

Women Welfare State of India: A Socio –Legal Phenomenon

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Abstract

In tune with constitutional mandate of equality and nondiscrimination wide range of progressive legislations have contributed towards the realization of equal status of women with men. From time to time new legislations have been enacted to fight the contemporary social evils. Law is a living organism and its utility depends on its validity and ability to serve as a sustaining pillar of society. Contours of law in an evolving society must constantly keep changing as civilization and culture advances.

Law as a cornerstone of the edifice of “order” should meet the challenges confronting the society. Unless law create equality and fairness, there is no way to get rid of discrimination. If discrimination is permitted by law, social attitude will not change, and if they do, there will not be a law to give effect to the new aspirations.

The women specific and women related legislative framework in India has been and will always remain a vital measure for improvement in the status of women. More importantly the success and failure of a law depends upon its implementation.

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Introduction

A welfare state is a concept of govt. in which the state plays a key role in the protection and promotion of the social and the economic well-being of its citizens .It is based on the principles of equality of opportunity ,equitable distribution of wealth ,and public responsibility for those unable to avail themselves of the minimal provisions for a good life .The general term may cover a variety of economic and social organization .

Meaning of Women Welfare State

As far as the meaning, nature and use of the women welfare state is concerned it basically means that providing the sociological, cultural, philosophical, legal, etc. kinds of security not for its own but for its family and inherited ones also. By doing so the govt. was providing the all the necessary things and infrastructure which provide as a tool for women empowerment.

Legal Mechanism for Making Welfare State

The govt. hinges upon the clearly enunciated mandate of the constitution to take an affirmative action to protect and promote the cause of women ,to remove their disabilities ,to provide them a place of dignity ,equality and opportunity for employment .From time to time Indian legislature have passed various laws to combat contemporary problems , have amended the existing laws in response to the egalitarian urges of the constitution .

Constitutional Provisions

The constitution of India is founded on the principle of equality and non-discrimination , striking a balance between the rights of the individuals and the duty and commitment of the state to establish an egalitarian social order .All Indian laws are emerged from and are in consonance with the provisions of the constitution .Various laws and constitutional provisions provide a place of honor, non-discrimination and equality of women . Even much before the independence, in the Karachi session of Indian National Congress in 1931; a resolution was adopted on the fundamental rights, which incorporated the concept of equality of sexes. Article 14 & 15 pronouncing the rights of men and women to equality before law and prohibit discrimination on the basis of sex by the State. Article 16(1) guarantees “equality of opportunity for all citizens in matters relating any office under the State”. Under this article, the obligation not to discriminate on ground of sex in matters relating to employment or appoint of any office under the State has ensured a significant position and status to Indian position. Article 19(1) (g) guarantees to every citizen the right “to practice any

profession, or to carry on any occupation, trade or business. Article 21 reinforces right to life. Equality, dignity of person and right to development are inherent rights in every human being. Life in expanded horizons includes all that given meaning to a person's life including culture, heritage and tradition with dignity of person. Article 23, a fundamental right against exploitation specifically prohibits trafficking in human beings, with main objective of ending sexual exploitation of women.

Directive principle of State policy embody major policy goals of the Indian State. They cover wide range of State activities embracing economic, legal, social, educational, and international problems. Some of them are directly "women specific" while some are indirectly or by necessary implication concerned with women. Article 39-A promotes justice, on the basis of equal opportunity and providing free legal aid by suitable legislation or scheme or in any other way ensuring that opportunity for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 44 provides for a uniform civil code for all the citizens throughout the country. Article 45 provides for early childhood care and education for all children until they attain the age of six years. Article 47 provides for raising the level of nutrition and the standard of living of the people and improvement of public health.

The fundamental duties enshrined in part IV-A of the constitution of India by the 42nd amendment is of immense significance. Article 51(A)(e) imposes fundamental duty on every citizen to renounce practices derogatory to the dignity of women¹.

Other Laws Related to The Safeguard of Women

The govt. hinges upon the clearly enunciated mandate of constitution to take an affirmative action to promote and protect the cause of women, to remove their disabilities, to provide them a place of dignity, equality, and opportunity for employment. From time to time, Indian legislature have passed various laws to combat contemporary problems, have amended the existing laws in response to the egalitarian urges of the constitution. Some of these laws are as follows-

(a) Child Marriage Restraint Act-The ACT primarily deals with a crime against girls. It is an attempt by indirect means to put a stop to the inhuman acts which go unpunished behind the screen of social religious validity. The ACT after amendment in 1978 now fixed the age of consent for males to be 21 years and for females to be 18 years.

