

POSITIVE DISCRIMINATION AND PROTECTION OF WOMEN UNDER CONSTITUTIONAL AND SPECIAL LAWS

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Abstract: The term 'Discrimination against women' shall mean any distinction, exclusion or restriction made on basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. State parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and to this end, undertake To embody the principle of the equality of men and women in their national constitutional or other appropriate legislation if not yet incorporate therein and to ensure, through law and other appropriate means, the practical realization of this principle; To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women; To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination; To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; To take all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise; To take all appropriate measures, including legislation, to modify or abolish existing laws regulations, customs and practices which constitute discrimination against women; To repeal all national penal provisions which constitute discrimination against women. (Articles 1&2 CEDAW 1979). CEDAW Helps Girls to claim their rights at all stages of their lives from when they are born to when they are little girls, adolescents, grown-up women and through old age. CEDAW Calls upon governments to take action to end discrimination of girls and women.

Keywords: Discrimination, Basic rights, Rule of law, Character building.

Introduction: Discrimination means unfair treatment of a person or group for any reason such as being a girl or boy, belonging to particular race or religion or having different abilities and so on. Discrimination against girls and women means directly or indirectly treating girls and women differently from boys and men in a way which prevents them from enjoying their rights. When people are discriminated against, they can't enjoy their rights. If a girl learns how to claim her rights while she is still a child, she is more likely to be able to enjoy her rights as women.

Discrimination against women, denying or limiting as it does their equality of rights with men is fundamentally unjust and constitutes an offence against human dignity. Gender based discrimination and violence from different dimensions are against to the very objectives of the democratic principles and basic structures of the laws of land of the world. Educationists, thinkers and politicians of the world have acquainted themselves with the fact that with the neglect of women there is no possibility of good for the world. Where women are regarded there good resides, (God resides) peace prevails there in the environment, this is the ancient Indian view about women. An educated woman is the harbinger of peace. She is the creator and restorer of peace in the society. Where women are illiterate there will be no

hope of peace and prosperity. Half of the world's population is women and future depends upon this half world so by educating this half world of women the individual, the family, the nation and the world will certainly achieve peace. But half of the world's population is subjected to violence regarding to women and girl children from womb to tomb i.e. Starting from the natal home to paternal home. It is so horrible and disgusting to know the fact that violence against women is a fact, and it is increasing...and it will be increased in future also. All the sociological problems are inter connected and interrelated eradicating one may automatically eradicate some or so many anti-social evils. The world already witnessed as to different governments expending millions and cores of money in the preparation of different types of modern war materials and destruction and on the other hand millions of people are dying due to hunger or poverty and unemployment having no money to purchase food for them or to satisfy their basic necessities, suicides not only by the farmers and professionals like software engineers and recent suicides of beauracrats (Karnataka DSP) may be simply because of the violation of principle of natural justice i.e. nepotism or favoritism towards some by violating others legal or basic rights of others.

The Constitution and the different Acts passed by the union government and the states give special protection to the women. Aware of their weak position and secondary status. The fundamental rights in part III of the constitution from (Art.-12 -32) ensuring equality, liberty educational and cultural rights and so on. Art. 14 say that the state shall not deny to any person equality before law and the equal protection of the laws. Art. 15 says that the state shall not discriminate against any citizen on ground only of sex. No Citizen shall on ground of only sex be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants and place meant for the use of general public. Apart from these fundamental rights, which can be enforced by the high court and the supreme court, there are certain guidelines to the states to improve the condition of women. In *VISHAKA & OTHERS. (vs.) STATE OF RAJASTHAN 1997 SC.384*. The Honorable S.C. laid down guidelines to the states to take disciplinary action, for formation of complaints committee and complaints mechanism, and creating awareness of the rights of female employees, duties and responsibilities of the persons in their work place and other institutions and the like. In spite of all these pieces of legislation loaded in favor of women, their condition is improving only at a snail's pace.

The rights are guaranteed by the Constitution for the welfare and progress of the society. Every individual in a society must recognize and respect the rights and use them for their personality development. One should understand that other individuals in the society must enjoy such rights equally. The rights enjoyed by others are quiet similar to his rights. Mutual respect of rights of each other in social life and in civil society is very important.

