

GENDER EQUALITY: LEGAL PROTECTION TO WOMEN

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Introduction

The position of women in India has transformed over the decades. Great strides have been made in ensuring equality for women in Indian society. However, contradictions and gaps in protecting certain basic rights of women continue to exist. The Government has actively – both through law and policy – sought to improve the status of women. Keeping in mind the regional variations, religious, caste and class-based differences that have a definitive impact on women in India; we draw some broad generalisations on the major socioeconomic developments that have impacted women in the country.

In spite of women contribution in all spheres of life and they enjoy a unique position in every society and country of the world, but they suffer in silence and belong to a class which is in a disadvantaged position on account of several barriers and impediments. India, being a country of paradoxes, is no exception. Here too, women, a personification of Shakti, once given a dignified status, are in need of empowerment. Women's empowerment in legal, social, political and economic requires to be enhanced. However, empowerment and equality are based on the gender sensitivity of society towards their problems. The intensification of women's issues and rights movement all over the world is reflected in the form of various Conventions passed by the United Nations. Gender equality is always escaped the constitutional provisions of equality before the law or the equal protection of law. This is because equality is always supposed to be between equals and since the judges did not concede that men and women were equal. Gender equality did not seem to them to be a legally forbidden inequality.

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Gender equality and women's empowerment are human rights that lie at the heart of development and the Millennium Development Goals (MDGs). Despite progress in recent years, women and girls account for six out of 10 of world's poorest and two thirds of the world's illiterate people, only 18 percent of the world's parliamentarians are women and one third of all women are subjected to violence, whether in times of armed conflict or behind closed doors at home.

In India, since long, women were considered as an oppressed section of the society and they were neglected for centuries. During national struggle for independence, Mahatma Gandhi gave a call of emancipation of women. Men and women are both equal and both play vital role in the creation and development of their families in particular and society in general. Indeed the struggle for legal equality has been one of the major concerns of the women's movement. Thus the first task in post independent India was to provide a constitution to the people, which would not make any distinction on the basis of sex. The preamble of the constitution promises to secure to all citizens Justice- social, economical and political. It is really important to note that though the constitution of India is working since more than sixty years, the raising status of women to one of equality, freedom and dignity is still a question mark.

It is well settled that gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The Constitutional framework in India towards gender equality is well indicated in some of the provisions of chapters on Fundamental Rights, Directive Principles of State Policy and Fundamental Duties. The Fundamental Rights in this regard relate to equality before law or the equal protection of the laws within the territory of India; prohibiting discrimination on the ground of sex; right to practice any profession or to carry out any occupation, trade or business; right to live life with dignity and in a safe working environment. The Constitution also guarantees equality of opportunity in matters of employment under the State. According to Article 16 (2), no citizen can be discriminated against or be ineligible for any employment or office under the State on the grounds only of sex, caste, place of birth etc. Article 16 is a facet of Article 14 and the two Articles are closely inter-connected. The relevant Directive Principles can be found in Article 39, 42 and 43 where under the State is supposed to direct its policy towards

Securing the right to an adequate means of livelihood, equal pay for equal work, health and strength of workers and right to maternity relief. A Fundamental Duty under Article 51A (b) has been put on every citizen of India to renounce practice derogatory to the dignity of women.

At International level also the trend is towards elimination of discrimination on the ground of sex. This becomes evident from provisions under the Charter of the United Nations; Universal Declaration of Human Rights; two International Covenants on Civil and Political Rights; Economic, Social and Cultural Rights; and Convention on Elimination of All Forms of Discrimination against Women¹⁶ which put emphasis on equality of males and females.

Gender and Legal Protection

Gender equality means that women and men have equal Status/Rights/Laws/conditions for realizing their full human rights and potential to contribute to national political, economic, social and cultural development and benefit equally from the results.

In Gender Equality India ranks 122 among 138 countries for which the gender inequality measure has been calculated. Pakistan is at 116, and Bangladesh is a notch higher at 112. India is worse than Pakistan/Bangladesh on gender equality.

The Constitution of India, Article 14 confers equal rights and opportunities on men and women, and ensures gender equality in its preamble as a fundamental right. India has also ratified various international conventions and human rights forums to secure equal rights of women, such as ratification of Convention on elimination of all forms of discrimination against women in 1993. Women have been finding place in local governance structures, overcoming gender biases. Over one million women have been elected to local panchayats as a result of 1993 amendment to the Indian Constitution requiring that 1/3 rd of the elected seats to the local governing bodies be reserved for women. The passing of Pre-natal Diagnostic Tech Act in 1994 also is a step in removing gender discrimination. This Act seeks to end sex-determination tests and female foeticide and prohibits doctors from conducting such procedures for the specific purpose of determining the sex of the fetus. The Government also announced the National policy for empowerment of women in 2001 to bring out advancement, development and empowerment of women. The Government has also drawn up a draft National policy for the empowerment of

women which is a policy statement outlining the state's response to problems of gender discrimination.

The Constitution not only grants equality to women, but also empowers the state to adopt measures of positive discrimination in favor of women. The 73rd and 74th Amendments (1993) to the Constitution of India provided for reservation of seats (at least one-third) in the local bodies of Panchayats and Municipalities for women. Another Constitutional Amendment (84th Constitutional Amendment Act 1998) reserving 33 per cent seats in Parliament and State Legislatures is in the pipeline.