(b) Dowry Prohibition Act- On 22 August 1986 Dowry Prohibition Amendment Act 1986 was passed, which brought about sweeping changes. Besides enhancing punishment for taking dowry, it also makes changes in penal statutes. It was for the

first time that the term ‘dowry’ was defined by making it an offence under IPC. Insertion of section 498-A in 1983 and section 304-B in 1986 and the consequential amendments in the code of criminal procedure, 1973 and the Indian Evidence Act 1872 sought to strengthen the existing laws to curb the evil of dowry.

(c) Sati Regulation Act -Sati tantamount to widow murder and is indicative of low status of women in the patriarchal society where her identity comes to an end with that of her husband. Thus to overcome such incidents, the Parliament enacted a new legislation called the Commission of Sati (Prevention) Act, 1987. Glorification of Sati is punishable now. Abetment of sati has been made punishable with death or imprisonment for life and the abettor is also liable to fine while the abetment of any attempt to commit sati has been made punishable with imprisonment for life and fine.

(d) Domestic Violence Act –The Protection of Women from Domestic Violence Act, 2005, as a civil remedy is a milestone in the quest of women’s rights in India. As civil remedy it assures the victims of domestic violence, freedom, from fear of eviction or physical harm in their family, home and to have access to family resources for adequate maintenance. This Act gives a very wide definition to the term ‘domestic violence’ so as to cover all forms of physical, sexual, verbal, emotional and economic abuse that can harm, cause injury to endanger the health, safety, life, limb, or well being, either mental or physical of the aggrieved person. Harassment by way of unlawful dowry demands to the women or her relatives is also covered under this definition.

Another unique feature of the Act is that it makes provision that any person, be it a neighbor, social worker, relatives etc. who has reason to believe that an act of domestic violence has been or is being committed, can take the initiative on behalf of the victim to lodge a complaint regarding an act or acts of domestic violence and does not make it necessary for the aggrieved woman to do it.

(e) Protection Against Sexual Harassment of Women Bill, 2005 -Cognizant to the growing social menace of sexual harassment of women at the workplace, three judge bench of Supreme Court, by an innovative judicial process, using its extraordinary power to make law and enforce fundamental rights, issued exhaustive guidelines in Vaisakhav/s State of Rajasthan (1997) 6 SCC 241, after taking note of the fact that the present civil and penal laws in the country do not adequately provide for specific protection of women from sexual harassment at places of work. Since the domestic law was silent on this issue, the court formulated the measures

to prevent sexual harassment, relying on international conventions and norms.

The protection against Sexual Harassment of Women Bill ,2005 recognizes it as the infringement of fundamental rights of women to gender equality under article 14 and her right to life and live with dignity under article 21 of the constitution which includes a right to safe environment free from sexual harassment. (f) Provisions Related to IPC ,CPC ,Cr.PC –In order to empower the women politically at the grass root level , the constitution Seventy –third (amendment) Act ,1992 and Seventy fourth (amendment) ,Act , 1992 have made significant changes.

Besides these constitutional commitments ,other procedural laws also tend to provide gender justice .However , many provisions of the Indian Penal Code ,the Criminal Procedure Code and other laws pre date the Indian Constitution and have been amended sparingly .Provisions relating to obscenity sexual assault , flesh trade , kidnapping and abduction and custodial intercourse have been spelt out separately in the Indian Penal Code² .

Support System for Making Welfare State

The Constitutional provisions, the statutory the laws and rulings of the courts confer de jure rights on women but to become defector entitlements, they have to be given the support of certain schemes or programmers. Conceptualizing and concretizing the mandate of the constitution of India by policy formation for women through the instrumentality of planning has been the most pragmatic approach towards the betterment in the status of women.

The planning commission of India defined three major areas in which special attention was paid to women’s development viz.education, socialwelfare and health³.

(1)The first five year plan (1951-56) –During this period welfare oriented approach towards women aimed at promoting services for family planning , maternity and child health care , schools , expansion of facilities for women education .

(2) The second five-year plan (1956-61) – reiterated comprehensive social welfare programmed which would include besides other things –social legislations, welfare of women and children, family welfare and youth welfare.

(3)The third five year plan (1961-66) –continued the thrust of its predecessors and as a sequel to the earlier two plans .It also emphasized on the welfare aspect of the women.

(4) The fourth five-year plan (1969-74) –during this plan attention was being given towards women’s education and health, following the report of the national committee on education in 1958.

(5) The fifth five year plan (1974-79) – enlarged the scope of social welfare in order to cope with several problems of family and the role of women .From this plan the emphasis definitely moved to development because it was felt that India could not develop if 50% of its population i.e. women ,were unable to their full potential .Therefore ,the new approach aimed at integration of welfare schemes with development services and stress was laid along with education and health ,on beneficiary oriented schemes of economic benefit and employment for women .

(6) The sixth five-year plan (1980-85) –represents the major watershed in development planning so far as women are concerned. The plan adopted a multi-disciplinary approach for women with thrust on three sectors –health, education and employment.