The constitution guaranteed a few basic rights to the people with the end to forbid the governmental organs from interfering with the same. The concept of human rights protect individual against the excess of the state. These rights protect the individual from oppression and injustice. The idea of guaranteeing certain basic rights is to ensure that person may have a minimum guaranteed freedom. The underlying idea in entrenching certain basic and fundamental right is to take them out of the reach of transient political majorities. So it has come to be regarded as essential that these rights be entrenched in such a way that they may not be violated, tampered or interfered with. By any oppressive government or any individual. In that case the guaranteed right can be limited or taken away only by the elaborate and formal process of constitutional amendment rather than by ordinary legislation, these rights are characterized as fundamental rights.

Good nature and good education implant good Constitutions. Of course we the Indians indebted to the father of the Indian constitution Dr. B.R. Ambedkar who drafted and who made continuous efforts of long time for two years eleven months and 18 days for the Detailed lengthiest written Indian constitution. He picked up different provisions and principles from different countries like USA, Britain, Russia, Australia, Canada, German and other countries to frame the best of all Where in the sacred supreme law of the land in its preamble ensures

JUSTICE- Social, economic and political

LIBERTY- Of thought, expression belief, faith and worship

EQUALITY-Of status and of opportunity and to promote them among all

FRATERNITY- Assuring the dignity of individual and unity and integrity o the nation.....

All these basic Democratic concepts and principles ensure all citizens and persons without any discrimination of any religion, race, caste, sex, and place of birth or any of them. No citizen or person shall only on grounds of religion, race, caste, sex, place of birth or any of them be subjected to any disability liability restriction or condition and so on. Every citizen who is aged 18 years above is entitle to have vote irrespective of his caste, religion, race, sex or economic position and the will of the people prevails ultimately in the administration of the country. True liberty exists in democracy. In a democratic country set up men and women are treated as equal irrespective of cast creed and color; they have liberty to express their views to practice any profession or occupation, to go and settle anywhere per their whims and will, there is equality of opportunity to enter in to government employment and so on. Whatever the democratic concepts stated in the preamble i.e. liberty equality and fraternity to all persons are the BASIC STRUCTURE OF THE SUPREME LAW OF THE LAND. According to JJ. Hedge and Mukherjee The preamble of the constitution (preamble is the soul and keynote to the constitution.)

The fundamental rights under part III of the constitution

Mandatory provisions of constitution to build welfare state

Sovereignty of India Democracy of the country Unity and integrity of the nation.

All these are the basic features of the supreme law and even the amending power of the parliament cannot be exercised in such a manner to destroy the basic or fundamental features of the constitution. Even any constitutional amendment which offends the basic structure of the constitution is ultra-virus.

Positive discrimination regard to women and children under art. 15 (3): Art.14 extends to all

persons while Art.15 is limited to citizens i.e. protecting the citizens against discrimination. Art.15(1&2) both are limited to discrimination on grounds of religion race caste sex place of birth or any of them, but Art. 15(3) PERMIT THE STATE TO MAKE SPECIALPROVISIONS FOR WOMEN AND CHILDREN. The purpose of Art.15 (3) is to eliminate the socio-economic backwardness of women and to empower them in such a manner as to bring about effective equality between men and women. Object of this Article is to strengthen and improve the status of women. Art 15 (3) thus relieves the State from the bondage of Art.15 (1) and enables to make special provisions to accord socio-economic equality to the women. Art.15 (4) also permits the state to make any special provision for socially and educationally backward classes of citizens. The crucial word in this Article DISCRIMINATION Means MAKING AN ADVERSE DISTINCTION OR DISTINGUISHING UNFAVOURABLY FROM OTHERS is the positive discrimination. Reservation of certain posts exclusively for women is valid under Art.15(3). The provisions in all substantive laws and procedural laws in favor of women or discriminating in favor of women have been upheld by the Apex Court of India. Reading Art.15(3) and 15(1) together, it seems to be clear that State may discriminate in favor of women against men, it may not discriminate in favor of men against women. However, only such provisions can be made in favor of women under this Article are reasonable which do not altogether obliterate or render illusory the constitutional guarantee mentioned in Art.15(2). In YUSUF ABDUL AZIZ (vs) STATE OF MAHARASHTRA AIR 1954. SC.321. "sex is a sound classification and although there can be no discrimination in general on that ground the constitution itself provides for special provisions in the case of women and children by clause (3) of Art.15. Arts. 14 and 15 thus read together validate the last sentence of section 497 IPC, which prohibits women from being punished as an abettor of the offence of adultery. In REVATHI (vs) UNION OF INDIA AIR 1998 SC 835 It was held that the offence of adultery and be committed only by a male and not by a female who can't even be punished as an abettor. Upholding Sec.497 IPC Bombay H.C. said the discrimination made by Sec.497 is based not on the fact that women have a sex different from that of men, but WOMEN IN THIS COUNTRY SO SITUATED THAT SPECIAL LEGISLATION WAS REQUIRED IN ORDER TO PROTECT THEM.

