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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

THE ROLE OF INDIAN CONSTITUTION IN UPLIFTMENT OF WOMEN

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Introduction

The founders of the Constitution of India wanted to give the Indian women better facilities through which a total halt could be brought to any kind of discrimination against women. Due care has been taken to avoid discrimination of any kind whether psychological, physical or rights wise on the basis of birth, sex opportunities, remuneration etc.

They also made sure that provisions were made for the benefit and progress of womankind in India so that the Freedom, for which India had fought for so dearly, results in freedom in every sense. This ensures freedom for women, too. They ensured that the women were freed from the shackles of drudgery so that they may be more educated, better aware and secure citizens of the world.

The founders of the constitution realized that majority of the women in India are generally ill-treated in the areas of employment. They realized that religion, caste and class played a main role in establishing the status of the women. They therefore, felt it essential to incorporate some provisions to improve the status of women in India and check on the discrimination between men and women.

The Constitution of India gives women right to equality. Moreover, powers were given to the State Governments to make special provisions for women and children. Thus the framers of the Constitution of India put the best of their efforts in breaking away the walls of old customs and traditions which governed the women and emphasized on their upliftment.

The Constitution of India not only guarantees to equality of women but also empowers the state to adopt measures to positive discrimination in favor of women. The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles, i.e. Preamble, Article 14, 15, 16, 19, 21, 23, 24, 39(c) & (d), 42, 44, 51-A, 243-D and 243-T relates to women.

Constitutional and Legal Provisions for Women in India

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favor of women. Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.

Constitutional Provisions

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favor of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits 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.

Fundamental Rights

Art. 14

It says that the state shall not deny any person equality before law and equal protection of law in the territory of India. While this article is general in nature, it forms the bedrock for all other provisions. The principle of equality adopted in this article is that *'like should be treated alike'*. This is the key principle for a social welfare state to ensure social and economic equality. The right

to equality without the capability and the means to avail the benefits equally would be a cruel joke on the weaker sections. This concept of equality permeates throughout the entire constitution. This article facilitates the existence of other provisions that might seem discriminatory but are, in fact, not.

Art. 15

While article 15(1) prohibits the state from discriminating on the basis of religion, race, caste, sex, or place of birth, art 15(3) allows the state to make special provisions for women and children. This is important because as espoused by art 14, it is imperative for the state to make laws as per the social condition of various peoples. Art 15 merely elaborates that same concept and acknowledges that women need special treatment for their upliftment.

In the case of *Yusuf Abdul Aziz Vs. State of Bombay, AIR 1954*, SC held that section 497 of IPC is valid even though it punishes only the man for adultery and not the woman even if she has abetted the crime.

Art. 16

Art. 16(1) ensures equality in employment in govt. services and Art. 16(2) explicitly prohibits any discrimination on the ground of sex among other grounds. Even though Art. 16 does not directly contain any provision specifically for women, in the case of *State of Andhra Pradesh Vs. P.B. Vijayakumar, AIR 1995*, SC held that a rule 22A introduced by Andhra Pradesh government that gave preference to women over men was valid. SC held that it is not necessary to have a specific provision in art 16 because such a provision can be made under Art. 15(3) itself. It further noted that Art. 15(3) is recognition of the fact that for centuries the women of this country are socially and economically handicapped. As a result they are unable to participate in the socio-economic progress of the country on an equal footing. Thus, making special provisions for women in employment is an integral aspect of Art. 15(3). This power of Art. 15(3) is not whittled down any way in Art. 16.

Art. 21

The courts have interpreted very widely the *Right to Life and Personal Liberty*. In several cases, this article has come to the rescue of women who have been wronged. In the case of *Bodhisatva Gautam Vs. Subhra Chakrabarti, AIR 1996*, SC awarded interim compensation to the rape victim. Soon after that in the case of *Vishaka Vs. State of Rajasthan, AIR 1997*, due to lack of any specific law, SC gave certain guidelines to prevent sexual harassment of women in workplace.

Art. 23

Prohibits traffic in human beings and forced labor. This has improved the condition of women in terms of forced prostitution.

Directive Principles

Art. 39(a) -Urges the state to provide equal right to adequate means of livelihood to men and women.

Art. 39(d) -Equal pay for equal work for both men and women.

In the case of *Randhir Singh Vs. Union of India, AIR 1982*, SC held that equal pay for equal work is a constitutional goal and is capable of being enforced.

Art. 39(e) -State should ensure that men, women and children are not forced into work that is unsuitable to their age or strength due to economic necessity.

Art. 40 & Art. 243D -provides that 1/3 seats in panchayats shall be reserved for women.

Art. 42 -says that the state shall make provisions for securing just and humane working conditions and maternity relief.

