

## “WOMEN’S RIGHT AND THE CONSTITUTION OF INDIA”

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### INTRODUCTION

To call woman the weaker sex is a libel; it is man’s injustice to woman. If by strength is meant moral power, then woman is immeasurably man’s superior.

-Mahatma Gandhi.

When a human being takes birth, it comes with certain rights those rights are known as Human Rights. Human rights are an integral part of Human Dignity. For the protection of those rights the Holy book of India i.e. the constitution of India plays a vital role to protect these rights and even it ensures about the same. It is a fact that the history of women is not good, it is not only the problem of one or two nations but the entire universe and unfortunately, India is not an exception. It is an irony that in India where women are considered and worshiped as a “*Shakti*”, the atrocities are committed against them in every section of the society.

In India when a Female has to face a Grave situation like Rape, the family members and the entire society consider it as a “*Naak katana*” or “*Izzat lut jana*” this is not fair. Man rapes the women, rapists never rape any women at the women’s’ desire. Women are often treated as a commodity or slave. Women are considered as a machine which is used only for the fulfillment of sexual desire and used as a tool to reproduce children. It is another irony that women are deprived of economic resources so they are dependent on the male. Even the Work done by the women at home is not counted in GDP. However, it has been seen that the Judiciary has been very sensitive to women and women related issues. Several judgments have come in favor of women’s rights which had played a vital role in shaping the new society where women are treated as equal to men.

### **Gender Justice and the Indian Constitution:**

The constitution of India has done magnificent work to ensure gender justice. The preamble to the Constitution, inter alia, assures justice, social economic and political, equality of status and opportunity and dignity of the individual. It recognizes women as a class by itself and permits the enactment of laws and reservations favoring them. Several articles in our Constitution make express provision for affirmative action in favor of women. It prohibits all types of discrimination against women and lays a carpet for securing the equal opportunity to women in all walks of life, including education, employment and participation.

### **Fundamental Rights (Part III)**

**Article 14 of the constitution of India ensures to women the right to equality.** Article 14 of the Indian constitution not only deals with the right to equality but it also ensures women to provide equality to them. Furthermore, Article 15 (1)<sup>1</sup> provides positive action to provide justice to women. It empowers the state to make special provisions for women. Furthermore, article 16 of the Indian Constitution provides for equality of opportunity to all, in matters relating to public

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<sup>1</sup> Constitution of India.

employment or appointment to any office and specifically forbids discrimination inter-alia on the ground of sex.

### **DIRECTIVE PRINCIPLE OF STATE POLICY**

Article 39 of the Indian constitution talks about the Directive policy of state policy. It ensures that the government should keep these things in mind while framing any law on any issue for the general masses. It states that State should direct its policy towards securing not only adequate means of livelihood but also there should be equal pay for equal work. The women should never face discrimination merely on the ground of sex. Furthermore, it ensures that the health and strength of workers men and women, are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

### **Fundamental Duties**

In part IV: A of the Constitution which was added by the 42<sup>nd</sup> amendment act, 1976, our natural obligation to renounce practices derogatory to the dignity of women has been elevated to the status of fundamental duty by article 51:A. The Equal Remuneration Act, 1976, the Maternity Benefit Act, 1961, the Dowry Prohibition Act, 1961 and the Immoral Traffic (Prevention) Act, 1956 are some of the enactments which owe their existence to the above-mentioned provisions of the Indian Constitution.

### **Judicial Approach towards Gender Justice**

The apex court in *Muthamma v. Union of India*<sup>2</sup> and *Air India v Nagresh Mirza*<sup>3</sup> Struck down the discriminatory service conditions which require female employees to obtain government permission before marriage and denying married and pregnant women the right to be employed. In *Vishaka v State of Rajasthan*<sup>4</sup> the Supreme Court states that equality in employment can be

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<sup>2</sup> (1979) 4 SCC 260

<sup>3</sup> AIR 1981 SC 1829

<sup>4</sup> AIR 1997 SC 3011

seriously impaired when women are subjected to gender-specific violence, such as sexual harassment in the workplace. It was the landmark case where the Supreme Court issued guidelines to ensure that the women get equal working conditions and they must be protected from the sexual harassment at the workplace.

*Maya Devi v. State of Maharashtra*<sup>5</sup> was another landmark judgment where the court observed that the requirement of husband's consent for wife's application for public employment was struck down as an anachronistic obstacle to women's equality and economic justice. Since article (15(3) itself hints substantive approach, its application for giving special educational facilities, for giving representation in local bodies and for protection in places of work has a substantive dimension.

The *Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa*,<sup>6</sup> case was the landmark judgment where the facts of the case was that the women stenographer was being paid money less than the male stenographer. All these settlements were taking place under the grab of settlement between the employees & the employer. The Hon'ble court made it mandatory to pay equal remuneration to lady stenographer. Furthermore the observed in the same case that the ground of financial incapability of the management cannot be a ground to seek exemption from the equal Remuneration Act, 1976.

In the landmark judgment of *Githa Hariharan v. Reserve Bank of India*<sup>7</sup> The court interpreted the Guardianship law in the light of Article 15 of the Indian Constitution. If we go through the Article 14, 15 and 21 of the constitution of India we will find that the constitution doesn't provide a single provision that permits the legislation to make laws against women. Any law which discriminates against the women on the ground of only sex is a violation of the constitution. It is the rule of the land. Law cannot alone remedy the inequalities and bring about justice, development and empowerment.

