

**ARE LAWS GETTING TOO FEMINIST? -- CONSTITUTIONAL FRAMEWORK AND
FEMINISM**

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*“Motherhood and Childhood are entitled to special care and assistance. All children whether born out in or out of wedlock shall enjoy the same social protection”.*³

Women enjoy a unique position in every society whether developed, developing or under developed. In spite of her contribution in the every sphere of individual’s life, she still belongs to the lower class due to social barriers and impediments. She has been the victim of tyranny at the hands of men who dominate the society.

On one hand she is held in high esteem by one and all worshipped, considered as the embodiment of tolerance and virtue in the form goddess Durga, Saraswati, Parvati, laxmi, etc. But on the other hand she has been the victim of untold miseries, hardships and atrocities caused and preheated by the male dominated society. The woman has been a victim irrespective of her economic background.

Women constitute half of the world population, perform nearly two thirds of work hours, receive one-tenth of the world income and own less than one-hundredth percent of the world property.⁴

In India, almost half of the population is women but they have always been discriminated against have suffered and are suffering discrimination in silence in the civilized as well as primitive society.

Even self-sacrifice and self-denial are the nobility and virtue of India yet they have made the victims of all inequality, indignity, inequity and discrimination from time immemorial.

The Constitution of India prohibits any discrimination solely based on the ground of sex in general and in the matter of public employment. This prohibition of gender-based discrimination has been given the status of fundamental rights. Various other different laws have been enacted by the parliament to deal with the women but sadly very few had been codified. Like Constitution and Personal Laws, Criminal law also contains numerous provisions to deal with the crimes against women. There are various other enactment like Dowry Prohibition Act, Immoral Traffic (Prevention) Act, Pre-natal diagnostic Techniques (Regulation & Prevention of misuse) Act 1994 etc.

³Article 25(2), Universal declaration of Human Rights

⁴United Nations report

NATIONAL COMMISSION FOR WOMEN

It is pertinent to note that there was no well-established institution to examine and investigate matters relating to the safeguards for women under various laws. The legislature realized it and enacted the National Commission for Women Act 1990, which came into force from 31st January, 1992. The commission has been entrusted with the task of presenting to the central government the problems of the women, deprivation of women's right, and the reports of the progress of development of woman under the Union or any other State, but no Constitutional status has been given. The body has been burdened with the laborious responsibility of reporting to the government the socio-economic development of women in all walks of their life but unfortunately the commission can only make recommendations and send the same to the authority for action. It has no judicial power for making it an effective instrument for providing relief to women in distress.

Justice Krishna Iyer has said, "*National Commission for Women has hardly any teeth or nail*".

Therefore, it is high time that the Commission should be given the Judicial Powers and confers the constitutional status.

PREAMBLE OF THE CONSTITUTION

The Indian Constitution adopted by the Constituent Assembly on 26th November, 1949 is a tolerant permit enshrining abundant assent of justice, liberty, equality and fraternity. These objectives specified in the preamble and form the basic structure of the Indian constitution.

The constitutional structure contains different positive and negative aspects which forward a long way in securing gender justice. The Constitution contains many negative and positive provisions which go a long way in securing gender justice. The history of suppression of women in India is very long and same has been responsible for including certain general as well as special provisions for upliftment of the status of women. The right guaranteed to women is on par to the right given to men except under some cases the women have been allowed to enjoy the benefit of certain special provisions.

The Preamble to the Indian Constitution contains various goals including "the equality of status and opportunity" to all citizens. This particular goal is incorporated to give equal rights to the

women and men in terms of status as well as opportunity⁵. It has been the basis of much legislation like Hindu Laws which aim at giving equal status and right to women.

FUNDAMENTAL RIGHTS

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

Article 15(3) of the constitution clearly has established this view on 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 provisions for women and children.⁶ Article 15(1) prohibits the gender discrimination. Article 15(3) lifts that rigor and permits the state to positively discriminate in favor of women to make special provision, to ameliorate their social economic and political justice and accords them parity.⁷ The reason for making special provision for them is their physical structure and the performance of maternal functions which place them at a disadvantage in the struggle for subsistence.⁸

The Supreme Court has upheld the constitutional validity of Proviso to Section 31(1)(a) of the Andhra Pradesh CO-Operative 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 proviso read with the rules provided for the 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.⁹

In Yusuf Abdul Aziz vs State of Bombay¹⁰, the validity of section 497, Indian Penal Code, was challenged as it was violative of Article 14 and 15(1) of the Constitution. The supreme court Upheld the validity of the provision on the ground that it was based on sex alone and Article 15(3) came in picture.