Art. 44 –Uniform Civil Code (UCC)

Due to absence of a uniform civil code, women are routinely exploited in the name of personal laws promulgated by religions. This fact was known to the makers of constitution and they urged the states to implement UCC. In the case of *Sarla Mudgal Vs. Union of India, AIR 1995*, SC urged the implementation of UCC by states.

Fundamental Duties

Art. 51A(e) says that it is the duty of the citizens to renounce practices that are derogatory to the dignity of women.

Legal Provisions

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women. Although women may be victims of any of the crimes such as ‘Rape’, ‘Murder’, ‘Robbery’, ‘Cheating’ etc, the crimes, which are directed specifically against women, are characterized as ‘Crime against Women’. These are

broadly classified under two categories.

The Crimes Identified Under the Indian Penal Code (IPC)

- (i) Rape (Sec. 376 IPC)
- (ii) Kidnapping & Abduction for different purposes (Sec. 363-373)
- (iii) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- (iv) Torture, both mental and physical (Sec. 498-A IPC)
- (v) Molestation (Sec. 354 IPC)
- (vi) Word, gesture or act intended to insult the modesty of a woman (Sec. 509 IPC)
- (vii) Importation of girls (up to 21 years of age)

The Crimes identified under the Special Laws (SLL)

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts have special provisions to safeguard women and their interests namely:

- (i) The Family Courts Act, 1954
- (ii) The Special Marriage Act, 1954
- (iii) The Hindu Marriage Act, 1955
- (iv) The Hindu Succession Act, 1956 with amendment in 2005
- (v) Immoral Traffic (Prevention) Act, 1956
- (vi) The Maternity Benefit Act, 1961 (Amended in 1995)
- (vii) Dowry Prohibition Act, 1961
- (viii) The Medical Termination of Pregnancy Act, 1971
- (ix) The Contract Labor (Regulation and Abolition) Act, 1976
- (x) The Equal Remuneration Act, 1976
- (xi) The Prohibition of Child Marriage Act, 2006
- (xii) The Criminal Law (Amendment) Act, 1983
- (xiii) Indecent Representation of Women (Prohibition) Act, 1986
- (xiv) Commission of Sati (Prevention) Act, 1987
- (xv) The Protection of Women from Domestic Violence Act, 2005

Special Initiative for Women

- (i) **National Commission for Women:** In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.
- (ii) **Reservation for Women in Local Self -Government:** The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.
- (iii) **The National Plan of Action for the Girl Child (1991-2000):** The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child. National Policy for Children-2013 was adopted by the Government of India on 26th April 2013.
- (iv) **National Policy for the Empowerment of Women, 2001:** The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “**National Policy for the Empowerment of Women**” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

Present Scenario

However, it must be remembered that guaranteeing a right in law does not ensure the ability to access the right to reality. The fact that the historical subjection of women has not been ended is constantly before us in the form of the reducing number of women in each census. It is falling at an alarming rate which is a matter of concern. Similarly crimes against women harassment, domestic violence, cheating etc., have been growing not only in numbers but also in intensity and brutality. That statistics provided by the National Crime Record Bureau of India brings this before us every year. These statistics reveal the numbers would be if one were to take into account the numerous unreported cases.

Instances of sexual abuse of children are ever increasing in the society. Today's society owes higher responsibilities to do something effective to save children from incestuous relationships. Several enactments protecting the rights of women have been amended and passed in the recent years.

Conclusion

The prime intention of the makers of the Constitution was to ensure that equality would not be only of opportunity but in reality. The Constitution has guaranteed various rights to women as citizens of India so as to protect their interests as human beings and individuals but the Judiciary in the course of its functioning as another wing of our Government has interpreted the Constitutional provisions so as to enable the implementation of the rights and also to facilitate the access to these rights in various cases that have come before it in the form of writ petitions filed by individuals or groups.

In addition to the Fundamental Rights various other provisions of the Constitution in Part IV that deals with the Directive Principles provide directions to the State in formulating policies and programmes in the interest of women. Article 38 requires the State to secure a social order in which justice, social, economic and political –for the promotion of welfare of the people. It requires the State to strive to eliminate inequalities in status, facilities and opportunities.

Clearly the intention of the makers of Constitution was to ensure that equality would not be only of opportunity but in reality. Article 39 puts down the principle policy to be followed by the State which include that the State should direct its policy towards securing the right to an adequate means of livelihood, that there is equal pay for equal work, that the health and strength of workers men and women, are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 42 requires the State to make provision for securing just and humane conditions of work and for maternity relief. Article 46 requires the State to promote with special care the education and economic interests of the weaker sections of the citizens. Clearly then the objective is to strive towards a gender just society.

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