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ANNIHILATION OF GENDER DISCRIMINATION THROUGH INDIAN CONSTITUTION

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Abstract

The obnoxious discrimination against women and girls has been prevalent all through India for ages. Recognizing this abhorrent practice of gender discrimination, the framers of Indian Constitution enshrined the principle of gender equality in the Constitution. There are many provisions included in this Magna Carta of India with a view to annihilate discriminatory practices based on gender. The Preamble of the Indian Constitution is a brief introductory statement of what the Constitution sets out to achieve. Using the constitutional provisions, we have achieved a certain degree of success in weakening the patriarchal nature of Indian Society, but to achieve gender equality in its truest sense, the society needs to change its mindset on women.

Key words: annihilation , discrimination ,gender ,right ,equality

Introduction:

The obnoxious discrimination against women and girls has been prevalent all through India for ages. Recognizing this abhorrent practice of gender discrimination, the framers of Indian Constitution enshrined the principle of gender equality in the Constitution. There are many provisions included in this Magna Carta of India with a view to annihilate discriminatory practices based on gender. We discuss a few of such provisions below.

The Preamble of the Indian Constitution:

The Preamble of the Indian Constitution is a brief introductory statement of what the Constitution sets out to achieve. The Preamble declares:

“We, **the people of India** having solemnly resolved to constitute India into a **Sovereign, Socialist Secular Democratic Republic** and 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 the integrity of the Nation.

In our Constituent Assembly this twenty-sixth day of November, 1949 do **Hereby, Adopt, Enact and Give to ourselves this constitution.**”

The expression “We the people of India” in the preamble indicates that the source of authority of the Constitution is the people of India. The preamble states clearly and unambiguously that it is the people of India, irrespective of religion, race, caste, sex etc. , who have adopted, enacted and given to themselves the constitution. Therefore, the expression “people” is gender neutral. It evidently refers to “human beings”. The preamble makes it very clear that the state has to secure justice, liberty, equality to all citizens irrespective of their sex.

Chapter III: Fundamental Rights

The Fundamental Rights are deemed as basic human rights of all citizens, irrespective of religion, race, caste, sex, and place of birth or any of them.

Article 14- Equality before Law

Article 14 states that ‘the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India’. The expression ‘equality’ mentioned in this article is a twofold concept²:

1) Equality Before the Law:

The concept of ‘equality before law’ has its root in the English Constitution. The expression ‘equality before law’ implies that there shall not be any special privilege in favour of any particular individual by virtue of birth or creed. As Sir Ivor Jennings, a well-known British constitutional expert puts it: “Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, religion, wealth, social status or political influence.”

Another British constitutional expert Prof. Dicey opined that ‘equality before law’ is an element of Rule of Law. According to him, ‘equality before law’ implies equal subjection of all individuals to the ordinary law of the land administered by ordinary courts. It means no individual is above law and all individuals, irrespective of their rank and condition, are subject to the jurisdiction of ordinary courts.

2) **Equal Protection of the Laws:**

The idea of “Equal protection of the laws” is borrowed from the American constitution. The expression “Equal protection of the laws” implies that there shall be equality of treatments in equal circumstances, both in the privileges conferred and liabilities imposed by the laws. It means the state must treat an individual in the same manner as others in similar conditions and circumstances.

The equal protection of law guaranteed by Article 14 does not mean that all law must be general in nature. It does not mean that the same laws should apply to all persons. Infact, identical treatment in unequal circumstances would amount to inequality. So, a reasonable classification is not only permitted but is necessary if society is to progress. But classification must not be arbitrary, artificial or evasive. Classification to be reasonable must fulfil the following two conditions:

- a) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and
- b) The differentia must have a rational to the object sought to be achieved by the act.

From above discussion, it is clear that Article 14 permits a reasonable classification. For instance, positive discrimination in favour of women is allowed under Article 14 given the fact that the discriminatory practices based upon gender exist in the society.

Article 15- Prohibition of Discrimination on Grounds of Religion, Race, Caste, Sex, Place of Birth or any of them.

Article 15 (1) declares “The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 15(2) states “No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to-

- (a) Access to shops, public restaurants, hotels and places of public entertainment; or
- (b) The use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

15(3) states “Nothing in this article shall prevent the state from making any special provision for women and children.

Article 15(3) clearly mentions that Article 15(1) shall not prevent the state from making any special provision for women and children. For instance, special seating arrangement for women in buses and trains does not constitute a violation of Article 15 (1)⁴.

