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Indian Laws Relating to Protection of Women: A Critical Approach

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ABSTRACT

Women from ancient times have administered a remarkable position in the society where they were given every right to attain intellectual standards. Women have been described holding equal status in the society, but with the passage of time women lost the equal status and formed a vulnerable part of the society. A large number of women are still victims of social evils and traditions which are ingrained in history. Since independence the government took over responsibility of protecting women and providing them better conditions of living. Many women specific laws are made, various laws conventions agreements are also made in order to protect and uplift the position of women in the society. Real empowerment and upliftment means a lot to bring something new rather than to implement properly what we have made. Reform or change in the position of women, emphasizing enforcement of the rights than demanding of a new right is the need of the present situation because all rights are just paper unless enforced.

I. INTRODUCTION

‘Where women are prayed god prefer to stay’

A well-known saying from the Vedas. It is evident from this only that during vedic period status of women was so high as well as pious, but during the later vedic period status of women started to deteriorate and it went to that worst stage where Draupadi was dragged by pulling her hair in the presence of the ministers and the courts person. It is evident that the ancient period was full of respect but the medieval period left them with disrespect. They did not possess any kind of right whether it is of education or of decision making in any field. They were only regarded as bonded labourers who were meant for accomplishing daily chores of household and to fulfil the needs of her husband. Clearly, the jewellery worn by a bride remarked her beauty in a more defined way, but here every ornament worn by her symbolizes an interdict which she can never cross. In modern India with the framing of the constitution our framers were very well aware of the situation of the women that’s why in

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preamble incorporated provisions are justice equality liberty and fraternity to every individual which is irrespective of gender. In fundamental rights, article 14' right to equality' has been incorporated. Not only this within clause 3 of article 15 special provisions regarding women and children has been incorporated in order to uplift the position of women in the society. In the directive principle of state policy provisions of equal pay for equal work and maintaining just order in the society are the provisions that are mandatory for the state while framing any policy of the state. In the fundamental duties it is duly imposed upon every citizen to protect the dignity of women and not to do any act derogatory to their protection. Not only constitution but IPC, CrPc, Indian Evidence Act contains provisions for protection of honour of women and maintaining their status in society.

Women specific laws are also made i.e. protection of women in domestic violence, dowry prohibition Act, women's commission act, Sati prohibition Act, etc.

There are various laws, conventions, agreements etc. but are they really protected or are they really uplifted, as per current data of NCRB 86 rapes are being committed every day offences/crimes against women have increased by 8% why such a deplorable situation still persists in our country?

On one hand women are flying Rafael, they are holding posts of MPs, judges, IAS, PCS, etc. on the other hand they are killed in the womb or if born, live their whole life under poor and deplorable conditions sacrificing their dreams.

Real empowerment or upliftment means a lot to bring something new rather than to implement properly what we have made. To execute the laws, which are in existence strictly and to provide strongest punishment for offences against women so that an example could be set in the society.

II. LEGAL FRAMEWORK

Women Rights are available in several acts and statutes. For better understanding and convenience I have categorized them into two categories.

1. Rights Under Constitution.
2. Rights Under Other Statute.

RIGHT UNDER CONSTITUTION

Preamble:

Preamble is the key to the constitution. It has made no distinction or discrimination between men and women rather treated them alike. The framers were well aware of the situation of

women from historical times that only they incorporated provisions for upliftment and empowering the statutes and position of women.

Provision of preamble “the equality of statues and opportunity” this clearly implies equal position of men and men by providing them equal opportunity.³

Fundamental Rights:

In constitution, Part III deals with the fundamental rights. Article 12 to 35 are the provisions containing fundamental rights. These are equally applied to all the citizens. No discrimination is made in application of fundamental rights but there are special provision to protect rights of women.

Article 15(3) makes special provision for women. This provision empowers state to make special laws for women and courts have declared the validity of such laws.

Directive Principles of State Policy

Article 38, 39(A), (D), and (E), 42, 44 and 45 deals with the welfare and development of women

Main goal divided by there provisions are:

1) Principle of Equal Works

Constitutional goal in case of *Randhir Singh v. Union if India* (1983)

2) Men and women workers to be protected equally, their strength should not be abused and should not be forced to work under inhuman or hazardous conditions.

3) Equal Justice and Free legal aid

Incorporated under Article 39-A

It was declared to be part of fundamental rights under Article 21 of the constitution.