⁵ Unanza Gulzar, "CONSTITUTIONAL PROTECTION OF WOMEN IN INDIA" (2013)

⁶ Abhishek Singh International efforts and judicial towards empowerment of women (2014) Online ISSN: 0974-4533

⁷ Madhu Kishwar & Ors. Etc. Vs. State of Bihar & Ors., (1996) 5SCC 125

⁸ Muller vs. Oregon, 52L.Ed 551 as Quoted in J.N. Pandey at page 100

⁹ T. Sudhakar Reddy vs Govt. of A.P. 1993

¹⁰ AIR 1954 SC 321

In Revathi vs. Union of India ¹¹, The supreme court upheld the Section 198(2) of the code of civil procedure which gives husband of adulteress the right to prosecute the adulterer but they doesn't give the wife of the adulterer the similar right.

WOMEN RESRVATION

Provsions providing for reservation of seats for women in local bodies or in educational institutions are valid. The Supreme court has recently held in the case of Govt. of A.P vs. P.B. Vijay Kumar that the reservation to an extent of 30% made in the state services by Andhra Pradesh Government is valid. The division bench of Supreme Court declared that the power by the virtue of Article 15(3) is so wide that it covers the entire range of State activity including employment under the state. Thus making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3).¹² This power conferred under Article 15(3), is not whittled down in any manner by article 16.

In Union of India vs. K.P. Prabhakaran¹³ the Supreme Court upheld the decision of the railway Administration to reserve the posts of Enquiry cum Reservation Clerks in Reservation offices in metropolitan cities of Madras, Calcutta, delhi, Bombay. Exclusively for women.

In P.B Vijay kumar¹⁴ wherein it was stated that since Articles 15(1) and 15(3) go together, the protection of Article 15(3) would be applicable under the stew falling under Articles 16(1) and 16(2).

WOMEN RESRVATION IN ELECTION OF LOCAL BODIES

The 73rd and 74th Amendments to the Indian constitution effected in 1992 provide for the reservation of seats to the women in Elections to the Panchayat and the Municipalities .

According to Article 243D of the Constitution of India, not less than one thir of the total number of seats to be filled by direct election in every Panchyat shall be resrvd for woman.

¹¹ AIR 1988 SC 835

¹² AIR 1981 SC 1829

¹³ AIR 1995 SC 1648

¹⁴ (1997) 11SCC 638

According to Article 243-T of the Constitution of India which was added by the constitution (74th Amendment) Act,1992 makes similar provisions for reservation of seats to women in the direct elections to every municipality. Therefore there is a successful reservation of 33% seats for woman in local bodies.

The parliament introduced the Constitution 81st Amendment Bill seeking to reserve one third of seats in Lok Sabha and State Assembly for woman in September,1996. The bill is yet to be passed.

According to my point of view, it is a major step towards empowering the women to play their rightful part in democratic government and in the political process at the decision making level. This measure is towards correcting the gender injustice.

RIGHT AGAINST EXPLOITATION

Article 23 of the Constitution specifically prohibits traffic in human beings. Traffic in human beings includes ‘devdasi system’¹⁵. Trafficking in human beings has been prevalent in India for along time in the form of prostitution and selling and purchasing human beings for a price just like vegetables. On the strength of Article 23(1) of the Constitution ,the legislature has passed the Suppression of Immoral Traffic Act,1956(now renamed as ‘The Immoral Traffic(Prevention) Act,1956) which aims at abolishing the practice of prostitution and other forms of trafficking. This is an Act made in pursuance of the International Convention Signed at New York on the 9thMay ,1950.

DIRECTIVE PRINCIPLE OF STATE POLICY

The Directive Principles of State Policy contained in Part IV of the Indian Constitution incorporate many directives to the state for the welfare of the status of women and for their protection

Article 39(a) directs the state to make the policy towards securing that the citizen , men and women ,equally have those right with a sufficient method for vocation.

¹⁵ Vishal Jeet vs Union of India,AIR 1990 SC 1412

Article 39(d) Regulates the state to secure equal pay for equal work for both men and women. The enactment of The equal Remuneration Act,1976 gave the effect to this Directive Principles.

Article 39(e) specifically directs the state not to abuse the health and strength of workers .

Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity benefit. The Maternity Benefit Act, 1961 is the outcome of this provision

Article 44 directs the state to secure for the citizens a uniform civil code in India. This particular goal is towards the achievement of gender justice.

