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THE CONSTITUTIONAL PROVISIONS FOR WOMEN IN INDIA



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Abstract: Constitution is the fundamental legal document in a democratic society. It lays down the principles for the governance of a country. All laws have to conform to it and any enactment, inconsistent with it, is void. In some countries, it is very often, a charter for social and economic development of the country.

Keywords: Constitutional Provisions , democratic society , economic development .

INTRODUCTION

The Indian Constitution, which came in force on 26th January 1950, is no exception. It provides the framework for the governance of the country assigning roles to different institutions such as executive, legislature and judiciary.

The Assurance of Equality and Freedom in the Preamble of the Constitution

The Preamble is the first part of the Constitution of India. It summarizes the provisions in the Constitution. It is as follows-

“We, the People of India, having solemnly resolved to constitute India into a (Sovereign Socialist Secular Democratic Republic) and to secure to all its citizens:

Justice, social, economic and political;
Liberty, of thought, expression, belief, faith and worship;
Equality, of status and of opportunity;
And to promote among them all
Fraternity assuring the dignity of the individual and the (unity and integrity of) nation;

In our constituent Assembly this twenty-sixth day of November, 1949, do hereby Adopt, Enact and Give to Ourselves this Constitution.”

As cited above, the Constitution of India assures all Indian citizens, whether poor or rich, women or men, Dalit or Sawarna of social, political and economic equality and freedom. The Manusmriti, which had denied the women their fundamental rights for ages together, stood refuted and Dr Ambedkar, the principal maker of the Constitution of India, assured the women of their equal rights in the very first. The Constitution contains the following promise-

While all provisions of the Constitution are applicable in equal measure to men and women, and can, therefore, be invoked by women for the assertion of their right; “Part III AND IV need special mention; as these are the backbone on which protective legislation for women has

been based. Part III of the Constitution recognizes and confers fundamental rights to citizens. And, some of these are enjoyed by non-citizen also. These rights have a special status in the Constitution, as according to Article 13;”

a) All laws in force before the commencement of “the Constitution, so far as they are inconsistent with the provisions of Part III, have been declared, to the extent of inconsistency, void.”³ “The State has been prohibited from making any law which takes away or abridges the rights conferred in Part III and any law made in contravention of this part, is to the extent of inconsistency, void.”

An understanding of the above provisions is important for the appreciation of the rights which have been conferred to the citizens in Part III of the Constitution. Of the various rights conferred in this Part, there are two provisions which need to be mentioned as these are of special importance for women to above

1) Equality of Status: “Article 14 of the Constitution of India enunciates the general principle of right to equality and prohibits the state from denying to any person equality before law or the equal protection of the laws.”

The Articles in the Constitution

Article 15 (1) Article “15 (1) of the Constitution is more specific instance to right of equality which prohibits the state from making discriminations against any citizen on ground of religion, race, sex, place, birth or one of them.”

Article 15 (2) Article “15 (2) of the Constitution prohibits discrimination on the bases of religion, race, caste, sex and birthplace.”

Article 15 (k) Article “15 (c) of the Constitution doesn't allow discrimination at shops, public restaurants, hotels and public entertainment places.”

Article 15 (Kh) “The wells, the lakes, the river steps, roads and public places either run by complete or partial government aid or of public use shall not come under prohibition or conditional use.”

Article 15 (3) Article “15 (3) nullifies all prohibitions on the formation of special provisions for women and children.”

In this way Dr Babasaheb Ambedkar brought about several Constitutional provisions for establishing social equality. The Indian social system had been paralyzed by the traditions of discrimination. The Dalits and women had virtually lost their dignity under the burden of a number of social prohibitions. The Constitutional provisions chalked out by Dr Ambedkar turned out to be a counter-reaction to the age-old inhuman customs and traditions in the Indian society.

Equality in the matter of employment or appointment under state

Article “16 (1) states that “there shall be equality of opportunity for all citizens in matters of employment or appointment to any office under the state.” Further, “No citizen shall on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible or discriminated against in respect of any employment or office under the state [Article 16 (2)]. The import of these provisions is that a woman has the same rights in the matter of employment under the state as a man. The state cannot practice any discrimination on this count. If any law is passed or any executive action is taken to prevent the women from taking up employment under the state, such law or executive action can be declared ultra-virus of the Constitution by the court of law.”

