

A STUDY ON INHERENT SOCIO POLITICAL RIGHTS OF EMPOWERING WOMEN

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Abstract: "India is said to have achieved true independence when its women feel free to move alone in the wee hours of the night." - M.K.Gandhi.

"Establishment of the Egalitarian Social order through Rule of Law is the Basic Structure of the Constitution."- Samatha (vs.) State of AP. 1997 AIR SC at 3326

The provisions like positive discrimination under Ar.15(3) of the Indian Constitution and some special legislations like protection of women from Domestic Violence Act 2005 and the like are just only camouflage for the suppression or oppression of half of the population i.e. women who is harbinger of peace in the society. The enforcement of Human Rights and All basic rights is a matter of major significance to the modern Constitutional Jurisprudence which should ensure equal status and liberty on par with men.

WE THE PEOPLE OF INDIA having unitary government with federal features, unity in diversity regard to different languages, communities, mutual respect for all religions and so on... So lucky to have world's lengthiest, detailed and written constitution which enshrined in it the key concepts of Democracy LIBERTY, EQUALITY and FRATERNITY and the like in its PREAMBLE which were reflected in the whole scheme of the constitution which are also come under **Basic Structure Theory of the Supreme law of India**, but these Rights are unfortunately in practice enjoyed only by half of the population i.e. men and impliedly and **completely eroded** in respect of half of the remaining population i.e. women. **The complete erosion of rights of women** imply when the women **loss her right to life which is the heart of whole fundamental rights** by the cruelty or harassment of her husband or relatives of her husband, then automatically all the basic and fundamental rights like liberty, equality, dignity of individual, to freedom of speech and expression, to move freely throughout the territory of India, to reside and settle in any part of India and to practice any profession or to carry on any occupation trade or business and so on which are **inalienable** and which are **inherent rights in her are completely eroded**. If we see the incident of Nirbhaya in the Capital City of India the loss of life included and impliedly expresses erosion of all basic and fundamental rights like liberty equality of the women which were enshrined in the Supreme law of India. It was argued in Jagmohan Singh (vs) State of Uttar Pradesh 1973 SC 947, the right to live is basic to the enjoyment of all these freedoms under Ar. 19 of the Indian Constitution and therefore freedom to live could not be denied by a law unless it is reasonable and in public interest Ironically though Capital Punishments awarded to the Convicts such type of violence are increasing day by day.

Introduction: Inequalities against women are one of the challenges to constitutional fundamentals. 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. The Fundamental Rights embedded in part III of the Indian Constitution occupy a transcendental position in the constitution & No Authority functioning under the Constitution including the parliament exercising the amending power s u/Art. 368 would be competent to amend the fundamental rights. The Supremacy of the law i.e. The Supremacy of the Constitutional law of India Over all other Subordinate laws and Sovereign institutions, The Rule of Law is the Basic Structure of the Indian Constitution. In this regard even the word 'Amend' envisaged only the minor modifications in the existing provisions but not major alterations. These Substantial Rights are inalienable of all members of Human Family which are the foundation for freedom justice and peace in the world.

The preamble of the supreme law of India framed by the forefathers of India declaring:

We The People Of India, Having Solemnly Resolved To Constitute India Into A Sovereign, Socialist Secular, Democratic, Republic And To Secure To All Its Citizens:

Justice, Social, Economic And Political;
Liberty Of Thought, Expression, Belief, Faith And Worship;

Equality Of Status And Of Opportunity; And To Promote Among Them All;

Fraternity Assuring The Dignity Of The Individual And The Unity And Integrity Of The Nation;

In Our Constituent Assembly This Twenty-Sixth Day Of November, 1949, Do Hereby Adopt, Enact And Give To Ourselves This Constitution.

The preamble is the soul of and key note to the constitutions. The Constitution is the Sacred Supreme law of India and Superior to all other laws in the country, and No Law can be enacted which is not in conformity with the Constitution. **Any Act violating or made in derogation to the constitution is declared as illegal by the judicial**

review. Through Judicial Review the Supremacy of the Written Constitution & basic Rights meant for the Development of the individual are Protected. Whenever a legal wrong caused or Legal Right is violated then individual seeks the protection against the grievance caused to him. The object of law is the creation of legal rights and the legal right is defined as the capacities residing in one person of controlling with the assent and assistance of the state the actions of others. The Natural, moral and legal Rights are inherent in human beings and inviolable by any other individual or institutions.