Article 16- Equality of Opportunity in Matters of Public Employment

Article 16 (1) declares “There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.”

Article 16 (2) declares “ 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 appointment to an office under the state”

Article 16 (4) declares “ Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the State.”

It is evident that Article 16 prohibits gender discrimination in matters of employment. For example, the discrimination against a woman on the ground of her marital status or pregnancy discrimination in matters of employment is unconstitutional.

Article 21: Protection of Life and Personal Liberty

Article 21 states “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

Article 21(A) declares “The state shall provide free and compulsory education to all children of the age of 6 to 14 years in such manner as the state may, by law, determine.”

Article 23: Prohibition of Traffic in Human Beings and Forced Labour

23(1) states “Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.”

23(2) states “Nothing in this article shall prevent the state from imposing compulsory service for public purposes, and in imposing such service the state shall not make any discrimination on grounds only of religion, race, caste or class or any of them.”

Article 23 provides right against exploitation. It prohibits traffic in human beings and forced labour. For example, sex trafficking of women and girls is unconstitutional. In pursuance of Article 23, Parliament has passed the Immoral Traffic Act, 1956 with the aim to stop exploitation of human beings.

Article 24: Prohibition of Employment of Children in Factories etc.

Article 24 states “No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.”

.Article 24 protects children below the age of fourteen years from violence, exploitation and abuse. The expression “child” in Article 24 is gender neutral.

Chapter IV: Directive Principles of State Policy

The directive principles of state policy are fundamental in the governance of the country. It shall be duty of the State to apply these principles in making laws.

Article 39: Certain Principles of Policy to be Followed by the State

Article 39 states “The state shall, in particular, direct its policy towards securing-

- (a) That the citizens, men and women equally, have the right to an adequate means of livelihood.
- (b) That the ownership and control of the material resources of the community are so distributed as best to subserve the common good.
- (c) That the operation of the economic system does not result in the concentration of the wealth and means of production to the common detriment
- (d) that there is equal pay for equal work for both men and women;

- (e) that the health and strength of workers, men and women, and the tender age of children are not abused and the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;
- (f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

In pursuance of the Article 39 (d), Parliament has introduced the Equal Remuneration Act, 1976.

Article 42: Provisions for Just and Humane Conditions of Work and Maternity Relief

Article 42 states “The state shall make provisions for securing just and humane conditions of work and for maternity relief.”

In consonance with Article 42, the Maternity Benefit Act, 1961 has been introduced to protect the employment of women during the time of her maternity.

Article 43: Living Wage, etc., for Workers

Article 43 states “The state shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.”

The Minimum Wage Act, 1948 is inspired by Article 43. The aim of this act is to set minimum wages that must be paid to workers, irrespective of gender.

Important Judgements:

- A) **In Air India v. Nargesh Meerja**, the validity of regulations 46 and 47 of the Air India Employees Service Regulations was challenged. Regulations 46 and 47 had treated male and female in flight cabin crew differently. For instance, under regulation 46, the retirement age of male cabin crew was 59, while the female cabin crew were required to retire under three conditions: 1) upon attaining the age of 35 years, 2) upon getting married within four years of service or 3) on first pregnancy, whichever occurred earlier. Under 47, the Managing Director had the absolute discretion to extend this period.

The Supreme Court struck down above-mentioned regulations as the conditions laid down in the regulations are antithesis of article 14 of the constitution. The court considered the termination of services of airhostesses on first pregnancy a callous and cruel act. The court was of the opinion that compelling the poor airhostess not to have any children was open an insult to the womanhood. The court also held that the absolute discretion of the Managing director to extend the service of airhostess was unconstitutional.

- B) In C.B Muthamma Vs Union of India**, the validity of Rules 8(2) and 18(4) of Indian Foreign Service (IFS) Rules 1961 was challenged in the Apex Court. According to 8(2), a female member in IFS had to take prior permission of the government in black and white before her marriage and to resign, if the government is satisfied that her family and domestic duties are likely to become hindrance to due and efficient discharge of her duties. 18(4) (Recruitment, Cadre, Seniority and Promotion) prohibited a married woman to be appointed in IFS as of right.

The Apex Court declared the above-mentioned provisions as unconstitutional. The court also impressed upon the government, the need to overhaul all Service Rules and remove the stain of sex discrimination.