Both men and women have equal right to earn their livelihood. “They must be paid equally for equal work. There should not an abuse of the energies of men and women, and the tender age of the minors.” This right to equality is only in employment or appointment under state that is in matters of recruitment, promotion, wages, termination of employment, periodical increments, leave, etc.

Right to life and right against exploitation

Article “21 gives right to life and personal liberty. “Right to Life” does not merely mean animal existence by means something more, namely, the right to live with human dignity. Rape, is therefore, a crime against basic human rights and is also violation of the victim's right to life contained in the Article 21. Article 23 of the Constitution of India provides for prohibition of traffic in human beings and forced labour. Similarly, Article 24 prohibits employment of any child (which includes a female child) below the age of fourteen years to work in any factory or mine, or these provisions would reveal how much our founding fathers were concerned in not only protecting the interests of women but also to ameliorate the conditions of this lot in totality. Forced labour in any form including beggar and traffic in human beings is completely prohibited and any contravention of this provision has been declared an offence punishable in accordance with law.”

Article 23 (1) Article “23 (1) bartering and bonding of women have been prohibited and such an activity is punishable in accordance with law.”

Article 23 (2) According to Article “23 (2) the state can make

service obligatory in the interest of social welfare. However, while doing this the women are discriminated from men and the women must not be obliged into service.”

The provision for religious freedom

According to Article “25 (1) the women are allowed to practice a religion according to the voice of their conscience and under the bylaws of the public system, morality and hygiene. This Article has helped the women acquire the freedom to chose a religion of their choice and propagate it. It has also allowed them the right to set up a religious or charitable society, manage it on their own, and own or acquire both movable and immovable properties.”

According to Article “27 religions is a private matter, and every citizen has a right to acquire and propagate a religion of his or her willingness.” According to Article “28 of the Constitution an institution either run partially or completely by the government shall not impart religious education or deny men or women admission on the basis of religion.”

The right to religious freedom is a very significant provision in the Constitution of India. It is against the social and religious customs and traditions which had made the Indian women face so much of misery and exploitation. Thus, the right to religious freedom has earned a special place among men and women.

Cultural and Educational rights

According to the Article “29 of the Constitution of India Dr Babasaheb Ambedkar ensured the women the rights to cultural practices and education. As a result, no institution can deny women admission under any pretext. With an objective of helping women develop, they are allowed the right to setting up educational and cultural institutions.”

The Constitutional Measures

In the traditional social set-up the women had no rights to oppose the injustice and atrocities perpetrated upon them. Dr Ambedkar was quite conscious of the misery of the women in India. Hence, after having allowed the women and the weaker sections of the society the human developmental rights, there are given Constitutional measures according to Article “32 (1) for protecting all the rights given under the Constitution.”

The Political rights

The Third section of the Constitution contains the rights to the freedom of expression and the individual freedom. Article “19 (1) allows all Indians the right to freedom.

- 1) Right to speak and express
- 2) Right to getting together unarmed and peacefully
- 3) Right to forming associations and organizations
- 4) Right to move freely in the political state of India
- 5) Right to live and settle in any part of the political state of India”

Along with these important rights, there have been given political rights too. The women are allowed the right to

vote and the right to contest elections. These rights have helped women to acquire political opportunities.

According to Article "14 of the Constitution the state shall not deny any citizen the equality and equal protection in the political state. This results into women getting the right to contest any elections according to the eligibility and acquire a public position."

It should be noted that England, which ruled India for so many decades and which is known as the mother of democracy, had not allowed its women the right to vote until the year 1920. The women in England had to fight a long-drawn-out battle for gaining the political rights. However, in India due to the commendable efforts of Dr Ambedkar the women have been awarded the political rights. Dr Ambedkar had demanded the right to vote for the adult men and women in his deposition to the Simon Commission on 23rd October 1928. At the Round Table Conference too, he reiterated the demand in the political favour of adult Indian men and women. His earnest efforts had their culmination in his drafting the political rights for adult men and women in the Constitution. One of the favourable results can be seen in Pratibhatai Patil becoming the first President of the nation and Meerakumar being made the Speaker of the Lok Sabha. The nation like America, with all its centuries of democratic history, has not been able to receive a lady President, whereas a nation, as divided as India had been, has been able to promote the identity of women by allowing them the highest offices. The credit should go to the towering efforts taken by Dr Babasaheb Ambedkar.

