid*, p.228.
13. *Ibid*, pp.313, 320,340.
14. *Op. cit.* Department of Economics and Statistics, gov. of Himachal Pradesh. 7.
15. Kumar. *op. cit.*, 395-396.
16. *Ibid*, 403-411.
17. *Op. cit.*, Department of Economic and Statistics, Govt. of Himachal Pradesh, 7.
18. Kumar. *op. cit.*, 616.
19. *Ibid*, 160-161.
20. Jha Uma Shankar and Premlata Pujari, 280.

¹⁷ *Ibid*, pp. 160-161.

¹⁸ Jha Uma Shankar and Premlata Pujari, "*Indian Women Today*" Tradition, Modernity and Challenge, Vol. 1, Kanishka Publishers, Distributors, New Delhi, 1996, p.280.