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Status of Women's in India: Constitutional-Legal Perspective

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Abstract

Though women constitute nearly half of the Indian population, but they are ignored socially, politically and economically. The issue of women is one of the most challenging and alarming issues in today's changed global context, not because they are well protected and well secured but because they are more and more battered and tortured day by day. The evidence is clear everywhere that the voice of women is being increasingly heard in the streets, courts and Parliaments, and even largely published in daily media. Yet issues concerning women are not given priority in society. However, it is necessary to understand the socio-political movement in India because these movements have had a great impact on the women's life in India. At the dawn of Indian history, the Vedic women possessed high status. This soon became legendary and the women were sinking deeper in economic dependence, religious taboos and social subservience and were treated as second class mortals. The Constitution of India has ensured equal status to all. But the basic question is that how far we have been able to achieve the objectives provided by the Constitution and legislations. In view of this paper has used secondary sources of data. Descriptive research method has been mainly used in this study. The main objective of this paper is to analyse how different sections of the constitution and legal provisions can be used to improve the empowerment or status of women.

Keywords: ignored, constitution, legislations

Introduction

Attention of the world on the issue of "Status of Women" has been drawn by U.N in 1970s. The U.N declared 1975 International Women's Year and 1975-1985 Women's decade. Soon after the systematic study of women's past began students of history recognized they were witnessing a revolution. The United Nations has declared 2021 as the year of 'Women in Leadership: achieving an equal future in Covid-19 World' as the theme of celebrations. The issue of women is one of the most challenging and alarming issues in today's changed global context, not because they are well protected and well secured but because they are more and more battered and tortured day by day. The evidence is clear everywhere that the voice of women is being increasingly heard in the streets, courts and Parliaments, and even largely displayed in daily media. Yet issues concerning women are not given priority in society. Women always constitute an important segment of any kind of society, be it primitive or modern, agricultural or industrial. Thus, an analysis of the role of women in society throws light on the complex problem of their participation in different aspects of life. Of all the aspects of relationship between women and society, it is women's participation in various fields like social, political, educational, economic and so on that has received the most sustained attention from the social thinkers, human rights' activists and political scientists.

The objectives of the paper are as follows:

1. Since historic times how the status of women has changed in the Indian society has been analysed in this paper.
2. How the different constitutional and legal provisions can be put in to practice to improve the present status of Indian women.
3. The paper ends with some suggestions to improve the current status of Indian women.

Status of Women from Ancient to colonial India:-

India is known for her specific culture. There is no direct reference to the notion of rights in India. However, it lies embedded in its culture. The notion of Purusharthas: Dharma (rules and regulations), Artha (material prosperity), Kama (sexual pleasure) and Moksha (eternal bliss) reflects four values of life for human development. It seeks to achieve both empirical and spiritual development of individuals. The Vedic sages also emphasize on the development and happiness of entire humanity: "SarveBhavantuSukhina" or "Let all be happy." However, one can not overlook the plethora of social evils like intolerant casteism, Sati (Burning widow while living), female infanticide, child marriage, religious orthodoxy, communalism etc. which viciated the society and blatantly violated human rights.¹ However, it is necessary to understand the socio-political movement in India because these movements have had a great impact on the women's life in India. At the dawn of Indian history, the Vedic women possessed high status, an equal partner with men.² This soon became legendary and the women were sinking deeper in economic dependence, religious taboos and social subservience and were treated as second class mortals. A steady deterioration of the status of women further reached a new low after the disruption of the Mughal empire and the consequent political and social confusion in the 18th century. So, when the British Period started, the position of the women was, in a sense worst, in the history of India. Child marriage was almost universal among the high caste Hindus, and had ever spread to some sections of the Muslims. The practice of 'Sati' was existing and literacy among women was regarded as a source of moral danger. With the above existing situation one of the remarkable features of modern India has been the unprecedented awakening of Indian women during the 19th and early 20th centuries. A number of movements both religious and social were launched in the middle of the 19th century, reforming Hinduism and the Indian society.³ According to Geraldine Forbes, "The first historical accounts of Indian women date from the nineteenth century and are a product of a colonial experience. This account tell of an ancient time when women were held in high esteem followed by a long period when their status declined".⁴ the well-remembered social reformer was Raja Ram Mohan Roy. He established the 'BrahmoSamaj' which worked earnestly for the welfare of women. Freedom and equality of women and widow remarriage were the focus of the Samaj. The cruel system of 'Sati' was abolished by the efforts of Ram Mohan Roy. The spiritual succession of Roy was Keshav Chandra Sen, who popularized BrahmoSamaj and fought for women's education and even established a school for girls. It was his courage and perseverance that brought Civil Marriage Act. III of 1872 which included abolition of child marriage, permission for widow remarriage and inter-caste marriage. A parallel religious reform movement in the form of ParthanaSamaj was started by Justice MahadeoGovindRanade in Poona. Swami DayanandaSaraswati founded the AryaSamaj, whose main objective was "to give equal opportunities to all persons, men and women; to acquire knowledge and to qualify themselves for whatever position in life they would like to fill". Another eminent person who stands out is Ishwar Chandra Vidyasagar. His notable reforms are education for

