

Judicial response on gender equality - A critical study

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1. Introduction

In Patriarchal society, the status of women were considered subordinate which reflects lack of empowerment of women and they are unable to take part in the decision making processes on an equal footing with man. Our constitution of India provides the right to equality to citizens of India provides the right to equality to citizens of India which means both men and women are equal in all spheres of life. In society .if there is a conflict between men and women their position is weak because of her gender relating to the problems of dowry, pregnancy and child care etc.¹ The socio- economic empowerment of women is the need of the hour .It will help them to be more assertive ,creative democratic, and productive in the society².

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 of women but also empowers the state to adopt measures of positive discrimination in favour of women. In recent years, the empowerment of women has been recognized as the central issue in determining the status of women. The women's movement and a wide spread net work of non government organizations which have strong grass-roots presence and deep in sights in to women's concern have contributed in inspiring initiatives for the Empowerment of women. Globalization has presented new challenges for the realization of the goals of women's equality, the gender impact of which has not been systematically evaluated fully. Strategies will be designed to enhance the capacity of women and empower them to meet the negative social and economic impacts which may flow from the globalization process.

In preamble of the constitution of India speaks about the equality of status and opportunity as well as the justice social economic and political. For this purpose the constitution of India provides ,the special provision to women under fundamental rights and directive principles of state policy .Art 15(3) of the constitution provides a special provision to women and children and a special status was given to them under this section. Under Art 21 of the constitution it provides the right to life includes the right to social security protection of family and even duty to preserve .

Under Art 21of the constitution personal liberty is the most important right among all the fundamental rights which deals from Art 19 to 22 and these articles form the back bone of the personal liberty guaranteed to the citizens of India. Art 21 (a) of

the constitution³ has made the right to education as fundamental right which specify the state shall provide free and compulsory education to all male and female children of the age from 06 to 14 years in such a manner as the state may by law directs. In Maneka Gandhi case⁴ the court gave a new dimension to Art 21 and held that a law depriving a person personal liberty has not only to stand the test of Art 21 but it must also stand the test of Art 19, 14 of the constitution.

Under directive principles of state policy the constitution of India provides that Art 39 the state shall in particular direct its policy towards securing

1. To all citizens men and women equal right to an adequate means of livelihood
2. Equal pay for equal work for both men and women
3. Children are given opportunity or facilities to develop in a healthy manner in conditions of freedom and dignity.

Art 42 requires that state shall make a provisions to secure the life of a women in all spheres of her life.

There are some other provisions to deal with women rights like Suppression of immoral traffic in women and girls Act 1956 ,the maternity benefit Act1961 the special marriage act 1954 ,the Hindu succession Act which gives a women ownership in the property inherited or acquired by her. The amendment in Sec 6 of Hindu succession Act 1956 gives a daughter as a co-parcener right and has a right to partition in her father's property.

Sec 23 of the constitution prohibits in traffic in human beings and beggar and other similar forms of forced labour. Traffic in human beings includes the Devadasi system and parliament has enacted the suppression of immoral traffic in women and girls Act 1956 which renamed as the immoral traffic prevention act of 1956 to abolish the practice of prohibition and other forms of trafficking.

Sec 24of the constitution prohibits the employment of male and female children below the age of 14 years in factories and hazardous employment under the employment of children act 1938and child labour prohibition act regulation act of 1986have been enacted.

In Randhir Singh vs union of India⁵ it has been held that Equal pay for equal work for both men and women although not a fundamental right is clearly a constitutional goal under Art 14, 16 and 39(d)of the constitution. The state has enacted the equal remuneration Act 1976 to give effect to this provision

¹ Women Empowerment and Family Set-up. Dr. S. R. Rosa. K.D. Kurukshetra Nov 2005

² Gender Bias. Sudesh Kumar Sharma, The Tribune

³ 86 Amendment act 2002.

⁴ AIR 1981 Supreme Court 746.

⁵ AIR 1982 Supreme Court 879.

Art44 directs the state to secure for the citizens to uniform civil code throughout the India to achieve the gender justice which was held in case of Sarala mudgal vs union of India⁶.

In Yusuf Abdul Aziz vs State of Bombay⁷ the validity of Sec 497 of I.P.C was challenged. This section makes an abettor of adultery punishable ,but provides that in such case the wife shall not be punishable as an abettor.

The provision under order 5 Rule 15 of C.P.C 1908 for service of summons on any male member of family⁸ if the defendant could not be found ,it was held that there was no discrimination between a women and a man simply on the ground of his or her sex in receiving a notice on behalf of some other of the family.