The Supreme Court has dealt with the validity of the Chotanagpur Tenancy Act, 1908 of Bihar which denied the right to succession to Scheduled tribes woman a violative of right to livelihood under Section 21 of the Constitution.¹⁶

UNIFORM CIVIL CODE

Part IV, Article 44 of the Constitution directs the state to provide Uniform Civil Code throughout the territory of India. However ,as it is only the Directive Principle of State Policy, therefore it can not be enforced in a court of law. It is prerogative of the State to introduce Uniform Civil Code. There was wide spread opposition to the incorporation of Article 44 (Article 35 in the draft constitution) particularly from the Muslim members of the Assembly.¹⁷ They were against the idea of uniform civil code in India on the grounds that they have the right to follow personal laws as it is the part of religion and culture and Uniform Civil Code will lead to the misunderstanding and confusion among the various sections of the society.

In my view if the personal laws of inheritance ,succession etc. is considered as a part of religion and culture than the equality between men and women can never be achieved.

RIGHT OF WOMEN TO ECONOMIC DEVELOPMENT

¹⁶M.Kishwar vs. State of Bihar (1996) 5 SCC 125

¹⁷ Constitution Asembly Debate book No.2, Vol III ,page number 538,552

The Supreme Court 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.¹⁸ The court ,while referring to the Vienna Declaration on the elimination of all forms of discrimination against women(CEDAW) which was ratified by the United Nations Organisation on 18-12-1979and by government of India on 8th August, 1993 elaborately discussed the principles of equality of rights and respect of women dignity. The necessary implication of the observations of the Supreme Court inthis case which dealt with the right of hindu females to execute a will in respect of the property acquired or possessed by her, under Section 14 of the Hindu Succession Act,1956 is that the right of women to eliminate all kinds of gender based discrimination particularly in respect of property is an implicitly rights forming part of Articles 14,15 and 21 of the Constitution of India.

SEXUAL HARASSMENT OF WOMEN

In Vishaka vs State of rajasthan¹⁹, then Chief Justice J,S.Verma laid down various guidelines in respect to sexual harassment at work place. The Supreme Court Referred to the convention on the elimination of All forms of Discrimination against Women(CEDAW) and also the violation of gender quality under Article 14 and 15 and Right to Life and personal liberty of women under Article 21 of the Constitution.

As a result of this judgement any women employee who is subjected to sexual harassment of any kind can take recourse to initiate criminal proceedings and seek compensation from the guilty employer and other person responsible for the harassment.

The court has followed its own decision in Apparel Export Promotio Council vs A.K.Chopra²⁰ and held that the punishment of removal of a male employee from service after he has been found guilty of sexual harassment of a female colleagues proper and reasonable on the ground that sexual harassment of female at work place is the form of “gender discrimination against women”.

¹⁸ C.M. Mudaliar vs Idol of Sri S.S. Thirukoil (1996) 8 SCC 525

¹⁹ (1997) 6 SCC 241

²⁰ AIR 1999 SC 625: 1999 AIR SCW 274: 1999 Lab IC 918

The Supreme Court has demonstrated great judicial activism while coming to rescue the women even at the cost of resorting to judicial activism under Article 141 of the Constitution.

PRESENT SCENARIO

The government has taken the various measures to irradiate inequality in the society. Recently, 'SUKANYA YOJNA' by Government of India is the step which should be admired. This scheme will strengthen the condition of female. In the state of Haryana, the reservation for women in the panchayats is also the milestone. Bihar Government has also come up with the scheme of donating cycles to the girls, this will attract the female towards the education and this scheme is nothing but a bet which will attract girls to the schools.

CONCLUSION

Legislative and executive actions must be conformable to, and to trigger the applicability of fundamental rights guaranteed in Part III and the directive principle enshrined in Part IV and the Preamble of the Constitution which constitute the Conscience of the Constitution. Conveants of the United Nations and impetus and urgency to eliminate gender-based obstacles and discrimination. Article 2(e) of CEDAW enjoins this court to breathe life into the dry bones of the constitution²¹, international conventions and the Protection of Human Rights Act, to eliminate gender-discrimination and to inculcate right to life including empowerment of economic, social and cultural rights.