### **Some Land Mark Judgments:**

- **A Woman shall not be denied a job merely because she is a woman:**

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<sup>5</sup> 1986(1) SCR 743

<sup>6</sup> AIR 1987 SC 1281

<sup>7</sup> AIR 1999 SC 1149

In *Air India v. Nergesh Meerza*<sup>8</sup>, the Hon'ble court has held that a woman shall not be denied employment merely on the ground of sex. As it amounts to the violation of Article 14 of the Constitution. The fact of the present case was that the air hostesses of Indian Air Lines and Air India have challenged the service rules which state that: Air hostesses shall not marry for the first four years of their joining, they will lose their jobs if they become pregnant. They shall retire at the age of thirty-five years unless managing director extends the term by ten years in his discretion. The Supreme Court suggested that the first provision is legal, as it would help in the promotion of the family planning programs, and will increase the expenditure of airlines recruiting air hostesses on temporary or ad hoc basis, but the second and third provisions to be declared as unethical, callous, cruel, detestable, abhorrent, unreasonable, and unconstitutional and an open insult to Indian womanhood. Thus, the above decision of the Apex Court has greatly elevated the status of the working woman.

Rules regarding seniority and promotion in the Indian Foreign service was challenged before the Apex Court in *Miss. C. B. Muthamma v Union of India*<sup>9</sup> Where it has been held that the Rules relating to seniority and promotion in Indian Foreign Service which make discrimination only on ground of sex is unconstitutional.

### **Beauty Contests:**

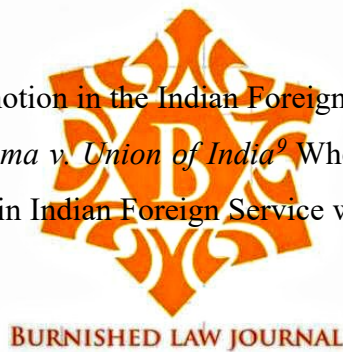
Whether Violation of Constitutional Provisions: This question was raised before the Andhra Pradesh High Court in *C. Rajakumari v. Commissioner of Police, Hyderabad*<sup>10</sup>. It has been held that if a beauty contest indecently represents any woman by depicting in any manner the figure of woman, form, body or any part thereof in such a way to have the effect of being indecent, or derogatory to or degrading women, or likely to deprive, corrupt an injure the public morality would be violative of the provisions of the Indecent Representation of Women (Prohibition) Act, 1986 and also unconstitutional as it violates Articles 14, 21, and 51:A of the Constitution of India.

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<sup>8</sup> AIR 1981 SC 1829

<sup>9</sup> AIR 1979 SC 1868.

<sup>10</sup> AIR 1998 AP 302.



## **The Immoral Traffic (Prevention) Act, 1956 and the Indian Constitution**

Article 23 of the Constitution provides the right against exploitation. This constitutional provision prohibits traffic in human beings. In this context traffic in human beings includes ‘devadashi system’. The Apex Court in *Vishal Jeet v. Union of India*<sup>11</sup>, observed that trafficking in human beings has been prevalent in India for a long time in the form of selling and purchasing of human beings for prostitution for a price just like that of vegetables. On the strength of Article 23(1) of the Constitution, the legislature has passed the Immoral Traffic (Prevention) Act, 1956 which aims at abolishing the practice of prostitution and other forms of trafficking including ‘devadasi system’. The court further observed that this Act has been made in pursuance of the International Convention which signed the declaration at New York (USA) on 9th May 1950 for the prevention of immoral traffic. Given the above statutory position and circumstances, the Apex Court upheld the validity of the said Act. Thus on the strength of the Constitutional powers the state is permitted to enact special laws exclusively for women and children, even the State may make preferential statutes to promote the development of the women in every walk of life.

### **Scope of Article 15(4) of the Constitution**

The Apex Court in *Dr. Preeti Srivastava v. The State of Madhya Pradesh*<sup>12</sup>, explained the scope and ambit of Article 15(4), which was added by the Constitution’s first Amendment of 1951. It enables, the State to make special provisions for the advancement of 1951. It enables, the State to make special provisions for the advancement of women inter alia, Scheduled castes and Scheduled tribes, notwithstanding Article 15(1) and 23(2). The working of Article 15(4) is similar to that of Article 15(3). Article 15(3) was there from the very inception. In enables special provisions being made for women and children notwithstanding Article 15(1) which imposes the mandate of non-discrimination on the ground (among others) of sex. This was envisaged as a method of protective discrimination. This same protective discrimination was extended by Article 15(4) to (among others) of sex. This was envisaged as a method of protective discrimination. This same protective discrimination was extended by Article 15(4) to (among others) Scheduled cases and Scheduled Tribes. As a result of the combined operation of these Articles, an array of programmers of Compensatory or protective discrimination have been pursued by the various states and Union

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<sup>11</sup> AIR 1990 SC 1412.

<sup>12</sup> 1999 (7) SUPREME 81.

Government. Since every such policy departs from the equality norm, though in a permissible manner for the benefit of the backward, it has to be designed and worked in a manner conducive to the ultimate building up of an egalitarian non-discriminating society.



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