women and widow remarriage. Later on, in the 19th century, came the eminent liberal, Gopal Krishna Gokhale. His Bill for universal compulsory primary education brought in a fresh breeze of reform for Indian women. Although nationalist discourse, according to ParthaChatterjee, resolved the women's question by the end of nineteenth century.⁵

The factor which contributed towards developing women's movement was the spontaneous and massive participation of women in the struggle for National Freedom. The movement as developed by Mahatma Gandhi encouraged women to participate actively in it. This participation helped in the removal of social shackles and activated women to press for political equality and in 1917 Indian National Congress elected a woman President Annie Besant for the first time. The Government of India Act, 1919 did not enfranchise women, but it did empower provincial legislatures to remove the sex barriers at their discretion. Madras was the first province to grant limited franchise to women in 1921, followed by other provinces. The Government of India Act of 1935 extended the franchise and after 12 years of struggle by the women's associations, the Hindu Law Reforms Committee was appointed in 1946. Thus, the social reformers of the 19th and early 20th centuries prepared a fertile ground on which Gandhiji could sow the seeds of inspiration for women's participation in the political movement. This participation in the freedom struggle in a true sense, beginning of a home-bound and constructed life for Indian womanhood. With the attainment of Indian Independence on August 15, 1947 and the framing of its Constitution, many of the demands of the women's movement were incorporated. But even after 70 years of its enforcement, freedom and social justice have not reached all women in the country. There is clear evidence of growing violence regarding women's rape, wife battering, family violence, dowry deaths and prostitution. This is the stark reality for millions of women. The declining value of women is surfacing in almost every aspect of life even today.⁶

Constitutional Provisions for Women Upliftment:-

Indian Constitution prescribes certain special provisions in favour of women's empowerment. These provisions became highlighted only in 73rd & 74th Amendment Act, 1992 when the Constitution provided thirty three percent reservation of seats to women in PanchayatiRaj Institutions & Municipalities to make them equal with that of their men counterparts in the political field. Those constitutional Provisions are:

- i. Not less than one third of the seats meant for direct election of members at each tier of Panchayats & Municipalities are to be reserved for the women (243-D(3));
- ii. Not less than one-third of the seats of Chairpersons at any level reserved for women and same to filled by direct election in every Municipality (243-T(3)).
- iii. The offices of chairpersons in the Municipalities shall be reserved for women (243-T (4)).

Article 14 guarantees equality before law and equal protection of law to all men and women within the territory of India.

Article 15 prohibits any kind of discrimination "against any citizen on grounds only ofsex".

Article 15(3) empowers the state to make “any special provision for women and children”.

Article 16 (1) guarantees “equality of opportunity for all citizens”.

Article 16 (2) forbids discrimination “in respect of any employment of office under the state”.

The Articles that concern women indirectly include: Article 38 directs the state to secure a just social, political and economic order, geared to promote the welfare of the people. Article 40 concerns the organization of village panchayats to promote self-government; Article 41 appertains the right to work, education and public assistance in cases of unemployment, old age, sickness, disablement and other types of undeserved wants.

The Articles of Directive Principles which deal with women directly and have a special bearing on their status include: Article 39(a) right to an adequate means of livelihood for men and women equally; Article 39 (d) equal pay for equal work both for men and women; Article 39 (4) protection of the health and strength of workers-men, women.