- The Preamble, the Fundamental Rights under Part III, (Art. 12-35),
- Mandatory provisions of Constitution to Built welfare state i.e. DPSP,
- The dignity of the individual secured by various fundamental rights,
- The parliamentary system,
- Unity and integrity of the nation,
- Democracy of the country,
- Sovereignty of India,
- Supremacy and Secular Character of the constitution and its Federal Character,
- Separation of powers between legislature executive and judiciary ,
- The Rule of law,
- The Parliamentary system,
- Independence of the judiciary and judicial review all these are Basic and Essential Features of the Constitution.

If the foundation is weak, the structure is bound to be collapsed, Similarly if the Supreme laws of the land i.e the Basic Principles of Democracy are not ensured properly and implemented Strictly to the half of the population that is to the women, then the administration is automatically bound to go astray. The ultimate Object of All law that is 'JUSTICE' is denied to the half of the population that is for the women either impliedly or expressly.

Equality is one of the Principles of Democracy. Equality in general aimed to provide equal opportunities to all the people in Social, economic and political activities without any discrimination of race, religion, caste, gender, community, language, region etc. In broader sphere it means, Every individual must have development in the society without any hindrance to his talents abilities and capabilities, Not to discriminate the individuals in running the administration, All the individuals must equally enjoy the rights provided by the constitutional law. Almost all key concepts for good governance and better administration of the country provided and ensured liberty equality and fraternity and the above features are easily perceived not only from the preamble but the whole scheme of the Constitution. The rule of law which is the basic

structure of the constitution requires that The Government should be subjected to the law rather than the law subject to the Government. The Wider Definition U/ Ar. 12 The term State includes

- (1) the Government and Parliament of India and
- (2) the Government and Legislatures of each of the states and
- (3) All local authorities and
- (4) Other authorities within the territory of India or under the control of the Government of India.

This Wider definition implies not only Public Servants but includes all Government servants of Governmental or quasi Governmental authorities and institutions to ensure equal status and equal opportunities in implementing the all the procedural or substantive laws by following fair procedures. The constitution of India grants Equality to women and empowers the state to adopt measures of positive discrimination in favor of women for neutralizing the cumulative socio economic political disparities and for ensuring equal status of women. The state has also enacted much women specific legislation to protect them against violence, discrimination and also from various kinds of atrocities, Special legislations like Domestic violence Act 2005, Indecent Representation of Women (prohibition) Act 1986, Dowry Prohibition Act 1961, The MBT 1961, Immoral Traffic Prevention Act 1986 and so on.. Rule of law requires the People should be governed by accepted rules rather than by arbitrary decisions of the rulers.

The Rules should be general and abstract, known and certain and apply equally to all individuals alike without any gender disparities: Only the Strict Compliance towards the Principles of Natural Justice without any pecuniary or other biases while enforcing the law in preserving and saving the rights of the women victims and in empowering the women equally with men without any gender disparities is the urgent need of the hour.

The principle of Gender Equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights and duties and DPSP and at International level the year 1975 is declared as International Women Year. 1976-85 is declared as International Women decade. CEDAW in 1976 The Convention on Elimination of all forms of Discrimination against Women which made with the objective of acknowledge and guarantee of Rights of Women and to eliminate all forms of manifestation of discrimination against women; and at national level National Commission for women and also State Commissions at state level all these made with the objective of ensuring equal status equal to men.

If we see the historical fluctuating status of women, Women enjoyed her absolute liberty and equality at her stone age. But with the development of the civilization and Codes of Conduct like Manu

Dharmasastra and through Customs & traditions and also by Scientific and Technological Development the minimum basic Rights of women **Completely eroded** and moreover the suppression & oppression and violence against women started, continuing and increasing enormously day by day. During Rig Vedic period Education was open for all boys and girls and Girls enjoyed freedom and full legal rights and right to property, even in Epic age the History of female freedom may be regarded as golden age. But the Status of women in smritis leads to deteriorated conditions of the women. MANU and HIS DISCIPLES through their inconsistent statements and literature in one way they gave better status to women and in another way they gave very low status to women. If we see some illustrations of their scriptures:

