

Constitutional Provisions – Women’s Equality And Gender Justice In Tamilnadu

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Introduction

In spite of women participation in all spheres of life and they enjoying a unique position in every society, but they suffer in silence and belong to a class which is in a disadvantaged position on account of several barriers and impediments. A woman, who is considered to be personification of Shakti, once given a dignified status, are in need of empowerment and development. Women’s Empowerment in legal, political, social and economic requires be enhancing and improving. However, empowerment and equality are based on the gender sensitivity issue of society towards their problems. The intensification of women’s issues and rights and movement all over the world is reflected in the form of various Conventions passed by the United Nations.

Social economic and political factors played a major role in women suppression, Social discriminatory practices against them continued to exist during the imperial rule. In India, the Constitution makers while drafting the Constitution look into the problems faced by women and made specific provisions relating to them.

The concept of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only Grants equal status to women, but also empowers the State to adopt the respective measures for discrimination in favour of women. Within the framework of Government, our laws, development has also ratified various International Conventions and human Rights instruments to secure equal rights of women. Important key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.

Constitutional Safeguards Towards Gender Equality Preamble

The Preamble is the soul of the Constitution and reflects the ideals and aims of the people. The source of the Constitution is traced to the people, i.e. men and women of India, irrespective of Caste, community, religion or sex. The makers of the Constitution were unsatisfied with mere territorial unity and integrity. If the unity is to be considered, it should be based on social, economic and political justice. Such justice should be equal for both men and women. The Preamble implies the goal of equality of status and opportunity to all citizens. This particular goal has been incorporated to give equal rights to women and men in terms of status as well as opportunity.

Economic Rights

There has been series of legislation conferring equal rights for men and women. These Legislations have been guided by the provisions of the fundamental rights and Directive Principles of State policy. Even though there is a sufficient provision, there is total lack of awareness regarding economic rights amongst women. Laws to improve their condition in matters relating to wages, maternity benefits, equal remuneration of property and succession have been enacted to provide the necessary protection in these respective areas.

Political Rights:

Even though there is a history of women participated equality in the freedom struggle. The provision which enables the political rights under the Constitution has equal political rights as men, enabling them to take part effectively in the administration of the country and even also representing them in politics. First it was only seven women members in the Constitution Assembly and the number later decreased further. Their representation in the Lok Sabha is far below the expected numbers. This has led to the demand for reservation of 33% seats for women in the Lok Sabha and Vidhan Sabhas. Political empowerment of women has been brought by the 73rd and 74th Constitutional Amendment which reserve seats for women in Gram Panchayats and Municipal bodies. There are some reasons which restrain the women in participating in politics were Illiteracy, lack of political awareness, physical violence and economic dependence. In present scenario, Indian Politics are fulfilling the provision of 33% of reservation of women in politics and women are highly interested in participating in politics by demanding higher reservation than former reservation and thus they ensuring their political rights.

Social Justice:

Gender equality is a shared vision of social justice and human rights. Social justice is a fair and just relation between individual and the society. Social justice assigns about the rights and duties in the institution of the society, which enables people to receive the basic benefits. Women as a part of our society still denied of social justice by violating their fundamental and human rights.

Fundamental Rights:

Part III of the Constitution consisting of Articles 12-35 is considered to be a heart of the Constitution. As per Justice P.N Bhagwati: "These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to fullest extent."

Article 14 – Equality before law

Article 14 guarantees to every person the right to equality before the law or the equal Protection of the laws within the territory of India.

Article 15 – Prohibition of discrimination on ground of sex

Article 15 embodies the general principles of equality before the law.

Article 15(1) prohibits the state from discrimination on the grounds of religion, race, caste, sex, and place of birth or any of them.

Article 15(2) provides that no citizen shall, on the ground only of religion, race, caste, sex, place of birth or any of them, be subjected to any disability, liability, restriction with regard to (a) access to shops, public restaurants, hotels and places of public entertainment, or (b) the use of wells, tanks, bathing ghats, roads, and places of public resort, maintained wholly or partly out of State funds or decided to the use of the general public.

Article 15(3) Nothing in this article shall prevent the State from making any special provision for women and children.

Accordingly Article 15(1) prohibits gender discrimination and Article 15(3) provides the State to positively act to discriminate in favour of women to make special provisions to ameliorate their social condition and provide political, economic and social justice. Especially the State in the field of Criminal Law, Service Law, Labour Law, etc. has resorted to Article 15(3) and the Courts, too, have upheld the validity of these protective discriminatory provisions on the basis of constitutional mandate.

Article 16 -Equality of opportunity in matters of public employment

Art 16(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.

Art 16(2) No citizens shall, on grounds only of religion, race, cast, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state.

The Constitution, therefore, provides equal opportunities for women as they are applicable to all persons irrespective of sex, Article 16 (1) and (2) depicts the general rule that the State shall provide equal opportunities for both men and women in matters relating to employment or appointment to any office under the State. There shall be no discrimination on the grounds of religion, race, sex, caste or place of birth while providing employment. These provisions fulfill the principles of equality before law and of the goal of 'equality of status and opportunity' as set up in the preamble of the Constitution.

Article 19(1)(g) – Freedom of Trade and Occupation.