A.M Hoshcot v. State of Maharashtra AIR 1978 SC 1548

RIGHTS UNDER OTHER STATUTES

1. Women Under CrPC,1973

Section 125 of the code of criminal procedure 1973 has made provision regarding maintenance of wives, children and parents. The compulsory direction of this section signifies that it is natural and fundamental duty of every person to maintain his wife and children as long as they are unable to maintain themselves.⁴

³ Dr. S.C Tripathi & Vibha Arora, Law relating to women and children, 6th Edition, Central Law Publications, Allahabad. Pg5.

⁴ AIR 1985 Cr L.J 875(SC)

Mohd Ahmed Khan Vs Shah Bano Begum 1985 Cr L.J 875(SC)

This is a historic judgement by Supreme Court where it has held that Section 125 will be applicable to all irrespective of their religion. It is of matter that the parties claiming maintenance belong to which religion or personal law.

2. Women Under I.P.C,1860

Provision of I.P.C which have been incorporated to promote honor of women are hereby enlisted. They are majorly those which have been provided to stop offence against women they are as follows-

- 1) Dowry Death (Sec 304 B & 306)
- 2) Causing of miscarriage and injuries to unborn children (Sec 312 to 318)
- 3) Intention to outrage modesty of women (Sec 354)
- 4) Kidnapping, Abducting or inducing women to compel her marriage (Sec 366)
- 5) Production of minor girl (Sec 366-A)
- 6) Importation of girl from foreign country (Sec 366 B)
- 7) Sexual Offence (Sec 375 to 376)
- 8) Unnatural Offence (Sec 377)
- 9) Offence related marriage (Sec 493 to 498)
- 10) To insult the modesty of women (Sec 509)

3. Women Under Industrial Laws

Statutes which took initiative for development and betterment of women in field of industry are as follows:

- 1) Equal Remuneration Act, 1976
- 2) Maternity Benefit Act, 1961
- 3) Factories Act, 1948
- 4) Employees Provident Fund Pension Linked Insurance Fund Act 1952

4. Women Under Personal Laws

Personal Laws dealing with the dignity and entitlement of women are as follows

- 1) Hindu Marriage Act, 1955
- 2) Hindu Adoption and Maintenance Act, 1956

- 3) Hindu Succession Act, 1956
- 4) Muslim Law
 - I. Muslim Women (Protection of Rights on Divorce Act), 1986
 - II. Lift
 - III. Succession

5. Other Legislation

Other Acts which dealt regarding women and promoted welfare and development of women by increasing their dignity, entitlement or protection are as follows:

- 1) The Indecent Representation of Women(Prohibition) Act, 1986
- 2) Pre-Conception and Pre-Natal Diagnostic Technique Act, 1994
- 3) The Medical Termination of Pregnancy Act, 1971
- 4) The National Commission for Women Act, 1990

6. Women Under International Laws

Since its inception in 1945 till today United Nation has been working continuously to secure equality for women in legal scenario.

The Achievement of United Nation in the field of women's rights since 1948 are:

- 1) Universal Declaration of Human Rights, 1948
- 2) Convention on the Political Rights of Women, 1958
- 3) Convention on the Nationality of Married Women, 1957
- 4) Declaration on Elimination of Discrimination Against Women, 1967
- 5) Convention on the elimination of all forms of discrimination against women (CEDAW), 1979
- 6) Declaration on the Elimination of violence against women, 1993
- 7) Optimal Protocol to the convention on the Elimination of Discrimination against women, 1999
- 8) Commission on the Status of women

III. JUDICIAL APPROACH

- *Madhu Kishore v. State of Bihar* (1996) 5 SCC 1125

Half of Indian population are... Women

Women have always been discriminated against and have suffered and are suffering discrimination in silence, self-sacrifice and self-denial are their mobility and fortitude and yet they have been subjected to all inequalities, indignities, inequality, and discrimination.⁵

- *Valsamma Paul v. Cochin University* (1996) 3 SCC 545

It was held that Human Rights regards with worth and dignity of individual so it is imbibed in human beings. Human rights were first talked in Universal Declaration of Human Rights. Therefore it is concluded that human rights of women is inseparable part of universal human rights.⁶

- *Maneka Gandhi v. Union of India* (1978) SCC 248

Bhagwati J held that-

Fundamental Rights reiterates the values which were incorporated by the people of India since Vedic period and they are necessary to maintain dignity of individual and condition conducive for growth of personality.⁷

