

RIGHTS OF WOMEN IN THE LIGHT OF THE CONSTITUTION OF INDIA

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Abstract

Since times immortal women has suffered mental harassment, dowry deaths, female feticides and many more not only in India but in almost every corner of the world. Violation of women rights is still very common almost everywhere. But it is not necessary that all that should continue to be in the way they have. Things need to change if not socially then at least legally. Women rights can be broadly classified into two categories - Constitutional rights and Rights under other laws. Rights guaranteed by the Constitution of India include Right to Equality, no discrimination in employment on the ground of sex, to secure adequate means of livelihood, equal pay for equal work, securing just and humane conditions of work, Election rights and maternity relief etc.

Introduction

The Indian Constitution, the longest of any sovereign nation in the world, provides a comprehensive framework to guide and govern the country, keeping in view her social, cultural and religious diversity. A distinctive document with many extraordinary features, the Constitution of India is the longest written constitution of any sovereign nation in the world. The original text of the Constitution contained 395 articles in 22 parts and eight schedules. It came into effect on January 26, 1950, the day that India celebrates each year as the Republic Day. The Constitution was framed by the Constituent Assembly of India, established by the members of the provincial assemblies elected by the people of India. Dr Sachidanand Sinha was the first president of the Constituent Assembly. Later, Dr Rajendra Prasad was elected its president. Dr BR Ambedkar, the chairman of its Drafting Committee, is considered the chief architect of the Indian Constitution which provides a comprehensive and dynamic framework to guide and govern the country, keeping in view her unique social, cultural and religious diversity. It establishes the main organs – executive, legislature and judiciary, defining their powers, demarcating their responsibilities and regulating the inter-se relationship. It inter alia lays down the basic structure of governance and the relationship between the government and the people. The rights and duties of citizens are also spelt out. The Constitution applies to the state of Jammu and Kashmir with certain exceptions and modifications as provided in Article 370 and the Constitution (application to Jammu and Kashmir) Order, 1954. It is the mother of all other laws of the country. Every law enacted by the Government has to be in conformity with the Constitution.¹

¹ Sumant Batra, 'Of the people, for the people and by the people', Available at: https://mea.gov.in/Images/attach/Article_on_Constitution_of_India.pdf (Visited on August 4, 2021)

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 favour 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 1993.²

There are various provisions that are incorporated in the Constitution of India with the aim of attaining gender equality and for providing benefits to the society at large and women in particular. Many of these provisions were introduced at the time of framing of the Constitution of India and many were incorporated with the help of amendments at latter stage.

Following are the key highlights for the rights of women under the Constitution of India: -

1. Preamble of the Constitution

The Preamble of the Constitution of India presents the intention of its framers, the history behind its creation, and the core values and principles of the nation. Preamble declares India to be a sovereign, socialist, secular and democratic republic.

The objectives as enshrined in the Preamble are to secure justice, liberty, equality to all citizens and to promote fraternity to maintain unity and integrity of the Nation. An indebt study of the Preamble of the Constitution of India clearly highlights that woman have equal rights as men so as to enable them to take part effectively in the administrative of the country.

2. Equality before law

Article 14 of the Constitution of India embodies the principles of equality before law and equal protection of laws. Equality before Law basically means that all persons should be treated equally no matter whether they are poor or rich, male or female, upper caste or lower caste. This state cannot provide any special privileges to anyone in the country. It is also known as legal equality.³

Apart from Article 14, Article 15 also incorporated the same spirit if equality. Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth

Article 15(1) and (2) prohibits the state from discriminating against any citizen only on the basis of any one or more of the aspects such as religion, race, caste, sex, place of birth or any of them.

Article 15(3) empowers the state to create special provisions for protecting the interests of women and children.

Article 15(4) vests in the State the power to create special arrangements for promoting interests and welfare of socially and educationally backward classes of society.

² Available at: http://mospi.nic.in/sites/default/files/reports_and_publication/cso_social_stactices_division/Constitutional&Legal_Rights.pdf (Visited on August 3, 2021)

³ Subodh Asthana, "An Overview of Right to Equality under Article 14 of the Constitution", Available at: <https://blog.ipleaders.in/article-14/>

3. Equality of Opportunity

The concept of equality of opportunity is embodied under Article 16 and 39 of the Constitution of India.

Article 16 provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

Article 39 requires the State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood [Article 39(a)], and equal pay for equal work for both men and women [Article 39(d)].

Article 39A directs the State to promote justice, on the basis of equal opportunity and to promote free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

4. Just and Humane Conditions at Work

Article 42 which is A Directive Principle of State Policy, directs the State to make provision for securing justice and humane conditions of work for women especially and to provide for maternity benefits and relief.

