



Women Empowerment Human Rights And Constitution Reflection

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Abstract

During the United Nations Decade for Women, women from many geographical, racial, religious, cultural, and class backgrounds took up organizing to improve the status of women. The United Nations-sponsored women's conferences, which took place in Mexico City in 1975, Copenhagen in 1980, and Nairobi in 1985, were convened to evaluate the status of women and to formulate strategies for women's advancement. These conferences were critical venues at which women came together, debated their differences and discovered their commonalties, and gradually began learning to bridge differences to create a global movement. In the late eighties and early nineties, women in diverse countries took up the human rights framework and began developing the analytic and political tools that together constitute the ideas and practices of women's human rights.

Keywords : Women Empowerment, Human Rights

Introduction

Taking up the human rights framework has involved a double shift in thinking about human rights and talking about women's lives. Put quite simply, it has entailed examining the human rights framework through a gender lens, and describing women's lives through a human rights framework. In looking at the human rights framework from women's perspectives, women have shown how current human rights definitions and practices fail to account for the ways in which already recognized human rights abuses often affect women differently because of their gender. This approach acknowledges the importance of the existing concepts and activities, but also points out that there are dimensions within these received definitions that are gender-specific and that need to be addressed if the mechanisms, programs, and the human rights framework itself are to include and reflect the experiences of the female half of the world's population.

When people utilize the human rights framework to articulate the vast array of human rights abuses that women face, they bring clarifying analyses and powerful tools to bear on women's experiences. This strategy has been pivotal in efforts to draw attention to human rights that are specific to women that heretofore have been seen as women's rights but not recognized as "human1' rights. Take, for example,

the issue of violence against women. The Universal Declaration states: "No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment." This formulation provides a vocabulary for women to define and articulate experiences of violence such as rape, sexual terrorism and domestic violence as violations of the human right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment. The recognition of such issues as human rights abuses raises the level of expectation about what can and should be done about them. This definition of violence against women in terms of human rights establishes unequivocally that states are responsible for such abuse. It also raises questions about how to hold governments accountable for their indifference in such situations and what sorts of mechanisms are needed to expedite the process of redress.

The term women's human rights and the set of practices that accompanies its use are the continuously evolving product of an international movement to improve the status of women. In the 1980s and 1990s, women's movements around the world formed networks and coalitions to give greater visibility both to the problems that women face every day and to the centrality of women's experiences in economic, social, political and environmental issues. In the evolution of what is becoming a global women's movement, the term "women's human rights" has served as a locus for praxis, that is, for the development of political strategies shaped by the interaction between analytical insights and concrete political practices. Further, the critical tools, the concerted activism, and the broad-based international networks that have grown up around movements for women's human rights have become a vehicle for women to develop the political skills necessary for the twenty-first century.

The concept of women's human rights owes its success and the proliferation of its use to the fact that it is simultaneously prosaic and revolutionary. On the one hand, the idea of women's human rights makes common sense. It declares, quite simply, that as human beings women have human rights. Anyone would find her or himself hard-pressed to publicly make and defend the contrary argument that women are not human. So in many ways, the claim that women have human rights seems quite ordinary. On the other hand, "women's human rights" is a revolutionary notion. This radical reclamation of humanity and the corollary insistence that women's rights are human rights have profound transformative potential. The incorporation of women's perspectives and lives into human rights standards and practice forces recognition of the dismal failure of countries worldwide to accord women the human dignity and respect that they deserve—simply as human beings. A woman's human rights framework equips women with a way to define, analyze, and articulate their experiences of violence, degradation, and marginality. Finally, and very importantly, the idea of women's human rights provides a common framework for developing a vast array of visions and concrete strategies for change.

The Indian Constitution adopted by the Constituent Assembly on 26th November, 1949 is a comprehensive document enshrining various principles of justice, liberty, equality and fraternity. These objectives specified in the preamble and elsewhere form part of basic structure of The Indian Constitution. The fundamental law of the land assures the dignity of the individuals irrespective of their sex, community or place of birth.

With regard to the women, the Constitution contains many negative and positive provisions which go a long way in securing gender justice. While incorporating these provisions, the framers of the Constitution were well conscious of the unequal treatment meted out to the fairer sex, from the time 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 upliftment of the status of women, The rights guaranteed to the women are on par with the rights of men and in some cases the women have been allowed to enjoy the benefit of certain special provisions.

The general provisions relating to the equal rights available to the women are the right to vote and other political rights, the fundamental rights contained in Part III of the Constitution and the directive principles etc.,

(i) 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 the basis for much legislation like the Modern Hindu laws which aim at giving equal status and rights to the women.

(ii) Fundamental Rights

Even though, all the fundamental rights contained in Part III, Articles 12 to 35 are applicable to all the citizens irrespective of sex, certain fundamental rights contain specific and positive provisions to protect the rights of women.

Article 15(3) of the Constitution specifically provides that the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth as contained in Article 15, shall not prevent the State from making any special provisions for women and children. In other words, the state is empowered to make any such provisions and it shall not be violative of Art. Article 15 (1) prohibits gender discrimination. Article 15 (3) lifts that rigour and permits the State to positively discriminate in favour of women to make special provision, to ameliorate their social economic and political justice and accords them parity.