- Honour the mother as the most venerable person in the world (vs) ONE SHOULD NOT SIT IN THE LONELY PLACE WITH ONE'S MOTHER, sister or daughter as the senses of women are powerful and masters even a learned man.
- Women must always be honored and respected by father brother husband and brother in law etc (vs) She is deprived of Educational Rights, upanayana, the property rights, economic rights and so on.
- Where Women are honored there the very Gods are pleased (vs) The Wife is asked to worship her husband even if he is not a person of all virtue and character. The primary duties of wife are sincere service to the Husband.
- The Family in which women suffer is bound to be ruined, While the family in which women are happy is bound to prosper (Vs) Husband is having right to even to kill his wife and wife has no right to divorce, She should be under the surveillance of father in her childhood her husband in her youth and her sons after the death of her husband.
- He Advises Every Householder to treat his daughter as the highest object of tenderness (Vs) Women should be guarded against her evil inclinations, and so on.

All these inconsistent code of conduct have subjected to much criticism and controversy and attacked by scholar's modern liberals, reformists and feminists. Though these codes of conduct have no binding force but these customary usages are still in practice due to age old as well as modern factors like **male Chauvinism in a world made for men by following the rules set by men** and ignorance on part of women of their minimum basic rights. Where the custom or Usage Permits or prevails, the binding force of law should have less effect and the social evils like Dowry system Child marriages continues for centuries to centuries even in era of ICT. This is the era of Technology where it touching horizons of the sky; social evils and sociological problems like the

crime rate against women is increasing enormously and morals are decreasing day by day. Actually both man and woman are counterparts of each other and unconscious of man is woman and unconscious of woman is man; Every man has his own largely unconscious feminine aspect and Every women has her own largely unconscious masculine aspect. Feminist Philosophers argued that gender ambiguity may blur or make indistinct gender classification. In fact she is the creator and restorer of peace in the country. Actually there are no deviations in divine laws as God Created man and Woman Equally & there are no deviations even in actual existing legislation all subordinate and supreme law. But some of The Weak, Lean and the foolish man not allowing women for their peaceful enjoyment of all their natural moral and legal rights for the women's complete development by preserving mans dominance or egoism.

While women sharing the Public Work and also the work of men, men should share the Domestic work of women. The Domestic work which is the full time job without any pay and without any specific hours at which it begins or ends is not at all recognized as the work. The Sharing of Domestic work or accepting the Dignity of Labour at the household level is the need of the hour and men needs to express their cooperation and coordination with their counterparts and to their families by eradicating the patriarchic dominance traits. It is so disgusting & horrible as most of men see women as Object of pleasure by forgetting the reality from whom they got their first breath on the earth and their lives and liberties. It was expressed by sir Vinobabave that "I have hope only on women who can save the entire humanity". In this scenario it is time to recollect the statement made by the Father of the constitution Dr. B.R. Ambedkar "Man is mortal, Everyone has to die someday or the other, But one must resolve to lay down one's life in enriching the noble ideals of Self Respect and in Bringing one's Human Life. Nothing is more disgraceful for a brave man than to live life devoid of Self Respect". As the progress of the society can be measured with the status of women in the society the objectives of the paper are

- To analyze the key concepts of Democracy like EQUALITY LIBERTY ... of the Basic Structure theory and to ensure Egalitarian social order through rule of law to women.
- For the Empowerment of women educational economic social and political, psychological technological and personal by getting political consensus to the Women Reservation Bill which was the long pending before the sovereign political authority and to ensure Equal liberal & dignified status to the women.

- To make critical appraisal of fundamental rights and directive principles of state policy and special provisions for women under Indian constitution as positive discrimination is only the camouflage rule against women to sustain the patriarchal dominance.
- To abolish discriminations against women and ensuring all basic rights of equality and of liberty as violation of these rights are fundamentally unjust and constitute an offence against human dignity.
- To analyze the status of women in India and to ensure complete security to the present future generations and ultimately the progressive and peaceful society.
- To find out all preventive measure than curatives and assistance and training programmes to women, Counseling centers for sustainable human life and family system.