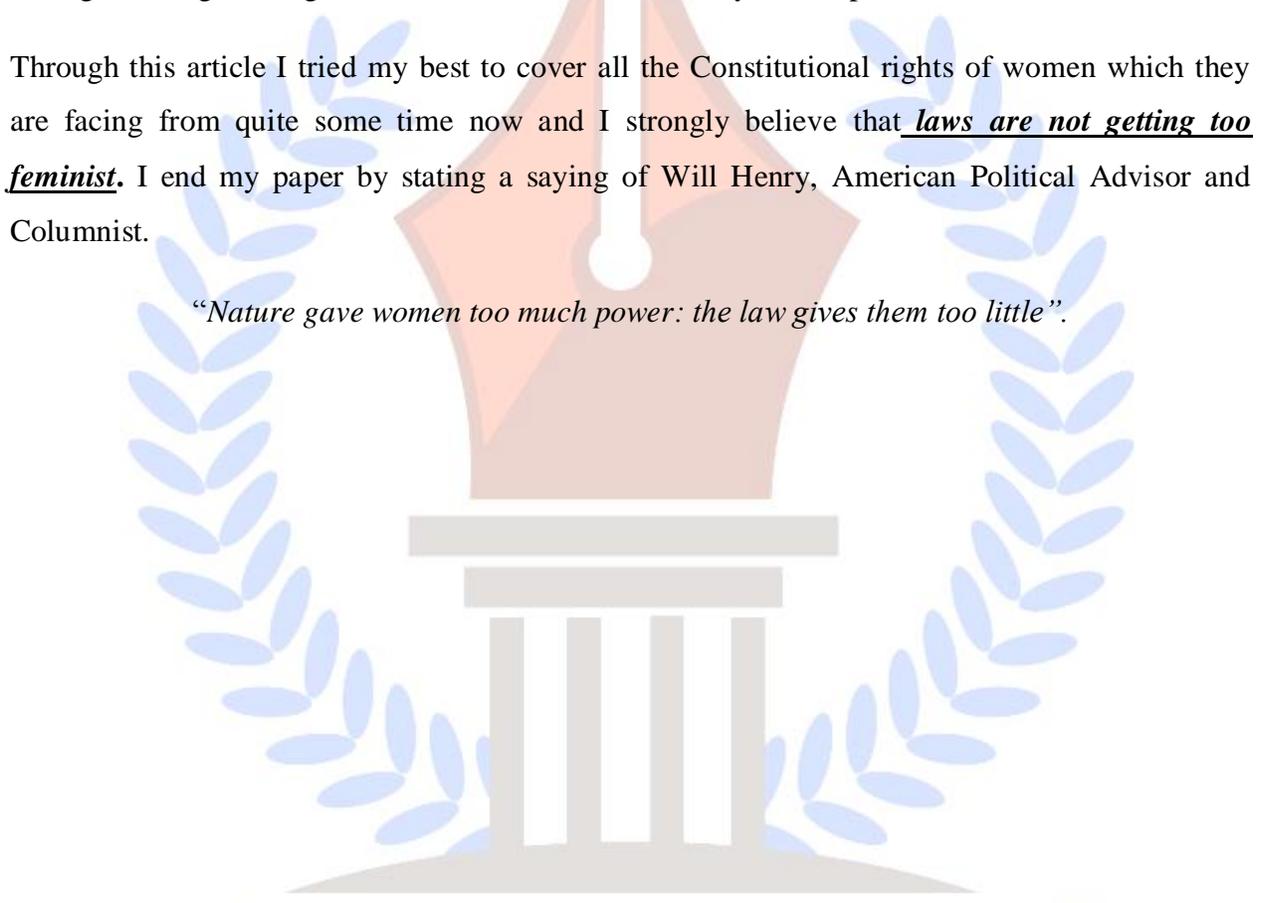
Apart from these provisions all the other provisions of the Constitution are equally applicable to men and women. This clearly establishes the intention of the framers of the Constitution to improve social, economic, educational and political status of the women so that they can treated with men on equal terms.

²¹C.Masilamani Mudaliar Vs Idol of Sri Swaminathaswami Swaminathaswami Thirukoil (1996 8 SCC 525)

To conclude I would like to say that Indian women have come a long way and prove that she is capable of doing anything and equal partner in the growth and prosperity of the nation if they are treated equal. Women are one of the pillars of society and it would be very difficult to imagine society without women. Now it is a high time for all of us to understand the power of women. Even or judiciary and legislature has also accepted the fact that women are one of the most important element of the society and their exploitation should not be accepted at any cost. “Behind every successful man there is a women” so women plays a different role in her lifetime from granddaughter to grandmother, which is not the easy task to perform.

Through this article I tried my best to cover all the Constitutional rights of women which they are facing from quite some time now and I strongly believe that laws are not getting too feminist. I end my paper by stating a saying of Will Henry, American Political Advisor and Columnist.

“Nature gave women too much power: the law gives them too little”.



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