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Constitutional Status of Women in India: A Historical Perspective

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Abstract

The status of women in any civilization shows the stage of evolution at which, the civilization has arrived¹. The term 'status' includes not only personal and proprietary right but also duties, liabilities and disabilities². In the case of a Indian women, it mean her personal right, proprietary rights, her duties, liabilities and disabilities vis-a vis the society and her family members. The status of women could be the best indicator of any nation. Azim (1997) endorses this view when she say "The position of women in society is true index of its cultural and spiritual attainment", women's active and social role is regarded as an integral part of progressive social system³. In India women are the second largest population of the country. Total women population is more than 646 million (2021) in all Indian population over 1.42 billion⁴. But her status is not better than Man, especially in Public Life, Politics, Education and Employments.

Keywords: Constitutional Status of Women, Indian women, Constitution of India, equal protection, Article 15

Introduction

The Constitution of India guarantees equality of sexes and in fact grants special favors to women. These can be found in three articles of the Constitution. Article 14 says that the government shall not deny to any person

1 Nivedita Menon & Shadhna Aarya (2004), *Stri Shanghars Ka Itihas*,(Hindi)

2 Ibid

3 Shaukat Azim (1997), *Muslim Women Emerging identity*

4 Census of India 2021.

equality before law or the equal protection of the laws. Article 15 declares that government shall not discriminate against any citizen on the ground of sex. Article 15 (3) makes a special provision enabling the State to make affirmative discriminations in favour of women. Moreover, the government can pass special laws in favour of women. Article 16 guarantees that no citizen shall be discriminated against in matters of public employment on the grounds of sex. Article 42 directs the State to make provision for ensuring just and humane conditions of work and maternity relief. Above all, the Constitution imposes a fundamental duty on every citizen through Articles 15 (A) (e) to renounce the practices derogatory to the dignity of women.

All these are fundamental rights. Therefore, a woman can go to the court if one is subjected to any discrimination. When we talk about constitutional rights of women in India, we mainly pertain to those areas where discrimination is done against women and special laws formulated to fight those bigotries. The most important issues stand as those pertaining to marriage, children, abortion, crimes against women, and inheritance.

Before modern Hindu laws were passed, child marriages were the norms, inter-caste marriages were banned, the girl became a part of the husband's family, and polygamy was common. In the 19th century, the British rulers passed several laws⁵ to protect customs and traditions while abolishing detestable practices like Sati. Some such revolutionary laws were Hindu Widows Remarriage Act 1865 and the Brahmo Samaj Marriage Act 1872, the forerunner of the present Special Marriage Act. In the beginning, the Act sets four essential conditions for a valid Hindu marriage. They are:

1. Monogamy
2. Sound mind
3. Marriageable age
4. The parties should not be too closely related

Polygamy was permitted among Hindus before the Act was passed in 1955.

However, after the act was passed, any man marrying again while his wife is living will be punished with fine and imprisonment up to seven years. Formerly, child marriages were common. The Child Marriage Act of 1929 was not very effective as such marriages were continued to be performed. Now, however, the bridegroom must be 21 years old and the bride 18 years. However, there is a separate Muslim Code of Conduct, which allows polygamy of up to four wives as per Islamic laws. A marriage may be invalid without the boy or the girl realizing it at the time of the wedding. A civil marriage would be void if four essential conditions are not complied with. These conditions are listed in the Special Marriage Act (Section 4), as enumerated below:

- If it is bigamy
- If either party was suffering from mental disorder

⁵ B.L. Grover (2006), *History of Modern India*

- If the boy has not completed 21 years and the girl 18 years
- The boy and the girl are too closely related, or in legal language, are "within degrees of prohibited relationship" unless custom governing at least one party permits the marriage between them. Prohibited relationships are listed in the Special Marriage Act.
- A fifth reason for invalidating a marriage is impotence of either party.

There are some grounds available to the wife only, both in Hindu and civil marriages. One such ground available exclusively to the wife is her husband's commission of rape, sodomy or bestiality. Under the Hindu Adoptions and Maintenance Act 1956, a Hindu wife is entitled to be maintained by her husband⁶. Section 125 of the Criminal Procedure Code also deals with maintenance of wife and children. If there is a decree of maintenance against the husband and the couple have been living apart for over one year, it would be a ground for the wife to seek dissolution of marriage. Here again the Muslim Personal Law has a different set of conditions for the annulment of an Islamic marriage.

