

Constitutional Guarantees of Women in India- A Historical Study

¹**Dr. R. Radha**, Teaching Assistant, Department of History, Alagappa University, Karaikudi-03, Tamil Nadu, India

²**Dr. S. Santhi**, Teaching Assistant, Department of History, Alagappa University, Karaikudi-03, Tamil Nadu, India.

³**Dr. A. D. Padmasree**, Assistant Professor, Department of History, Jayaraj Annapackiam College for Women (A), Periyakulam, Theni, Tamil Nadu, India.

⁴**M. Thirumalaichamy**, Ph.D. Research Scholar, PG&Research Department of History, Government Arts College, Melur, Madurai, Tamil Nadu, India.

⁵**Dr. P. Thangamuthu** Assistant Professor Department of History, PTMTM. College, Kamuthi. Tamil Nadu, India.

⁶**Dr. AR. Saravanakumar**, Assistant Professor, Head of the Department i/c, Department of History, Alagappa University Karaikudi-03 Tamil Nadu, India.

ABSTRACT

History is the study of the past human activities and the human society everywhere is composed of males and females and the society is stratified on the basis of sex. Women constitute half of the population, and thus, a significant segment of every society. Every human being is born free, but the women's freedom has always been neglected in the name of custom, honour, family welfare and social prestige. Today the idea has emerged that "Unequal status of women offensive to human dignity and the violation of human rights". India is not an exception. In India despite of the fact that during the last century a social reform movement was started and constitutional provisions also aimed at securing equal status for women, the status of women remain more or less same. Positive judicial trend and various welfare schemes of the Government and active participation of voluntary organizations to uplift the status of the women have failed to improve the condition of women. The enactment of the National Commission Act for the Women in the year 1993 is a step towards securing better status for women in India. During the last 68 years of independence cases of attack on women have increased remarkably.

Keywords: Constitutional Guarantees, Enactment, Status of Women, Welfare Schemes, Social Prestige.

INTRODUCTION

The process of liberation of women which started in the 19th century was further accelerated during the 20th century. Consequently, various legislations were enacted to improve the condition of women. Activities for social reform were not, however, confined to the council chamber. Vigorous movement for the improvement of women's position continued throughout the Country. One of the important items was the popularization of the marriage of widows. Measures were taken to improve the lot of widows and several Hindu Widow Homes were established throughout the Country. The Legal right of women refers to the social and human rights of women. One of the first women's rights declarations was the Declaration of Sentiments. The dependent position of women in early law is proved by the evidence of most ancient systems.

HINDU LAW

Women in ancient Hindu law had only limited rights of inheritance, and were disqualified as witnesses. The rule of inheritance was agnatic, that is, descent traced through males to the exclusion of females. The gradual growth of property of a women given by the husband before or after marriage, or by the wife's family, may have contributed to the practice of sati, in which the widow immolates herself on her husband's funeral pyre.

Contrary to the general notion regarding the indissolubility of Hindu Marriages customary forms of divorce, recognized both Socially and judicially, have been widely practiced among the lower Castes.

The most usual forms are divorce by mutual consent, by the husband and by deeds. Under customary law, there is no waiting period after divorce for Marriage. But the Constitution is against the Customary Practice of divorce.

The Hindu Marriage Act, 1955, permits divorce to both parties for

- Living in adultery,
- Conversion
- Insanity
- Communicable leprosy
- Venereal disease
- Renunciation

- Disappearance for seven years or more
- Failure to resume cohabitation for two years after a decree for senstitution of conjugal rights ,A wife has two additional grounds,
- If the husband has another living wife and
- If he has been guilty of rape, sodomy.

ISLAMIC LAW

In the early middle Ages, an early effort to improve the status of women occurred during the early reforms under Islam, when women were given greater rights in marriage, divorce and inheritance. Women were not accorded with such legal status in other cultures, including the West, until centuries later. The Oxford Dictionary of Islam states that the general improvement of the status of Arab women included prohibition of female infanticide and recognizing women's full personhood. "The dowry, previously regarded as a bride –price paid to the father, became a nuptial gift retained by the wife as part of her personal property." Under Islamic law, marriage was no longer viewed as a "status" but rather as a "contract", in which the women's consent was imperative. "Women were given inheritance rights in a patriarchal society that had previously restricted inheritance to male relatives", Annemarie Schimmel states that "compared to the pre- Islamic position of women, Islamic legislation meant an enormous progress; the women has right, at least according to the letter of the law, to administer the wealth she was brought into the family or has earned by her own work." Some have claimed that women generally had more legal rights under Islamic law than they did under Western legal systems until more recent times. English Common Law transferred property held by a wife at the time of a marriage to her husband, which contrasted with the Sura: "Unto men (of the family) belongs a share of that which Parents and near kindred leave, whether it be a little or much – a determinate share" (Quran 4:7), albeit maintaining that husbands were solely responsible for the maintenance and leadership of his wife and family. "French married women, unlike their Muslim sisters, suffered from restrictions on their legal capacity which were removed only in 1965."

In Muslim Law, the husband has an absolute and unlimited right to repudiate the marriage at his will, but a Muslim wife has no such rights. Muslim Marriages Act 1939, recognizes the wife's right to divorce on the following grounds:

- Husband's disappearance for four years
- Neglect and failure to provide maintenance for two years
- Husband's imprisonment for seven years or more
- Failure to perform marital obligations for three years.
- Impotency
- Insanity , leprosy, venereal disease
- Option of puberty and
- Cruelty or any other ground recognized valid for divorce under Muslim law.

This Act benefited many Muslim Women. The most frequently used option of puberty and failure to provide maintenance.

