



Legislative Framework In India For The Protection Of Women

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Introduction

In the Vedic period, the women enjoyed equal status with men. They were honoured by the society. Right to education was recognised for them. Gargi and Maitreyi are well known amongst educated women. However, in middle ages, there was extreme unreasonable discrimination between men and women. In other words, it can be put that there was extreme gender bias observed in the society in India. Women had no family, social, economic and political status and dignity. During that period the position of women was not better than slaves. The right to education, right to property, right to equality, right to remarry etc. were also denied to them. Women were not considered to have an independent personality but they were considered to be under influence and the control of men i.e. under the control of father in their childhood, under the control of husband in their young age and under the control of son in their old age. At that time law was implemented to protect the interest of particular class in the society at the cost of weaker section of the society including women as one of the components of the weaker section of the society. Women were exploited through various superstitious acts.

After the establishment of British rule in India, the situation was changed in the second half of the 19th century through social revolution. Maharashtra's Social reformers like Dhondo Keshu Karve, Raja Ram Mohan Roy, Mahatma Jotiba Fule, Smt. Savitribai Fule, Chattrapati Shahu Maharaj, Karmveer Bhaurao Patil, Dr. Panjabrao Deshmukh, Sant Gadgebaba, Rashtrasant Tukdoji Maharaj and Dr. Babasaheb Ambedkar started social agitations for rights of women such as education to women, equal political rights as men, prohibition of sati custom, prohibition of dowry, re-marriage of widows, prohibition of child marriage, prohibition of polygamy, prohibition of discrimination between men and women at all levels, removal of gender bias, etc. These great social reforms made sincere efforts for the empowerment of women and overall improvement in dignity and status of women in the society. Then the British Government appreciated the need of gender justice and some legislation were made for giving social status to women. British Parliament abolished Sati custom and also prohibited other superstitious customs in Indian society through various legislations. Pursuant to the provisions of the Constitution, various revolutionary laws giving equal status and dignity to the women with men have been enacted by the Indian Parliament in order to remove disparities, dissimilarities and discriminations against women and for the protection of women from gender bias through women empowerment.

Position Of Women Under the Constitution of India :-

Though women were treated unequally for almost a century under the British rule in India. No special attention was given to this cause by the Britishers and very little was done by way of legislative enactments during the British rule in India. The question of gender bias and social inequality was given special attention by constituent assembly and constitution makers and therefore while dealing with the legislative framework in India for the protection of women it is necessary to begin with study of Constitution of India which is the basic law of land

The Constitution of India grants equality to the women as that of men in each and every field of life. Not only that but it also guarantees positive discrimination in favour of women under articles 14, 15, 16, 19(1), 21, 21-A, 23, 25(1) 39(a), 39(b), 39(c), 39(d), 39-A, 42, 44, 45, 46, 51-A(e), 243D(3), 243D(4), 243T(3) and 243T(4) These Articles are relevant and significant for women empowerment in various fields viz. education, employment, politics, economic, religious, social and cultural fields.

The framers of the Indian Constitution were fully aware about the sufferings and based discrimination faced by the Indian women since immemorial times. Hence they provided the provisions for the protection and improvement of dignity and status of the women in the Preamble of the Constitution. The Preamble of our Constitution is a key to open the minds of the makers of the Constitution. It begins with the words. "WE, THE PEOPLE OF INDIA....." which includes men and women of all castes, races, places of birth, religious etc.

Preamble secures "equality of status and / or opportunity to all" i.e. to every man and women. It assures "dignity of individuals" which includes the dignity of women. There are several enactments and judicial pronouncements of Supreme Court of India which are based upon the Preamble and related to the protection of rights dignity and status of women. Such enactments and judicial pronouncements are significant for women empowerment. The provisions under the Succession Acts, Acts related to the empowerment,. Acts related to the protection of dignity of women are based upon the provisions of the Preamble of the Constitution. In **Randhir Singh**¹, the Supreme Court evolved a principle of 'equal pay for equal work' relying on the Preamble and Articles 14, 16 and 39(d) of the Constitution of India.