- *Air India v. Nergesh Meerza* (1981) 4 SCC 335

In this case Supreme Court clearly barred the Air India Regulations which are related to retirement and pregnancy restrictions on the service of air hostesses declaring them unconstitutional on the ground of being unreasonable and arbitrary.⁸

- *Madhu Kishwar v. State of Bihar* 1996 AIR 1864

In SC dealt with validity of the Chota Nagpur Tenancy Act, 1908 of Bihar where the act denied right of succession to Scheduled Tribes women so it was challenged before the court as violative of right to livelihood. Here the majority of judges pronounced the legislation as valid on ground of custom of STs regarding succession and inheritance.

Dissenting Judgment of K. Ramaswamy J

He said that the law made a discrimination on ground of gender and it is violative of Articles 15,16,and 21 of the constitution of India.⁹

⁵ (1996) 5 SCC 1125

⁶ (1996) 3 SCC 545

⁷ (1978) SCC 248

⁸ (1981) 4 SCC 335

⁹ (1996) AIR 1864

- *Githa Hariharan v. RBI* AIR 1999 SC 1149

The Supreme Court held that mother can act as natural guardian also when the father is alive. Here a new interpretation given to word 'after' in SEC 6(A), Hindu Minority and Guardianship Act 1956 which was earlier only meant as 'in absence of father'. Now it is in absence as well as during lifetime of father.¹⁰

- *Ravi Raj Rajeshwari Devi v. State of U.P* 1954 SCC

In this case, a discriminatory provision of U.P Court of Ward Act, 1912 was dealt. As per the provision a male proprietor can only be declared incapable on a ground mentioned and prior notice is given to him while female can be declared incapable without any notice to her.

The Allahabad High Court held that the provision of the statute is discriminatory and it is violation of Article 15 on the ground of sex.

Similar with above case, two cases came up where such situation came up

- 1) *Toguru Sudhakar Reddy v. Government of Andhra Pradesh* AIR 1992 AP 19
- 2) *Nithya v. University of Madras* AIR 1995 Mad 164

- *Savita Samvedi v. Union of India* (1996) 2 SCC 380

In this case, SC invalidated provision of circular of Railway Board which comes on 27 Dec 1982, in which restriction was laid that married daughter of retiring officer is not qualified for allotment of house even in the situation where the officer has no son or the sons were not in position to maintain himself. This provision was held to be discriminatory under Article 15 on ground of sex.¹¹

- *Government of A.P v. P.B Vijayakumar* (1995) 4 SCC 520

In this case, Reservation of seats for women in local bodies and educational institution was held to be valid.¹²

In this case Andhra Pradesh Government reserved 30percent seats for women in state services. This was challenged.

The Division Bench of SC held that the power to do so is conferred upon State by Article 15(3) which is wide enough and having scope to cover activities of state regarding women which includes employment as well. This power is nowhere obstacle by Article 16.

¹⁰ AIR 1999 SC 1149

¹¹ (1996) 2 SCC 380

¹² (1995) 4 SCC 520

- *Sattatraya Motirum More v. State of Bombay* AIR 1958 BOM 311

In this case, the Bombay HC held that the state government can establish educational institution exclusively for women.¹³

- *State of Maharashtra v. Indian Hotel & Restaurants Association* (2013) 8 SCC 519

In this case, civil appeals challenged the judgment and final order of HC of Bombay which was upon Sec 33 A. A Bombay Police Act, 1951 inserted by Bombay Police(Amendment) Act, 2005. The provision was held ultra vires as it violated Article 14 and 19 (1) (g) of the constitution.

In the present case the opinion of SC was that the restriction laid over women in manner of prohibition is not reasonable because there are alternative measures available which would have ensured safety of women rather than complete prohibition of dance.

It is not correct to interpret the expression ‘any kind or type of dance’ as only limited to dance obscene and derogatory to dignity of women. The closing down of dance bars resulted into unemployment of 75,000 women workers and they were now compelled to opt for prostitution under necessity to maintain their families. Thus the legislation showed no positive results rather was totally counterproductive and ultra vires to Article 19(1) (g).¹⁴

- *Anuj Garg v. Hotel Association of India* (2008) 3 SCC I

In the present case Sec 30 Punjab Excise Act, 1914 was challenged on ground of violation of Articles 14, 16, and 21 as it prohibited the employment of women in hotels & bars.