Clause (3) of Article 15, which permits special provisions for women and children, has been widely resorted to; by the State and the courts have always upheld the validity of the special measures In legislation or executive orders favouring women. These provisions could be seen in the sphere of Criminal Law, Labour and Industrial Laws, Service Law and Criminal Procedure etc.

Article 15(3) embodies one of the two exceptions to the prohibition contained in clause (1) and (2) of Article 15. It empowers the state to make special provisions for women and children. This particular advantage has been conferred n the women because the framers of the Constitution were well aware of the unequal treatment meted out to women in India from the time immemorial. The other reason for making special provisions for them is their physical structure and the performance of maternal functions which place them at. a disadvantage in the struggle for subsistence.¹

Recently the Supreme Court has upheld the constitutional validity of Proviso to Section 31(1)(a) of the Andhra Pradesh Cooperative Societies Act, 1964 and of the Rules 22(c) and 22 A(3)(a framed there under relying upon the mandate of Article 15 Clause 3. The Priviso read with the said rules provided for nomination of two women members by the Registrar to the managing committee of the co operative societies with a right to vote and to take part in the meetings of the committee. The court upheld the validity of these provisions on the ground that Article 15(3) of the Constitution permitted the making of special provisions for women.²

Thus it would be no violation of Article 1.5 if institutions are set up by the State exclusively for women or places reserved for them at public entertainments or in public conveyances. The reservations made for women in educational institutions and public employment are protected by Article 15(3). The following few cases may be helpful in understanding the concept of protective discrimination in favour of women.

The Universal Declaration of Human Rights defines human rights as universal, inalienable, and indivisible. In unison, these defining characteristics are tremendously important for women's human rights. The universality of human rights means that human rights apply to every single person by virtue of their humanity; this also means that human rights apply to everyone equally, for everyone is equal in simply being human. In many ways, this universality theme may seem patently obvious, but its egalitarian premise has a radical edge. By invoking the

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1. ¹Muller vs. Oregon, 52 L.Ed. 551 as quoted in J.N. Pandey, Constitutional law of India 26th Edn. 1994 at p. 100
 2. ²T. Sudhakar Reddy vs. Govt. of A.P. 1993 Supp. (4) SCC 439.

universality of human rights, women have demanded that their very humanity be acknowledged. That acknowledgement and the concomitant recognition of women as bearers of human rights-mandates the incorporation of women and gender perspectives into all of the ideas and institutions that are already committed to the promotion and protection of human rights. The idea that human rights are universal also challenges the contention that the human rights of women can be limited by culturally specific definitions of what count as human rights and of women's role in society.

The idea of human rights as inalienable means that it is impossible for anyone to abdicate her human rights, even if she wanted to, since every person is accorded those rights by virtue of being human. It also means that no person or group of persons can deprive another individual of her or his human rights. Thus, for example, debts incurred by migrant workers or by women caught up in sex trafficking can never justify indentured servitude (slavery), or the deprivation of food, of freedom of movement, or of compensation. The idea of inalienable rights means that human rights cannot be sold, ransomed, or forfeited for any reason. The idea of inalienability has also been important in negotiations over the priority given to social, religious and cultural practices in relation to human rights. For decades, work to transform practices which are physically or psychologically damaging to women and that have often been "protected" under the rubric of religion, tradition or culture has been particularly difficult, given both the integrity of culture guaranteed by the Universal Declaration and the history of Northern domination in much of the world. Thus it was important that both the Vienna Declaration and Programs of Action from the World Conference on Human Rights held in Vienna in 1993, and the United Nations Declaration Against Violence Against Women passed by the General Assembly the same year, affirmed that in cases of conflict between women's human rights and cultural or religious practices, the human rights of women must prevail.

Our culture is a male dominated one. Our models are male and we cannot escape the fact that a female point of view has never been given due weight age. The present work is an attempt of a Hindu woman to analyse the various enactments, judicial pronouncements and other available material with a view to examine the dynamic status of Hindu woman or a true picture of Hindu woman.

The evaluation of the status of women in India has been a continuous process of ups and downs throughout the history. The term 'dynamic' connotes the unstable and unsteadily status of woman through the ages. From the Vedic era to the present day there has been variform ups and downfalls in the position of the Hindu woman.

The term Status represents a person's legal, social or professional position in relation to others. As regards Hindu woman, status means her rights, duties, liabilities and proprietary rights. It is a study of changing pattern of the right, duties, liabilities. and proprietary rights of the Hindu woman right from the Vedic time to

the present day. This study has been made with special reference to some of the important legislative trends and judicial pronouncements. In case of statutory vacuum on any point the researcher has relied on the ancient shastric texts and literature.

The legislations, which take care of rights and privileges of women, are numerous in number. But due to ignorance and illiteracy those legislations cannot be properly enforced. The plethora of Indian Legislations aims at women empowerment. The judicial decisions rendered by the Indian Courts depict the active role played by the judiciary to protect women from exploitation at a stage where legislations are unenforced due to lack of adequacy of enforcement machinery. The legislative and judicial initiatives have placed the women in a better position in the society. Yet the woman in India has to go for miles to achieve cent percent empowerment.

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