CHRISTIAN LAW

The Indian Divorce Act 1869, which governments all Christians discriminated between the husband's and wife's right to seek divorce. The husband can do so if the Wife has committed adultery. The wife has to prove a second offence along with adultery (incest, bigamy, cruelty, desertion) in order to obtain a divorce.

According India's constitution, women are legal citizens of the country and have equal rights with men. Because of lack of acceptance from the male dominant society, Indian women suffer immensely. Women are responsible for baring children, yet they are malnourished and in poor health. Women are also overworked in the field and complete the 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.

The status of women in India has been subject to many great changes over the past few millennia. From equal status with men in ancient times through the low points of the medieval period, to the promotion of equal rights by many reformers, the history of women in India has been eventful.

The term women 's right refers to freedoms and entitlements of women and girls of all the ages. These rights may or may not be institutionalized, ignored or suppressed by law, local custom, and behavior in a particular society. These liberties are grouped together and differentiated from broader notions of human rights because they often differ from the freedoms inherently possessed by or

recognized for men and boys, and because activists for this issue claim an inherent historical and traditional bias against the exercise of rights by women and girls.

Issues commonly associated with notions of women's rights include, though are not limited, to right: to bodily integrity and autonomy; to vote (universal suffrage); to hold public office; to work; to fair wages or equal pay; to own property; to education; to serve in the military or be conscripted; to enter into legal contracts; and to have marital, parental and religious rights. Women and their supporters have campaigned and in some places continue to campaign for the same rights as modern men.

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

TRAFFICKING

The Immoral Traffic (Prevention) Act was passed in 1956. However many cases of trafficking of young girls and women have been reported. These women are either forced into prostitution, domestic work or child labor.

SEXUAL HARASSMENT

Half of the total number of crime against women reported in 1990 related to molestation and harassment at the workplace. Eve teasing is a euphemism used for sexual harassment or molestation of women by men. Many activists blame the rising incidents of sexual harassment against women on the influence of "Western Culture". In 1987, The Indecent Representation of Women (Prohibition) Act was passed to prohibit incident representation of women through advertisements or in publications, writings, paintings, figures or in any other manner.

In 1997, in landmark judgments, the Supreme Court of India took a strong stand against sexual harassment of women in the workplace. The Court also laid down detailed guidelines for prevention and redressal of grievances. The National Commission for Women subsequently elaborated these guidelines into a Code of Conduct for employers.

DOWRY

In 1961, the Government of India passed the Dowry Prohibition Act, making the dowry demands in wedding arrangements illegal. However, many cases of dowry-related domestic violence, suicide and murders have been reported. In the 1980s, numerous such cases were reported.

In 1985, the Dowry Prohibition (maintenance of lists of presents to the bride and bridegroom) rules were framed. According to these rules, a signed list of presents given at the time of the marriage to the bride and the bridegroom should be maintained. The list should contain a brief description of each present, its approximate value, the name of whoever has given the present and his/her relationship to the person. However, such rules are hardly enforced.

A 1997 reported claimed that at least 5,000 women die each year because of dowry deaths, and at least a dozen die each day in 'kitchen fires' thought to be intentional. The term for this is "bride burning" and is criticized within India itself. Amongst the urban educated, such dowry abuse has reduced dramatically.

CHILD MARRIAGE

Child marriage has been traditionally prevalent in India and continues to this day. Historically, young girls would live with their parents till they reached puberty. In the past, the child widows were condemned to a life of great agony, shaving heads, living in isolation, and shunned by the society. Although child marriage was outlawed in 1860, it is still a common practice.

According to UNICEF's "State of the World's Children-2009" report, 47% of India's women aged 20-24 were married before the legal age of 18, with 56% in rural areas. The report also showed that 40% of the world's child marriages occur in India.

FEMALE INFANTICIDES SEX SELECTION ABORTIONS

India has a highly masculine sex ratio, the chief reason being that many women die before reaching adulthood. Tribal societies in India have a less masculine sex ratio than all other caste groups. This, inspite of the fact that tribal communities have far lower levels of income, literacy and health facilities. It is therefore suggested by many experts, that the highly masculine sex ratio in India can be attributed to female infanticides and sex-selective abortions.

All medical tests that can be used to determine the sex of the child have been banned in India, due to incidents of these tests being used to get rid of unwanted female children before birth. Female infanticide (killing of girl infants) is still prevalent in some rural areas. The abuse of the dowry tradition has been one of the main reasons for sex-selective abortions and female infanticides in India.

DOMESTIC VIOLENCE

The incidents of domestic violence are higher among the lower Socio-Economic Classes (SECs). There are various instances of an inebriated husband beating up the wife often leading to severe injuries. Domestic violence is also seen in the form of physical abuse. The Protection of Women from Domestic Violence Act, 2005 came into force on October 26, 2006.

Other Women related legislation:

- Guardians and wards Act, 1860
- Christian Marriage Act, 1872
- Married Women's Property Act, 1874
- Legal Practitioners(Women) Act, 1923
- Workmen's Compensation Act,1923
- Indian Succession Act, 1925
- Child Marriage Restraint Act, 1929
- Payments of Wages act, 1936
- Muslim Personal Law(Shariat) Application Act, 1937
- Factories Act, 1948
- Minimum Wages Act, 1948

CONCLUSION

Relative to developed countries, there are far fewer women than men in India. Estimates suggest that among the stock of women who could potentially be alive today, over 25 million are missing. In India crime also committed vigorously especially in Big cities. It is very important that all Women must be made aware of their legal provisions. Ms. Kiran Bedi at the International Women's Conference said that the legal provisions should be made available at a particular single places where everything should be available. In each district, counseling center, free legal aid, shelter home, medical center, All Women Police Station, family court, rehabilitation center, must be in one roof. The helped the women and they need not Shunt here and there without any awareness.

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