The SC held that prohibition of employment of women in part of hotel where liquor or intoxicating substance are being served is an invalid discrimination state should focus on measures how they can provide safety to wonder rather than prohibiting their employment.¹⁵

- *Goutam Kundu v. State of West Bengal* (1993) 3 SCC 418

Here the Supreme Court rejected application for a blood test to dragonize paternity of a child in a maintenance suit.¹⁶

The Court held that a child born of a married women is deemed legitimate until the contrary is proved. This presumption should be rebutted by strong evidence not by mere probabilities.

The Court laid down the following principles:

¹³ AIR 1958 BOM 311

¹⁴ (2013) 8 SCC 519

¹⁵ (2008) 3 SCC I

¹⁶ (1993) 3 SCC 418

- 1) Courts in India cannot order a blood test as matter of course.
- 2) An application for subjecting a child to a blood test made in inquiry cannot be entertained.
- 3) There must be prima facie case for suspecting the fatherhood of child which can only be proved by non-access.
- 4) The court must imagine the consequence of ordering a blood test what impact it will cause to the child and his mother.

- *State of Maharastra v. Madukar Narayan Mardikar* (1991) 1 SEC 57

This judgement was regarding rape. The Supreme Court held that a women is unchaste that does not means that she is 'open to any and why person' to do what they wish. Even a prostitute has right to privacy under Article 21 and no person can rape her and take plea that she is a women of easy virtue.¹⁷

- *Railway Board v. Chandrima Das* (2000) 2 SEC 465

In this case it was observed that word Life in Universal Declaration has same meaning as under Article 21. Here relief was provided to a Bangladeshi women as she was raped. The interpretation of life under Article 21 and International Convention was concluded to be life worth living, meaningful, and dignified.¹⁸

- *Suchita Srivastava v. Chandigarh Administration* (2009) 9 SCC

It was held that a women rights to privacy, dignity, and bodily integrity should be respected. It was explained that rights to life and personal liberty under Article 21 includes women right's to make reproductive choice. Reproductive choice includes right to procreate and to abstain from procreation.¹⁹

- *Budhadev Karmaskar v. State of West Bengal* (2011) 10 SCC 283

The object of judgement given in this case was to provide a dignified life to sex workers in India by providing them technical skills to earn their living with dignity in spite of selling their bodies. For purpose of attaining the object of the judgement Supreme Court has appointed a panel which will work in cooperation with them, social welfare and women's Welfare department of all Central as well as State Government and Union Territories.²⁰

¹⁷ (1991) 1 SEC 57

¹⁸ (2000) 2 SEC 465

¹⁹ (2009) 9 SCC

²⁰ (2011) 10 SCC 283

- *Gang-Rape ordered by Village Kangaroo Court (2014) 4 SCC 786*

In the present case of gang rape of victim was ordered by Panchayat for having relationship with a person of different community. The amicus curial appointed by the court pointed out the lapses and non-compliance with Section 154,161,164, and 164-A CrPC. Declaring it to be violation of victims right under Article 21. The court held that state is duly bound to protect the fundamental rights of the victims which in the present case has failed to do so.²¹

IV. CONCLUSION AND SUGGESTION

On the completion of this Article, I'm hereby concluding on this note that reform or change in the position or status of women in family, society, and nation is the need of the present situation but that cannot be attained by mere making laws, as there are plethora of laws regarding women already in existence.

Laws, Society and Government-their role is not to just provide statutes or Acts rather the responsibility upon them is to incorporate those laws as executive body in order to attain the aim with which they were made.

So the loopholes of present situation are-

- Non Implementation of Existing Laws.
- Lack of Regulatory Authorities
- Lack of Check and Balance
- Lack of Awareness and Knowledge to public about the Laws
- Women are themselves not aware what's Rights, Protection or Entitlement they have been providing by the laws.
- Lack of Coherence between Legislature and Executive of the Country.

So with this note, I would end up suggesting few things. They are:

- Instead of making new laws execute the older ones in proper form so that they achieve the objectives with which they were made.
- Appoint proper authorities who will act as regulatory bodies for the laws as well as perform the work of. Check upon the mode of execution.

²¹ (2014) 4 SCC 786

- Initiation of awareness programs either by NGOs or Government authorities/institution whose main aim should be to aware women about their rights and entitlement.

Social initiative should be taken to aware public at large regarding poor condition of women in order to uplift the position of women in society.