Special legislations for the protection of women:

Although all laws are not gender specific, the provisions of law effecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. To uphold the constitutional mandate, the State has

enacted various special legislations to counter the social discrimination and various forms of violence and atrocities intended to ensure equal rights & to provide support services especially to working women.

THE COMMISSION OF SATI (PREVENTION) ACT 1987 though General William Bentinck issued regulation prohibiting sati which was enacted on December 4, 1829 the practice of sati continued to be practiced rarely in some orthodox families, So With objective to prevent the traditional practice of widow immolation, and to ensure women her fundamental right to life and liberty which is the heart of the basic rights.

DOWRY PROHIBITION ACT 1961 with the objective of prohibiting the evil practice of giving and taking dowry as an offence. But still dowry deaths and dowry demands became common news of every day. Even today after enacting so many Acts the evil practice of burning brides we witnessing. In ASHOK KUMAR (vs) STATE OF RAJASTHAN 1991 SCC 166 Justice R.M. Sahai commented thus "Bride Burning is a shame of our society. Poor never resort to it. Rich do not need it. Obviously because it is a socially an economic problem of a class which suffers both from ego and complex social ostracism is needed to curtail increasing malady of bride burning. Effective implementation of all these special legislations is the need of the hour.

THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE 2005 with the objective of protecting women against violence of any kind especially occurring within the family.

THE MATERNITY BENEFIT ACT 1961 which is providing maternity leave of complete 6 months and other safeguards of monetary benefits and infant or child take conditions and so on..

PROHIBITION OF IMMORAL TRAFFIC IN WOMEN Immoral Traffic (Prevention) Act 1956 and PROHIBITION OF INDECENT REPRESENTATION OF WOMEN The Indecent Representation of Women (Prohibition Act) 1986 which are intended to protect women and to ensure dignity and decency to the women which come under Art.21 of the Indian constitution

MEDICAL TERMINATION OF PREGNANCY ACT 1971 ; THE PROHIBITION OF CHILD MARRIAGE ACT, 2006. CRIMINAL LAW (AMENDMENT) ACT 2013 and so many special provisions under the procedural and substantive laws under criminal procedures even in succession laws there are plenty of special protection laws regard to women including

SPECIAL INITIATIVES FOR WOMEN Like National Commission for Women (NCW 1990) to study and monitor all matters relating to the constitutional and legal safeguards provided for women, to review and

suggest amendments whatever necessary for the development of women. Reservations for women in local self-governments, the national plan of action for the girl child 1991-2000. National Policy for the empowerment of women, 2001 to bring about advancement, development and empowerment of women and plenty of social welfare schemes are meant for the economic and social development of the women.

Conclusion: There are sufficient special legislations for the positive discrimination of women. But the Accountability and Transparency which is the facet of the rule of law (law is supreme over all citizens and institutions, equality before law and the predominance of legal spirit) i.e. The established legal principles like RULE OF LAW AND PRINCIPLES OF NATURAL JUSTICE are defeating due to lack of values and value based education system, resulting in the enormous increase in the crime rate and all

anti-social elements like nepotism corruption secondary victimization so on... which are effecting the innocent basic rights. There is only one most powerful weapon we can use to change the world ENLIGHTENMENT BY CHARACTER BUILDING i.e. Education is one of the most powerful instruments of empowerment and development. "Education is the most powerful weapon you can use to change the world" Emancipation and empowerment should be the basic aim of all govt. servants and public servants to ensure equality and liberty to women and for the progress of the nation. State should ensure all Basic Natural, Moral, Legal, Civil and Political Rights to all especially for the victims who seek the assistance before the courts of law, and the recognition of human dignity, and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, peace in the world.

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