“The judiciary is not untouched by **corruption** “this is the statement made by Justice Sadasivam garu the retired CJI, it reveals that either expressly or impliedly there is a secondary victimization of the victim even before the highest law enforcing authority. Then there is no place for the women victims knock the doors or seek assistance in the country except strict compliance towards the PNJ which is the panacea for number of social evils. **Nepotism or favoritism** is the blunder violation of highly qualified innocent victims i.e. Educated rights or even the illiterate or marginalized sections rights violation by bias towards undeserved while implanting the different schemes.. Rarely a gleamy idea attacks whether all these supreme and subordinate laws are for the intentional violation? a positive norm for negative implementation and the negative norm for positive implementation.? If not.... within 10 or 20 years off the independence the establishment of egalitarian society might be possible without the need of further 70 years for progressive and civilized society. The Ethical Values should be imparted to all the individuals by the strongest foundation at the primary and secondary levels to bend the individuals to obey their conscience and laws of land while discharging their primary and secondary obligations. India is one of the richest countries of the world so far as physical resources and climate conditions are concerned. In order to make the best use of physical resources people have to be educated. Education Wipes away ignorance and brings enlightenment. It gives spiritual intellectual and ethical awakening which helps him to discriminate between good and bad and right and wrong. Education only helps to overcome narrow consideration of caste colour, creed, religion, region and sex and also brings about social change which is responsible for nation building. The Transparency

and Accountability in all procedures while implementing the law is needed.

We have sufficient supreme subordinate and also special laws but only the stringent adherence towards principles of natural justice and rule of law ensures progress in the country. We have more than 3000 castes and still there is a demand for some more castes or communities, but only the implementation of creamy layer ensures the ultimate goal of law i.e the justice; or the upliftment of backward or oppressed should completely based on the economical status of the individual. The accused oriented system ensuring minimum rights to accused; at the same time victims protection laws and victim compensation schemes should be made and implemented to ensure security to the innocent victim. The due process of law reveals that **No person shall be deprived of his life, liberty or property and every procedure should be reasonable fair and just.** The Substantive Due Process envisages that the substantive provisions of a law should be reasonable and not arbitrary. Procedural due process envisages a reasonable procedure, i.e., the person effected should have fair right of hearing which includes four elements. Notice, opportunity to be heard, an impartial tribunal and an ordinary procedure. **Ultimate effect of non-compliance towards Principles of Natural Justice falls only on women who are overworked, double burdened and under paid in addition to the dowry harassments and domestic violence's.** At this juncture as the women both middle class and working class looking for protection from unfair treatment, it is time for egalitarians, Feminists, Economists especially the sovereign political authority to make all endeavors to accord women with dignified liberal and equitable status.

The originality and framework of the constitutional jurisprudence ensuring Right to equality to all its citizens and persons and the Equality the concept of Democracy is the basic feature of the Indian constitution. Inequalities against women are one of the challenges to constitutional fundamentals. The preamble to the UDHR inter alia declares “where as recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom justice and peace in the world. The applicability of principles thereof may have to be read, if need be into the domestic jurisprudence. Gender equality is the first and foremost a Human Right, Women are entitled to live in Human dignity and free from fear and in secured life. Gender disparity which is fundamentally unjust and constitutes an offence against half of the population and to the human dignity. Rule of law is anti thesis of arbitrariness in State action and ensures

fairness and equality of treatment among all its citizens and persons. The principle of reasonableness which is legally as well as philosophically an essential element of equality and non arbitrariness is to be adopted to ensure social economic and political justice to the women.

WE THE WOMEN OF INDIA AND THE WORLD

Need...the supreme realists not the Male Chauvinists and the Supremacists;

Need Supreme Realists for ensuring objectives sought to be achieved by all the statutes;

Need... not the Nepotists and Corruptionists;

We need respect for women's rights, strict compliance towards the PNJ and the rule of law.

Need... not the Bureaucratic system or biased administrators;

We need the real civil servants to serve the civil society to establish PEACE and SECURITY among all citizens and persons throughout the territory of India.

We need Egalitarianists who ensure who ensures equal rights and opportunities in between men and women equally.

WE need egalitarian society which ensures equal rights and opportunities for all and in absence of camouflage rules or provisions.

WE need Due process of law which is just fair and reasonable and all preventive measures than curatives.

WE need Rationalism i.e. the theory that the Reason and wisdom is the foundation of certainty and progress of the nation and its citizens.

WE need Individualism, which ensures minimum basic rights to all individuals for the complete development especially to the oppressed and suppressed class i.e. women and girl child.

WE need men of QUALITY who accepts Women's Equality.

I, on behalf of all women of India and of the world reclaim hope from despair for the equal, liberal and progressive status of the women.

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