Article 51A (e) of the constitution of India imposes fundamental duty upon every citizen of India to renounce the practices derogatory to the dignity of women.

Finally, Article 325 and 326 introduce Universal Adult Franchise without any distinction of sex.

Thus the special attention is given to the needs and problems of women, to enable them to enjoy and exercise their constitutional equality of status.⁷

Status of Women and Role of Judiciary: - The judiciary all over the world has been playing a greater role in protecting the rights of women. The Indian judiciary led by the Supreme Court has exhibited a welcome judicial activism in recognizing, popularizing and enforcing these rights. The Supreme Court in *State of Maharashtra vs. Madhukar Narain*⁸ without referring to Article 21, held that even a woman of easy virtue is entitled⁹ the court has consistently maintained that the offence of rape is violation of the right to privacy of the victim.

The Supreme Court in a number of cases held that right to economic empowerment of women is a human right. In *C. Masilmami Mudaliar vs. Idol of Sri Swamina Thaswami Thirukoil*¹⁰ the Supreme Court has recognized, highlighted and conferred the right to economic empowerment of women as a fundamental right under the Constitution of India.

The Supreme Court in case of *Visaka vs. State of Rajasthan*¹¹ laid down a number of guidelines to remedy the legislative vacuum. The broad guidelines laid down in Visaka’s case have set a new trend in the protection of the human rights to dignity of working women in the country like India.

The Supreme Court in *Delhi Domestic Working Women’s Forum vs. Union of India*,¹² suggested the formulation of the scheme for awarding compensation to rape victims. In this manner in *Chairman, Railway Board vs. Chandrima Dass*,¹³ the Supreme Court awarded compensation of ten lakhs to an alien woman under Article 21 of the Constitution who has been a victim of rape.

At last, it is very important to mention here that for the constitutional protection of women in India, the judiciary may make it abundantly clear that the courts have played the role of catalyst in ensuring their position in an effective

manner. Thus, it is crystal clear that the Constitution of India provides Directive Principles of State Policy which are fundamental in the governance of the State. These provisions provide special favour to women and direct the State to treat male and female equally.

The National Commission for Women (1992) investigates and examines all the matters relating to the safeguards provided for the women under the Constitution.

Some import legalization contain several rights and safeguards for women—

1. Protection of Women from Domestic Violence Act (2005) is a comprehensive legislation to protect women from all forms (physical, sexual, mental, verbal and emotional) of domestic violence.
2. Sexual Harassment of Women at Workplace Act (2013) provides protection to women from workplaces both public and private sector.
3. Equal Remuneration Act (1976) provides equal payment to both men and women work of a similar nature.
4. Family Courts Acts (1984) - for speedy settlement of family (women problem) dispute.
5. Legal Service Authorities Act (1987) provides for free legal services to women.
5. Dowry Prohibition Act (1961) prohibits the giving or taking of dowry at or before or any time after the marriage. The other important legislations: a. Plantation Labour Act (1951) b. Bonded Labour Abolition Act (1976) c. Muslim Women rights on marriage Act (2019) d. Sati Prevention Act (1987) e. Hindu Marriage Act (1955). f. Foreign Marriage Act (1969) etc.

Concluding Observation:-There are many Constitutional provisions and legislation for the protection of women but they have failed to give protection to the women practically. Even judiciary and media failed to play its role in many instances. Many types of outrage or atrocities, rape are frequent incidents in today's India. Even eminent women politicians has also ignored this issue. In this context few recommendations proposed by the current author regarding status of women in India are as follows:

1. High status of women or empowerment of women will remain a distant dream if women are not educated. Education of women is very essential is not only for their self-consciousness and awareness but also for their economic independence. Economic empowerment of women is essential in status of women, in a male dominated Indian society.
2. Judiciary must play an active role in different women's issues.
3. At present women has 1/3 of representation in the local government bodies. Women's representation should be increased to 1/3 in all levels of government. Women should be aware and actively participate in the different policy making decisions of the government and indifferent developmental issues.
4. The central state and local government bodies from time to time undertake different developmental activities to encourage women to participate and express their views in these developmental activities women should be trend and such training and workshop should be conducted by the government from time to time to train women show that they can

actively participate process Participate in the local developmental process.

5. In the higher level of party structure, all national and regional political parties should increase their women's representation in 1/3.
6. Media should play an active role in various women issues.

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