The Dowry Prohibition Act of 1961 says that any person who gives, takes, or abets the giving or taking of dowry shall be punished with imprisonment, which may extend to six months or with fine up to Rs. 5,000 or with both. Dowry that started off as a practice to give away presents to the departing daughter, usually some resources to begin her new married life, slowly assumed extraordinary proportions and turned into a social evil. Brides were expected to bring the "gifts" regardless of their personal willingness. The bride's family could no longer have an individual say; lists were prepared and sent to the girl's house before the final agreement between the two families. The condition being that the boy would marry the girl only if the demands were met. Such a custom is being practiced not only in India but also in other countries like Bangladesh and Nepal. The reason behind this custom is the poor economical condition of the people along with a lack of education; unawareness of legal rights among women and a general bias against the women.

Crimes like rape, kidnapping, eve teasing and indecent exposure can be grouped as crimes against women. Rape is the worst crime against women after murder and the maximum punishment under the Indian Penal Code (IPC) is life imprisonment. An abortion or miscarriage due to natural causes is not an offence. Therefore, the law does not deal with it. However, violent and forceful abortion is a crime⁷. Sections 312 and 316 of the Indian Penal Code deal with abortion as crime. Section 313 deals with abortion without the consent of the woman. The punishment could even be life imprisonment.

⁶ See *Criminal Penal Code of India*

⁷ *Indian Penal Code*, 312-316

The Hindu Succession Act gives male and female heirs almost equal right to inheritance. Section 14 says that any property possessed by a female Hindu shall be held by her as full owner and not as a limited owner.

According to India's constitution, women are legal citizens of the country and have equal rights with men (Indian Parliament)⁸. Because of lack of acceptance from the male dominant society, Indian women suffer immensely. Women are responsible for bearing children, yet they are malnourished and in poor health. Women are also overworked in the field and complete all of the domestic work. Most Indian women are uneducated. Although the country's constitution says women have equal status to men, women are powerless and are mistreated inside and outside the home.

India is a society where the male is greatly revered. Therefore women, especially the young girls, get very little respect and standing in this country. The women of the household are required to prepare the meal for the men, who eat most of the food. Only after the males are finished eating, can the females eat. Typically the leftover food is meager, considering the families are poor and have little to begin with. This creates a major problem with malnutrition, especially for pregnant or nursing women. Very few women seek medical care while pregnant because it is thought of as a temporary condition. This is one main reason why India's maternal and infant mortality rates are so high. Starting from birth, girls do not receive as much care and commitment from their parents and society as a boy would. For example a new baby girl would only be breast fed for a short period of time, barely supplying her with the nutrients she needs. This is so that the mother can get pregnant as soon as possible in hopes of a son the next time.

Even though the constitution guarantees free primary schooling to everyone up to 14 years of age (Indian Parliament)⁹, very few females attend school. Only about 54.28 percent of all women in India actually attend primary schools¹⁰. There are several reasons why families choose not to educate their daughters. One reason is that parents get nothing in return for educating their daughters. Another reason is that all the females in a household have the responsibility of the housework. So even though education does not financially burden the family, it costs them the time she spends at school when she could be doing chores. In addition, even if a woman is educated, especially in the poorer regions, there is no hope for a job. Most jobs women perform are agricultural or domestic which do not require a formal education. Another reason girls are not educated is because families are required to supply a chaste daughter to the family of her future husband. With over two-thirds of teachers in India being men and students predominately male, putting daughters in school, where males surround them all day could pose a possible threat to their virginity.

⁸ *Constitution of India, Sec -2, Article, 5-11*

⁹ *ibid*, Sec.-3, Article, 29-30.

¹⁰ Center for Women Development Study, *Annual Report*, 2007

Because women are not educated and cannot hold a prestigious job, they take on the most physically difficult and undesirable jobs. A typical day for a woman in an agricultural position lasts from 4am to 8pm with only an hour break in the middle. Compared to a man's day, which is from 5am to 10am and then from 3pm to 5pm. Most women are overworked with no maternity leave or special breaks for those who are pregnant. Plus women do the majority of the manual labor that uses a lot of energy compared to the men who do mostly machine operating. Even though women work twice as many hours as men, the men say that "women eat food and do nothing." This is mainly because the work the women perform does not require a lot of skill and are smaller tasks.

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