(7) The seventh five-year plan (1985-90)-continued the multipronged approach of the previous plan.

(8) The eighth five year plan (1992-97) –envisaged a more comprehensive approach to women’s development .The plan made an attempt to shift the approach from development to empowerment of women .Human development , in all its many facets ,is the ultimate goal of this plan .

(9) The ninth five-year plan (1997-2002) –is another milestone in women’s development. This plan made two significant changes in conceptual strategy of planning for women. Firstly, Empowerment of women became one of the nine objectives and secondly the plan attempted convergence of existing services available in women specific and women related sectors. There was a pragmatic shift in planning process from development to empowerment.

(10) The tenth five-year plan (2002-2007)-in this plan the planning commission has authored India’s human development goals and targets for the next five to ten years.

(11) The eleventh five-year plan (2007-2012) –was to provide education to enhance literacy to reduce the gender bias and inequality and to provide the gainful employment status to all.

(12) The last five-year plan (2012-17) –was somehow the same as the previous five-year plan but the talk about skill India has started here.

1.6 Government Schemes and Programmes – Various schemes of the govt. of India under various departments, which have multiplier effect in extending benefits to women are as follows⁴–

(a) Support to training and employment programmed for women (STEP) –It provides training for skill upgradation to poor and asset less women in the traditional sectors viz. agriculture, animal husbandry, dairying, fisheries, handlooms, handicrafts, khadi

and village industries etc.

(b) Setting up of employment -cum- income generating units for women (NORAD)- This programme was launched in 1982-83 with the assistance from the Norwegian Agency for Development and cooperation, aims at training women preferably in the non-traditional areas and non-traditional trades viz. electronics, watch assembly etc.

(c) Short stay homes for women and girls (SSH)- The service extended in these homes under this scheme includes medical care, psychiatric treatment, case work services, occupational therapy, recreational facilities etc.

(d) Educational work for prevention of atrocities on women –Under this scheme grants are extended to various agencies to conduct legal literacy camps, para- legal workers training, production and publicity material, seminars and to promote studies on gender and violence.

(e) Indira mahila yojana –It was launched in 1995 as an integrated development scheme for women. This scheme primarily addresses the capacity building, income and awareness, generation related requirement of the women. The major thrust of this scheme is the formation of self-help groups at the village or the anganwadi level. Such an endeavor is expected to help prepare women for decision making and participation in decision making at various levels.

(f) Adolescent girls scheme –This scheme provides family life education to school dropouts , cater to girls in the age group of 11-18 years , attempts to raise their nutritional status , educational literacy and recreation and skill formation .

(g) Integrated child development services (ICDS) –The main objective of this scheme is to improve the nutritional and health status of children in the age group 0-6 years , to lay the foundation for proper psychological , physical and social development of children to reduce the incidence of mortality malnutrition and school drop outs , to enhance the capability of the mother to look after the normal health and nutritional need of the child through proper nutrition and health education .

(h) Mahila samakhya programme -It was launched in 1989 to translate the goals of the National policy on education into a concrete programme for education and empowerment women in rural areas, particularly women in socially and economically marginalized groups.

(i) District primary education programme (DPEP) –This is a special initiative launched in 1994 within the broader objective frame of universalization of elementary education.

(j) Reproductive and child health (RCH) –RCH programme seeks to strengthen and

reorient the services now provided under the Family planning programme. This programme aims at child survival and safe motherhood.

(k) Rastriya mahila kosh (RMK)(National credit fund for women) –The main objective of RMK is to facilitate credit support to poor women for income generation activities as an instrument of socioeconomic change and development .

(l)Balika samridhhi yojana (BSY) -This yojana is to extend a special package of girl children belonging to families of below the poverty line to ensure that the girl children enter into school.

Various other similar schemes have been further launched by both Central and State govt. like Sukanya yojana etc. to protect and to empower the girl children. Role of National Commission For Women –Serving as a statutory ombudsman for women, the national commission for women was established in January ,1992. This commission was set up as a statutory body to review the constitutional and legal safeguard for women ,recommend remedial measures ,facilitate redressal of grievances and advises the government on policy matters affecting women .The commission firmly believes that awareness and education will empower women to face any challenge .The greatest achievement of NCW has been in spreading awareness regarding women by touring in various states of the country and assuring the women that there is an autonomous body that cares for women .

Recommendations and Findings – In tune with constitutionalmandate of equality and nondiscrimination wide range of progressive legislations have contributed towards the realization of equal status of women with men. From time to time new legislations have been enacted to fight the contemporary social evils. Law is a living organism and its utility depends on its validity and ability to serve as a sustaining pillar of society. Contours of law in an evolving society must constantly keep changing as civilization and culture advances.

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