The Indian Government has passed various legislations to safeguard Constitutional rights to women. These legislative measures include, the Hindu Marriage Act (1955), The Hindu Succession Act (1956), Dowry Prohibition Act (1961), Medical Termination of Pregnancy Act (1971), Equal Remuneration Act (1976), Child Marriage Restraint Act (1976), Immoral Trafficking (Prevention) Act.(1986) and finally Pre-natal Diagnostic Technique (Regulation and Prevention of Measure) Act (1994) etc.

Apart from these, various welfare measures have been taken up by the Government from time to time to empower to the women. They are the support to Training for - Employment Programme (1987), Mahila Samridhhi Yojana (1993), the Rashtriya Mahila Kosh (1992-93), Indira Mahila Yojana (1995), DWACRA Plan (1997) and Balika Samridhhi Yojana (1997). On 12th July, 2001, the Mahila Samridhhi Yojana and Indira Mahila Yojana have been merged into the integrated self-help group programme i.e. Swayam Siddha.

The Government of India in 1953 established a Central Social Welfare Board with a nation-wide programme for grants-in-aid for women, children and under-privileged group. A separate department of women and child development was set up at the Centre in 1985 to give a distinct identity and provide a nodal point on matters relating to women's development. National Commission on women was created by an Act of Parliament in 1992.

Besides these, 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 of Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993.

Other than this 30% local government seats are reserved for women. In a Karnataka survey, nearly 1,000 women who were holding posts in the gram sabhas, In certain districts in Karnataka, more than 60% of the women who have emerged into elected positions, taking block, zila and district together, are not only young — between 20 and 40 years — but include strong ratios of SC/ST or OBC women among the elected in all three tiers, with some even becoming the presidents of zila parishads. Last but not least in many States Women are holding Chief minister posts and current president of Congress is a women. Lastly no need to mention President of India is also a Woman.

Year 2001 as 'Women's Empowerment Year', Ninth Plan witnessed many national policies like the National Health Policy, (2001) National Population Policy (2000), National Policy for Empowerment of Women (2001) etc. More significant is the first National Agricultural Policy (July 2000)

Political Rights

Even though the fact that women participated equally in the freedom struggle and, under the Constitution and law, have equal political rights as men, enabling them to take part effectively in the administration of the country has had little effect as they are negligibly represented in politics. There were only seven women members in the Constituent Assembly and the number later decreased further. Their representation in the Lok Sabha is far below the expected numbers. This has led to the demand for reservation of 33% seats for women in the Lok Sabha and Vidhan Sabhas. Political empowerment of women has been brought by the 73rd and 74th Amendments. Which reserve seats for women in Gram Panchayats and Municipal bodies. Illiteracy, lack of political awareness, physical violence and economic dependence are a few reasons which restrain women from taking part in the political processes of the country.

Women are under-represented in governance and decision-making positions at all levels. Women's presence in local bodies does not guarantee women's effective participation in decision-making. Challenges faced by women in the electoral process such as women being elected as proxy candidates, intimidation of independent women candidates and other such constraints still persist.

- Continue to strengthen processes including through affirmative action to increase women's participation in decision-making and leadership.
- Enhance capacity of elected women through training and political education.

Economic Rights

At hand there has been series of legislation conferring equal rights for women and men. These legislations have been guided by the provisions of the fundamental rights and Directive Principles of State Policy. Here again there is a total lack of awareness regarding economic rights amongst women. Laws to improve their condition in matters relating to wages, maternity benefits, equal remuneration and property/succession have been enacted to provide the necessary protection in these areas.

Social justice

For providing social justice to women, the most important step has been codification of some of the personal laws in our country which pose the biggest challenge in this context. In the area of criminal justice, the gender neutrality of law worked to the disadvantage of a woman accused because in some of the cases it imposed a heavy burden on the prosecutor, for e.g. in cases of rape and dowry. Certain areas like domestic violence and sexual harassment of women at the workplace were untouched, unthought of. These examples of gender insensitivity were tackled by the judiciary and incorporated into binding decisional laws to provide social justice in void spheres. Although a Uniform Civil Code is still a dream in spite of various directions of the Court, the enactment of certain legislations like the Pre-Natal Diagnostic Techniques (Prevention of Misuse) Act and the Medical Termination of Pregnancy Act prevent the violation of justice and humanity right from the womb. In spite of these laws, their non-implementation, gender insensitivity and lack of legal literacy prevent the dream of the Constitution makers from becoming a reality. They prevent the fulfillment of the objective of securing to each individual dignity, irrespective of sex, community or place of birth.

Fundamental Rights:

Part III of the Constitution consisting of Articles 12-35 is the heart of the Constitution. Human Rights which are the entitlement of every man, woman and child because they are human beings have been made enforceable as constitutional or fundamental rights in India. The framers of the Constitution were conscious of the unequal treatment and discrimination meted out to the fairer sex from time immemorial and therefore included certain general as well as specific provisions for the upliftment of the status of women.

Conclusion

If the principle of gender equality is enshrined in the Indian Constitution, then why are Indian women treated as second citizens in their own country? The Constitution officially grants equality to women and also empowers the State to adopt measures of positive discrimination in favor of women. However, the varied forms of discrimination that women in India are subject to are far from positive. Thus, there are a number of laws to protect women, but what is the use of having these laws when no-one follows them? In fact, the people whose business it is, to enforce these laws are the ones who publicly flout them. Besides, not many women are conversant with law and few are aware of the rights and privileges accorded to them by the constitution. So they suffer all forms of discrimination, passively.

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