Special protection under Directive Principles of State Policy

In Articles "38 to 51 which contain the Directive Principles, the social and economic goals have been set with a view to fulfill the basic needs of the common man. As women have been neglected in the social and economic development of the country in the past, the state has been specially called upon to look into certain problems which plague them. In order to enable them to participate in the socio-economic development of the country, a climate has to be created for them to be equal partners in development with man, rather than being mere beneficiaries of developmental activities."

The Directive Principles which directly concern women are as follows:

A) Article "39 (a) lays down that the citizens, men and women, have the right to adequate means of livelihood. Nothing much has been done for the realization of this principle as a right either for men or women except the overall improvement in the economic condition which may, in course of time, ensure adequate means of livelihood;"

(B) "Equal pay for equal work for both men and women is a principle directly related with the status of women. There has been a general belief that qualitatively and quantitatively, a woman's output is less than a man's for a given hour of work. But there is no survey or study to substantiate this belief. In order to realize the ideal enshrined in this principle. Equal Remuneration Act, 1976 was passed in 1976 which secures equal wages for men and women for the same type of work."

C) Article "39 (c) lays down that "The health and strength of workers, men and women, and the tender age of children are not abused." Further, "Citizens are not forced by economic necessity to enter vocations unsuited to their age or strength." A number of laws have been enacted to provide for the safety and welfare of female and child workers employed in different types of establishments during the last three and a half decades. The employment of women and children in hazardous activity is completely banned. However, not much progress has been made in the implementation of the ideals enshrined in the latter part of the Article. As legislation by itself is not likely to help the achievement of the ideal that citizen should not be forced by economic necessity to enter vocations unsuited to their age or strength will depend upon the general improvement in the economic conditions of people."

D) Article "42 provides that the state shall make provisions for securing just and humane conditions of work and maternity relief"

The sum and substance of the Constitutional provisions is that women stand on equal footing with men in all spheres of economic, social and political life of the country. Discrimination has been completely abolished on the ground of the sex and women belonging to different religions and races have the same status in the eye of law. As women have been neglected in the past, these special provisions made in the Constitution for their benefit are expected to help them in the fuller development of their personality and self-actualization.

Constitutionality of the Provisions of the Indian Penal Code

"The Indian Penal Code, in general, does not make any distinction on the basis of sex. It is uniformly applicable to all. The Indian Penal Code was enacted in 1860 and came into force in 1861. Looking to the social conditions and norms prevailing in Indian society, the Penal Code has provided special provisions which afford protection to woman who could be a victim of the offences relating to her sex. It must be clear that the special provisions relating to women are not exceptions but are special offences, because a woman faces many problems in her public and private life because of her womanhood, her social position."

The basis of protective discrimination in favour of woman is Article "15 (3) of the Constitution of India, which provides:"

"Nothing in this article shall prevent the state from making any special provision for women and children"

Reading clauses "(1) and (3) of Article 15 together it will follow that while there can be no discrimination in general on the ground of sex, special provisions in the cases of women and children are permissible. The drafters of the Constitution were of the opinion that women require special treatment on account of their very nature. The reason is that, "women's physical well-being becomes an object of public interest and care in order to preserve the strength and vigour of the race"

It may be made clear that Article "15 (3) of the Constitution provides for only special provisions for the

The Constitutional Provisions For Women In India

benefit of women and children and doesn't require that absolutely identical treatment as those enjoyed by males in similar matters must be afforded to them.”

In this manner there have been made various vital provisions in the Constitution of India in favour of the women. While setting down the Constitution, Dr Babasaheb Ambedkar took out-of-the-way efforts to ensure social, political and economic equality for women through various provisions, along with special opportunities and provisions for them. On the one hand, the dignity of women at public places is ensured and on the other, the women are allowed equal opportunities of livelihood and their share in the political field.

In order to prevent the violent abuse of women and assault on their character, there have been made rigorous punitive provisions in the Constitution. The violations of the Constitutional rights are severely taken cognizance by the Indian Penal Code.

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