In Raghubans Saudagar Singh Vs State⁹ an order of governor of Punjab rendered women in eligible to post in men's jail other than those of clerks and matrons and the court turned down the plea and held that not violative of Art 16(2) of the constitution.

In Air India Vs Nargesh Meerja¹⁰ the validity of Indian Air lines and Air Indian service rules providing that an air hostess had to retire from service at the age of 35 or on marriage which ever was earlier or if she got married within four years of confirmation or first pregnancy, the court held that the provision was not valid.

In Sarita Vs venkata subbaiah¹¹ the A.P High court extended the application of principle of reasonableness to matrimonial matters and invalidated the sec 9 of Hindu marriage Act 1955 dealing restitution of conjugal rights and it is violation of the right to privacy and human dignity guaranteed under Art 21 of the constitution.

In State of Maharashtra Vs Madhukar Narain¹² the S.C without referring to Art 21 held that even a women of easy virtue is entitled to privacy and no one can invade her privacy as when he likes.

In Neera vs. LIC¹³ the S.C held that the questions asked to the candidate was violated the right to privacy of women employees and directed the corporation to delete such such column in declaration.

In Gautam Kundu Vs State¹⁴ a women refused the husbands application for blood test to disprove the paternity as it would be slanderous ,embracing and humiliating for the women.

In Rupan Deol Vs K.P.S.Gill¹⁵ the Apex court did not allow the police officer to escape judicial enquiry of his alleged insult to the modesty of the complainant of an I.A.S. officer.

In State of Punjab vs. Gurmit Singh¹⁶ the S.C while convicting three accused persons of a minor girl directed that all such trials must be held in camera.

In Bodhi Satwa Gautam vs. Subra Chakraborty¹⁷ the S.C held that rape was a crime against basic human rights and also violated the most cherished fundamental right normally the right to life contained in Art 21 .Women also have the right to life and liberty ,they also have the right to be respected as equal with men .Their honour and dignity cannot be touched or violated. They also have a right to lead a honourable and peaceful life.

In Sarala Mudgal vs Union of India¹⁸ the S..c held that the second marriage of a Hindu after his conversion to Islam was void in terms of Sec 494 of I.P.C and the husband was liable to be prosecuted for bigamy.

In Air India statutory corporation vs. united labour union¹⁹ the S.C held that the directive principles are embedded as an integral part of our constitution and therefore they should be elevated to in alienable fundamental human rights.

In Pragati vs Cyril George Varghese²⁰ the full bench of Bombay High court struck down sec 10 of Indian divorce Act and the court held that Sec 17,20 of the act invalid.

With regard to the women the constitution contains many negative and positive provisions which go a long way in securing gender justice. The general provisions relating to the equal rights available to the women are the right to vote and other political rights and fundamental and directive principles.

In Anuj Garg hotels association of India the S.C²¹ held that Empowerment is a more tenable and socially wise approach than prohibition and consequently declared the ban on employment of women in bars and hotels etc where liquor is served as unconstitutional.

In Sowmitri Vishnu vs.Union of India²² the court held that the sec 497 I.P.C does not violate the art 14 ,15 on the ground that the offence will be committed only by a man.The S.C followed the judgment of Yusuf Abdul Aziz vs State of Bombay as declared by constitutional bench.

In Vijay Lakshmi vs Punjab university²³ the S.C relying up on the principle of protective discrimination in favour women under art 15(3) up held the reservation of post of principal and teachers in ladies college only for women candidate.

⁶ AIR 1995 Supreme Court 635.

⁷ AIR Supreme Court 321.

⁸ Shadab Vs Mohamed Abdulla AIR 1967 J&K 120.

⁹ AIR 1972 Panjab and Haryana.

¹⁰ AIR 1981 Supreme Court 1929.

¹¹ AIR 1983 AP 356.

¹² AIR 1991, Supreme Court 207.

¹³ AIR 1992 Supreme Court 329.

¹⁴ AIR 1993 Supreme Court 2295.

¹⁵ AIR 1995 Supreme Court 4100.

¹⁶ AIR 1996 Supreme Court 1998

¹⁷ 1996 Supreme Court 490.

¹⁸ 1995 Supreme Court 635.

¹⁹ AIR 1997 Supreme Court 635.

²⁰ AIR 1997 Bombay 349.

²¹ AIR 2008 Supreme Court 663.

²² AIR 1985 Supreme Court 1618.

²³ AIR 2005 Supreme Court 2450.