- C) In Vishaka v. State of Rajasthan**, the Apex Court laid down a set of guidelines for safeguarding women from sexual harassment at work place. The petitioner, a social worker in Rajasthan, was gang raped by a group of men, for she tried to prevent a child marriage. The petition was filed to enforce the rights of working women under articles 14, 19 and 21 of the Constitution.

Safeguard against sexual harassment and right to work with dignity are integral aspects of gender equality. In the formulation of guidelines, the Apex Court has considered international conventions and norms. The court has laid down following guidelines:

- (1) All employers or persons in charge of work place in the public and private sector, should take appropriate steps to prevent sexual harassment without prejudice to the generality of his obligation he should take the following steps:
 - (a) Express prohibition of sexual harassment, which includes physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornographic or any other unwelcome physical, verbal or non-verbal conduct of sexual nature should be noticed, published and circulated in appropriate ways.

- (b) The rule and regulation of government and public sector bodies relating to conduct and discipline should include rules prohibiting sexual harassment and provide for appropriate penalties against offender.
- (c) As regard to private employees, the above prohibitions should be included in the Standing Order under the Indian Employment (Standing Orders) Act 1916.
- (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work place and no employee women should have reasonable ground to believe that she is disadvantaged in connection with her employment.

2) Where such conduct amounts to specific offences, under the Indian Panel Code or under any law, the employer shall initiate appropriate action in accordance with law making a complaint with appropriate authority.

3) The victim of sexual harassment should have option to seek transfer of the perpetrator or their own transfer.

D) In Dettatreya Motiram v. State of Bombay, certain provisions of the Bombay Municipality Boroughs act, 1925 that reserves seats for women in the election to the Jalgaon Municipality were challenged in the Bombay High Court. The court held that the state could discriminate in favour of women against men, but it could not discriminate in favour of men against women.

E) In T Sudhakar Reddy v. The Govt. of Andhra Pradesh, the provision 31 (1)(a) of the Andhra Pradesh Co-operative Societies Act was challenged in the Apex Court. The proviso states “Provided also that two women member shall be nominated by the Registrar to the Committee of such class of societies and in such manner as may be prescribed from among the women members of the general body of such societies. Such nominated women members shall, notwithstanding anything contained in this act, have the right to vote and otherwise to take part in the proceedings of the meetings of the Committee.”

The Apex Court upheld the constitutional validity of the above-mentioned provision of Andhra Pradesh Co-operative Societies Act on the reasoning that Article 15 (3) of the Constitution of India permits the making of special provisions for women.

F) In Randhir Singh v. Union of India, the Apex Court has held that the doctrine of “Equal pay for equal work though not a fundamental right” is

certainly a constitutional goal and , therefore capable of enforcement through constitutional remedies under Article 32 of the Constitution.

- G) **In Navjet Singh Johar & Ors v. Union of India**, the Apex Court decriminalises consensual sexual conduct between adults of the same sex.
- H) **In Shayaro Bano v. Union of India**, instant triple talaq was declared unconstitutional by the Apex Court.
- I) **In the Secretary, Ministry of Defence v.Babita Punia &Ors**, the Apex Court has ruled that the woman officers in Short Service Commission (SSC) are eligible for the permanent commission in the Indian Army.

Important Legislations:

1) Immoral Traffic (Prevention) Act, 1956:

The aim of this act is to end the commercial sexual exploitation of women and children.

2) The Maternity Benefit Act, 1961

The Maternity Benefit Act, 1961 safeguards the employment of women during the time of her maternity and entitles her of a 'maternity benefit'.

3) Dowry Prohibition Act, 1961

This act makes the practice of giving or taking of dowry a punishable offence.

4) The Equal Remuneration Act, 1976

The object of the Equal Remuneration Act is to prohibit discrimination between workers on the ground of gender.

5) The Prohibition of Child Marriage Act, 2006

This act was introduced to eradicate the pernicious effect of child marriage.

6) The Protection of women from Domestic Violence Act, 2005

The aim of this act is to protect women from domestic violence.

7) The sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

This act intends to safeguard women from sexual harassment at workplace.

Conclusion:

Using the constitutional provisions, we have achieved a certain degree of success in weakening the patriarchal nature of Indian Society, but to achieve gender equality in its truest sense, the society needs to change its mindset on women. As Justice K.N. Phaneendra puts it: “Any number of legislations and adding more teeth to the existing acts will not act as a deterrent to the increasing incidents of atrocities on women and rising sexual offences against the children, it is only a responsible society which can bring about some hope and reverse the trend.”

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