5. Fundamental Duty

Article 51-A of the Constitution of India embodies Fundamental duties. By the 42nd Constitution (Amendment) Act, 1976, a new Chapter IV-A consisting of only one Article i.e 51-A was added which dealt with a Code of Fundamental Duties for citizens. Fundamental duties are intended to serve as a constant reminder to every citizen that while the constitution specifically conferred on them certain Fundamental Rights, it also requires citizens to observe certain basic norms of democratic conduct and democratic behaviour because rights and duties are co-relative. The inclusion of Fundamental Duties brought our Constitution in line with article 29 (1) of the Universal Declaration of Human Rights and with provisions in several modern Constitutions of other countries. The concept of Fundamental duties was taken from the USSR.⁴

In specific relation to women, Article 51A (e) enjoins upon every citizen to renounce practices derogatory to the dignity of women.

6. Reservation of seats for Women in Panchayats and Municipalities

Through the 73rd and 74th amendments to the Constitution in April 1993, the dream of decentralising power at the grassroots level became reality. The 73rd amendment, among other things, handed over the reins of power to the people at the panchayat level with a 33 per cent reservation of certain seats and key positions within the panchayat to women. The amendment also made it mandatory for all states to hold gram panchayat and municipal elections and empowered these bodies to undertake development activities at the local level.⁵

The articles inserted by the 73rd and 74th amendments were: -

⁴ Constitution Day and Fundamental Duties, Available at: <https://doj.gov.in/sites/default/files/Constitution%20Day.pdf>

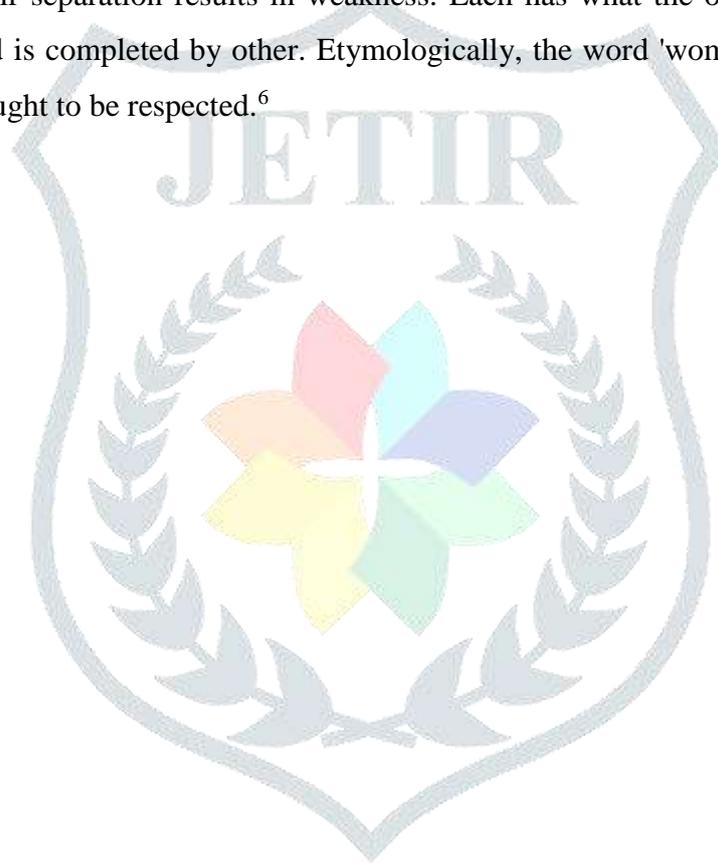
⁵ In – Depth, “Panchayats' working women”, Available at: <https://www.downtoearth.org.in/indepth/panchayats-working-women-22753>

Article 243 D (3) and Article 243 T (3) provide for reservation of not less than one third of total number of seats in Panchayats and Municipalities for women to be allotted by rotation to different Constituencies.

Article 243 D (4) and 243 T (4) provides that not less than one third of the total number of officers of chairperson in the Panchayat and Municipalities at each level to be reserved for women.

To uphold the Constitutional mandate, from time to time the state has enacted various legislative measures which are intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services specially to working women.

Swami Vivekanand ji rightly said that, “Just as a bird cannot fly with one wing only, a Nation cannot march forward if the women are left behind”. Men and women are the two holes of a perfect whole. Strength is borne of their union their separation results in weakness. Each has what the other does not have. Each completes the other, and is completed by other. Etymologically, the word 'woman' means - half of man. Therefore, the women ought to be respected.⁶



⁶ Available at: https://www.legalserviceindia.com/laws/women_issues.htm (Visited on August 4, 2021)