Articles of Constitution of India Relevant to Women Protection

Article 14. Equality before law:- The State shall not deny to any person equality before law or the equal protection of the laws.

Article 15. It provides prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:-

¹ Randhir Singh v. Union of India, AIR 1982 SC 879.

1. The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, and place of birth or any of them.
2. No citizen shall on ground 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;
 - (b) the use of wells, tanks, ghats, roads and places of public resort maintained wholly or partly out of State funds or declared to the use of general public.
3. Nothing in this article shall prevent the State from making any special provision for women and children.
4. Nothing in this article or clause (2) of Article 20 shall prevent the State from making any special provisions for the advancement of any socially and educationally backward classes or for the Scheduled Castes and the Scheduled Tribes².

Article 16 Equality of opportunity in matters of public employment:-

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 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.
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 Territory³ any requirement as to residence within that State or Union Territory prior to such employment or appointment.
4. Nothing in the article shall prevent the State from making any provision for the reservation or appointment of 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.
 - 4-A.Nothing in this article shall prevent the State from making any provision for reservation in matters 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 services under the State⁴.
5. Nothing in 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 thereof shall be

² Added by the Constitution (First Amendment) Act, 1951 Section 2.

³ Subs. By the Constitution (Seventy.Seventh Amendment) Act, 1995.

⁴ Ins. By the constitution (Seventy.Seventh Amendment) Act, 1995.

a person professing a particular religion or belonging to a particular denomination.

This equality also call for the equality in cyber space where in more space is dominated by the men while women largely constitutes the victims in cyber world.

Article 19 Six Fundamental Freedoms:- Under Article19(1) of the Constitution of India, all citizens 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 assemble peaceably and without arms; (e) to reside and settle in any part of the territory of India; and (g) to practice any profession, or to carry on any occupation, trade or business. These six freedoms are, however, not absolute. These freedoms are restricted by the Constitution itself in clauses (2) to (6). The restrictions which may be imposed by the State under any of the clauses must be reasonable restrictions and not arbitrary.

Out of these six fundamental freedoms , the freedom of speech and expression covers both offline and online aspect. This freedom of expression is misused to a very large extent against women in the cyber world. They are being tagged by posting all nasty things and thereby become victim of cyber defamation. Thus while availing this freedom, many persons cross their redline and commit cyber defamation against women. They forget that the freedom of speech and expression is not absolute but subject to reasonable restriction.

Article 21.Protection of life and personal liberty:-No person shall be deprived of his life or personal liberty except according to procedure established by law.

This Article is very widely interpreted by Hon' ble Supreme Court to include within its preview. Various rights including right to privacy

The Indian Constitution does not specifically provide the, "right to privacy" as one of the fundamental rights guaranteed to the Indian citizens but the Apex Court of India has clearly affirmed in its judicial pronouncements that right to privacy is very much part of the fundamental right guaranteed under Art 21 of the Indian Constitution. The right to privacy prohibits interference or intrusion in others private life and the cyber crime such as hacking into one's private property or one's intellectual work is a complete violation of her right to privacy.

As per the IT Act 2008, cyber privacy is interpreted only to cover commercial privacy and not necessarily individual's right to privacy in the cyber space. Privacy has not been guaranteed as a direct fundamental right under the Indian constitution, but it is the judicial interpretation of Right to life (Article 21 of the Constitution of India) which has extended the meaning of right to life to cover right to privacy of common individuals.

Right to Life:-

Right to Life was first interpreted to cover life with dignity in the case of Maneka Gandhi vs. Union of India⁵, AIR 1981, SC 746. In this case, the court held that: “right to live is not merely confined to physical existence, but it includes within its ambit the right to live with human dignity”. This stands true for life in the cyber space. Various sorts of cyber offences of the nature of invading privacy, such as stalking floating private information in the web without consent, unauthorized accessing and modifying digital contents and misusing them etc, may crop up only when these two basic rights are hampered.