In *Rajesh kumar vs State of U.P.* the S.C held 50% reservation for females in basic teacher's certificate training course by invoking the principle of Gender justice

Besides the constitution a number of laws contain special provisions containing aimed at promoting gender equality in matters of inheritance employment marriage and citizenship. Apart from the specific provisions , all the other provisions of the constitution are equally applicable to the men and women .This particular goal is towards the achievement of gender justice. Even though the state has not yet made any effort to introduce uniform civil code in India the judiciary has recognized the necessity of these laws made by the framers of the constitution to improve the social economic educational and political status of the women. In so many cases the S.C has highlighted the right of the women in India to eliminate gender based discrimination particularly in respect of property so as to attain economic empowerment. Now today every law favours to the women for achieving the empowerment of women and higher status in the society. The recent amendments to sec 6 of the Hindu succession Act 1956 Art 14, 15 of the constitution Hindu marriage Act 1955 allowing women to take divorce under sec 13 (1) (a) on any of the grounds available under this provisions the Hindu minority and guardianship act 1956 the adoption and maintenance act 1956, the Dowry prohibition Act Sec 498-A of I.P.C relating to punishment for cruelty against wife all favour women. There are so many social organizations and commissions working against exploitation of women at home or in society and at their work place.

2. Conclusion

The position of Indian women is not much better in comparing to the other states of the world. The women has become victim of tyranny at the hands of men who dominated in the society. The constitutional provisions of the fundamental rights ,directive principles of state policy clearly establishes the intention of the framers of the constitution to improve the social ,economic, political status of women so that they can be treated with men on equal status. It is the necessity of the court and also the state to rectify the historical inequality that discriminated the women and to protect their rights .In this regard the legislative and executive actions must be co- inside to each other and effectuation of fundamental rights under part iii and part iv directive principles of the constitution which constitute the conscience of the constitution .Legislative action should be devised suitably to constitute economic empowerment of women in socio- economic restructure for establishing egalitarian social- order.

India has ratified various international conventions and Human rights instruments committing to secure equal rights of women ,the convention on Elimination of All Forms of discrimination Against women.(CEDAW)in 1993. The state should provide women equality in power sharing active participation in decision making including in political process at all levels will be ensured for the achievement of the goals of Empowerment. All measures will be taken to guarantee women equal access to and full participation in decision making bodies at all level including the legislative executive judicial corporate statutory bodies as also the advisory commissions ,committees

Boards Trusts etc. Affirmative action such as reservation including in higher legislative bodies will be considered .

A women during this period not only occupied an inferior position but also made to feel that her position was subordinate to men in society. The constitution of India has provided equal rights to her ,but still she has to face injustice in her life. There is growing feeling that women suffer from discrimination and disabilities in more and she still suffer social and economic oppression. The ministry of women affairs ,statutory bodies created within the ministry ,the National committee of women were entrusted with the task of implementation of various policies and programmes for the promotion of Gender equality and also the advancement of women's rights. The parliament of India has also realized all the problems and matters relating to solve the problems of women and to give the equal status and to achieve the Gender –justice and gender equality. The existing legislative structure will be reviewed and additional legislative measures taken by identified departments should be implemented The specific measures required would be evolved through a consultation process involving civil society, National commission for women and

Department of women and child development. Strict enforcement of all relevant provisions and speedy redressal of grievances will be ensured with a special focus on violence and gender related atrocities. Measures to prevent and punish sexual harassment at the place of work protection for the women workers in the organized sector and strict enforcement of relevant laws such as equal remuneration Act and minimum wages act will be undertaken. Crimes against women their prevention investigation detection and prosecution will be regularly reviewed at the central ,state and district levels .Women cells in police stations family courts mahilacourts counseling centers ,legal aid centers and nyaya panchayat will be strengthened and expanded to eliminate violence and atrocities against women. Wide spread dissemination of information on all aspects of legal rights ,human rights and other entitlements of women through specially designed legal literacy programmes will be provided. Training of personnel of executive legislative and judicial wings of state and promoting societal awareness to gender issues and women's human rights , Review of curriculum and educational materials to include gender education and human rights issues Removal of all references derogatory to the dignity of women from all public and legal instruments, use of different kinds of mass media to communicate social messages relating to women's equality and Empowerment.

In order to achieve Women empowerment and gender equality the state has provide and

- 1) Create an environment through positive economic and social policies for full development of women to realize their full potential
- 2) Equal access to participation and decision making of women in social political and economic life of the nation
- 3) Equal access to women to health care employment equal remuneration social security and public office.

- 4) changing societal attitudes and community practices by active participation and involvement of both men and women.
- 5) Elimination of discrimination and all forms of violence against women and
- 6) Mainstreaming a Gender perspective in the development process.

The 73rd and 74th Amendments (1993) to the Indian constitution have served as a break through towards ensuring equal access and increased participation in social power structure for women. The local and self governments will be actively involved in the implementation and execution of the Gender justice and Women Empowerment.

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