Article 19(1)(g) of the Constitution guarantees that all citizens have the right to practice any profession or to carry on any occupation, trade or business. This Right allows the women to carry over any business or trade for development of their socio economic status. This right not only allows the women to carry their occupation but also to carry their occupation in dignified manner and also it secures the women at workplace. **Article 21 Protection of life and personal liberty.**

“ No person shall be deprived of his life or personal liberty except according to procedure established by law. This Article makes every woman to live and lead their life with dignified status without depriving or violating their rights

Article 23 Prohibition of traffic in human beings and forced labour.

Art 23(1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

Art23(2) Nothing in this article shall prevent the State from imposing compulsory service or public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

Directive Principles of State Policy

Directive Principles of State Policy are not enforceable in any court of law they are essential the governance of the country and provide for the welfare of the people, including women. These provisions are contained in Part IV of the Constitution. Fundamental Rights furnish to individual rights while the Directive principles of State Policy supply to social needs.

Article: 39 certain principles of policy to be followed by the state: The state shall, in particular, direct its policy towards securing-

(a). That the citizen, men and women equally, have the right to an adequate means of livelihood;

(b). That there is equal pay for equal work for both men and women;

(c). That the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article: 42 Provision for just and humane conditions of work and maternity relief.

The State shall make provision for securing just and humane conditions of work and for maternity relief.

Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity relief. The State has implemented this directive by incorporating health provisions in the factories Act, Maternity Benefit Act, Beedi and Cigar Workers (conditions of Employment) Act, etc.

Article 44 Uniform Civil Code

The State shall Endeavour to secure for the citizens a uniform civil code throughout the territory of India.

Article 44 directs the State to secure for citizens a Uniform Civil Code applicable throughout the territory of India. Its particular goal is towards the achievement of gender

justice. Even though the State has not yet made any efforts to introduce a Uniform Civil Code in India, the judiciary has adoption, divorce, maintenance, etc. But as it is only a directive it cannot be enforced in a court of law. However, one of the most dynamic members of the Assembly, Shri K.M. Munshi expressed his option that “ if the personal law of inheritance, succession, etc., is considered as a part of religion, the equality of women can never be achieved.

Fundamental Duties:

Parts IV-A which consist of only one Article 51-A was added to the constitution by the 42nd Amendment, 1976. This Article for the first time specifies a code of eleven fundamental duties for citizens.

Article 51-A (e) is related to women. It states that; “It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religion, linguistic, regional or sectional diversities; to renounce practices derogatory to the dignity of women”.

Article:243 D and Art 243 T Reservation of seats.(73rd Amendment)

These Articles provides for the reservation of seats for women in contesting them Panchayat election. Such a contribution at grass root level leads to the stepping stone to achieve democracy.The 73rd **constitutional amendment** has added the following articles to the constitution providing reservation for women in Panchayat Raj Institutions.

Article 243-D (2) states that not less than 1/3 of the seats reserved under clause (1) shall be reserved for women belonging to S.C or as the case may be S.T.

Article 243- D (3) extends reservation to women not less than 1/3 of the total number of seats to be filled by direct election in every panchayat shall be reserved for women and such seats shall be allotted by rotation to different constituencies in a panchayat.

Article 243- D (4) extends reservations to elected offices as well. The office of the chairpersons in the panchayat or any other level shall be reserved S.C and the S.T and women in such a manner as legislature of a state may, by law provide.

In spite of such provisions in the constitution, the decades following independence witnessed a decline in the women’s participation in politics. These rights appeared illusionary and there was a shift from the aims of the constitution. Gap started widening in all political spheres. Article 325 and 326 guarantees political equality, equality right to participate in political activity and right to vote. Politics proved to be very inhospitable terrain for women and continues to be male domain where entry of women is severely restricted. Representation of women in parliament and state assemblies remain at a very low level. Their representation is 10.8% in parliament.

Those constitutional principles supporting women and ensuring their equals status in the field of politics were discussed above. But the implementations of those laws are fragile. Though, legislative assurance has been given to women to achieve their status of equality, still they have to faces several obstacles to reach their goals.

Where are the Women? The political power is still male domain in India. Gender equality leading to deprivation of power among women continues to be a political reality in India today. Women are perpetually excluded from decision making at every step of the ladder, starting from the household to top layer of policy making.

Conclusion

The issue of Gender Justice has been serious issues for years ago. It is realized that despite the constitutional safeguard and the active support towards the cause of women, changes in social attitudes and institutions cannot be brought about very rapidly. Women upliftment is a big task ahead of us. It has multifarious dimension. The issues relating to women need to be addressed with exceptional sensitivity taking into consideration all the surrounding factors. Law, in this respect may prove to be useful and forceful instrument. By and large, the reasons of law have been positive constructive in this direction. First stepping stone for enhancing and developing the women in the society is that, first they should be aware of their fundamental and legal rights. The provision enshrined in the Constitution provides various rights and which help them to live in a dignified and decent status. When their rights are been violated they must aware all the legal provision entitled to them. Such a provision will be remain useless when it is considered to be a document and hence it has to be utilized whenever it is necessary to be used. The legal steps taken however are not sufficient. In addition to this, it could be said that law can do part of the task for its inherent limitation. For better and total results, the society needs to work at various other levels to complete the task.

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