21A. Education of Children:- The State shall provide free and compulsory education to all children between the age of six and fourteen years in such manner as the State may, by law determine. Though this article is not having direct bearing upon a status of women in general but also do not discriminate with girl child’s in the matter of education.

In addition to these fundamental rights, provisions are also found with respect to women in the form of directive principles and fundamental duties.

Article 39 Certain principles of policy to be followed by the State:-

- (a) that the citizen, men and women, equally have the right to an adequate means of livelihood;
- (b) that the ownership and control of material resources of the community are so distributed as to best serve the common good;
- (c) that the operation of economic system does not result in the concentration of wealth and means of production to the common detriment;
- (d) directs the State to secure equal pay for equal work for both men and women. The State has enacted The Equal Remuneration Act, 1976 to give effect to this directive principle.
- (e) specification directs the State not to abuse the health and strength of workers, men and women.
- (f) that children are given opportunities and facilities to develop in a healthy manner and in a condition of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment⁶.

Rights imply duties and cyber space is no exception. It is the duty of all person in the internet to see that the “ internal culture “ does not over shadow the norms of humanity in real as well as virtual life. It is the duty of all parents to impart adequate knowledge to their wards/ children regarding cyber culture. Along with the individual internet users, internet service providers (ISP) are also duty bound to make the cyber space safe for women.

Article 39-A. Equal justice and free legal aid:- The State shall secure that the operation of the legal system promotes justice on basis of equal opportunity and shall, in particular,

⁵ Maneka Gandhi vs. Union of India, AIR 1981, SC 746

⁶ Subs. By the Constitution (Forty-Second Amendment) Act 1976, Section 7(w.e.f. 3-1-1977).

provide free legal aid by suitable legislation or schemes or any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities⁷

Article 42 Provision for securing just and human conditions of work and for and maternity relief:- The State shall make a provision for securing just and humans conditions of work and maternity relief.

Article 51-A:- Part IV-A which consists of only one Article was newly added to the Constitution by the 42nd Amendment, 1976. This Article for the first time specifies a code of ten fundamental duties for citizens. Article 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 amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women.”

Thus this Article added by our Constitution of 42nd 1976. This Article protect the dignity of women as well as the Indian Constitution are equally significant for the empowerment of women in various field .All These provisions attract both the offline and online world.

Indeed, from the above discussion it is clear that women have been protected by our ideal Constitution of India by guaranteeing fundamental rights, by laying down guidelines in the form of directive principles to our draftsmen and by imposing fundamental duties on all the citizens. Apart from the protection given in this basic law of the land, there are other laws to which speaks and protects this vulnerable section of our society. These other laws are discussed hereafter.

Conclusion

Women, children, minorities, backward classed and weaker section of the society are considered as vulnerable to the victimization. Women have always been vulnerable to victimization due to their trusting nature. Therefore, they require special care and protection in the form of positive or compensatory discrimination which justified under Article 15(3) of the Constitution. A vast legal and statutory frame work is available under the Indian legal system for the protection of women’s right and to empower them.

Different laws have been enacted by the Parliament on the issue of protection of women’s rights. Moreover, various statutory provisions are there for empowering the women. It is obvious that the protection of rights of women in true and genuine sense would result into women empowerment. In other words, it can be said that the objective of empowerment of women could be achieved through protection of their rights under provisions of different laws in perfect manner. Certain provisions under different laws can be used as a shield for the protection of women’s rights and women empowerment.

⁷ Ins. by the Constitution (Forty-Second Amendment) Act 1976, Section8(w.e.f. 3-1-1977).

To concentrate and highlight the specific provisions under different laws which are related to women empowerment and protection. . Different laws related to the protection and empowerment of women can be categories as under.

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