Indian Constitution as an Instrument of Women Empowerment: A Critical Analysis

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Abstract: The peculiar position of women in society needs special care and preferential treatment. In almost all societies women have been treated with an inferior position. In feudal societies, power depended on status, custom and the then prevailing system of social organization. With the advent of Laissez – faire and industrialization, the focus shifted to individual enterprise and capacity to compete on equal basis. The state took the role of an umpire at the best, making the competition increasingly fair and equitable. A new era of social justice and social engineering through rule of law started with the emergence of the modern social welfare state and human rights Jurisprudence. Law is being used as an instrument for the protection of the interest of people especially weaker sections of society including the women. In India, upliftment and empowerment of women, specially economic and social, as initiated with the adoption and enforcement of the constitution in 1950. The constitution provides not only about the system of government and its functioning but also sets the direction for the economic and social progress of the country. The fundamentals of the Indian Constitution are contained in its Preamble secures to all its citizens justice – social, economic and political; equality of status and of opportunity along with others. Under the Fundamental Rights and Directive Principles of State Policy, special protection has been ensured to the women so that they have proper place in the society. Other measures are also required beside the constitutional and legal sanctions for the real socio – economic empowerment of women.

Key Words: Indian Constitution, Justice – Social and Economic, upliftment and empowerment of women, welfare state, Preamble, Fundamental Rights, Directive Principles of State Policy.

1. INTRODUCTION:

The special place of women in Indian society requires special care and special handling. With the word "Femme" itself, that is, a Mature woman-man Let in the English women, vimana (plural wimen), literally "woman-man", " the change of wifman (plural wifmens) "servant" (8c.), the connection of wif "woman" (see wife) + man ("man") (in Old English used in relation to both sexes; see man(n.). Compare this to the Netherlands vrouwmens "wife," literally "woman - man" does have a long history of dependence and subordination." In almost all societies, women were treated to a low level. Thus, Gibbon, for instance, says that it was a strict and haughty spirit of the old law, and that woman were condemned to the perpetual tutelage of the clergy, men, or legal guardians, a race created to please and obey you, do not keep to the attainment of the age of reason, and experience. The women had a low status in the Hindu and Muslim personal information.1 According to Manu, “by Day and by night, the women should be under the care of their guardians.”2 The Islamic human rights of women also had lower rates.3

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2 Manu says, “A Women is under the subjection of her father when a child, when married under that of her husband, after her husband under her sons, and if she has no sons then to her agnatic relations, because there is no woman whatsoever who is fit to be independent.”
In feudal societies, a power that depends on the state, the customs service, and the prevailing system of social organization. With the advent of the fault and the constitution, shifting the focus to a company's ability to compete on an equal footing. The state has taken on the role of the court is, at best, to make the competition fairer and more unbiased. A new era of social justice, and social engineering by the rule of law, starting with the emergence of the modern welfare State, and the international human rights law. The law serves as an instrument for the allocation of rights and responsibilities, resources, and capabilities in such a way that equality of opportunity is organized in such a way that the weak are properly anchored, and the minimal use of its life, it should be accessible for all. Along with the development of our society, the women's liberation movement is gaining momentum, and it is not a single country can afford to ignore the status of women in national life. The law is an instrument of economic and social change in all the democratic nations. In India, women's economic and social growth, it began with the ratification of the Constitution in 1950. To get into the spirit of the Constitution, realistic, and reasonable to do so, the state has resorted to a variety of social legislation, in which the weaker sections of the society, as well as the priority of the rights, privileges, and benefits. In the determination of policies and priorities, to choose their own strategies and methods used in the allocation of resources, and the powers of the State, the law has become a decisive factor in this process. An example of the application of the law is to protect the well-being of women.

2. THE CONSTITUTIONAL PROVISIONS:

In early societies, women as a class do not enjoy the same rights and opportunities as men in social attitudes and behaviour towards women, which were established by the legislation and the political processes. It is only since the turn of the century; the legal status of women is to be objective considered in different legal systems. In spite of differences in detail, all of the legal system are the signs of a male-dominated society, both in theory and in practice. The Indian Constitution does not allow such inequality, and discrimination. The Constitution provides for not only the rules of the city council and its activities, but it also determines the direction of the country's economic and social progress. The Indian Constitution is unique in itself. In addition, it attempts to organize society into a democratic process, human dignity, and ensuring the highest values of freedom, equality, and justice. The framers of the Constitution understood this very well, and that it should serve as an instrument of social change. Therefore, we have provided each and every citizen is entitled to certain rights in and to the Instagram that of the State in the implementation of social policies aimed at ensuring justice for each and every section of the society, that is, it is clearly stated in the Preamble, the Fundamental Rights in and to the Guidelines of the politics. The Constitution guarantees equality before the law and equal protection of the laws. The recognition of the ancestral practices which are discriminatory against women, as well as the need for preferential tariff discrimination, the Constitution of the State to legislate, if necessary, to provide for the women to have more rights and privileges.

The basis of the Indian Constitution in its Preamble, that it provides to its citizens, social justice, economic and political; liberty of thought, expression, belief, faith and religion; equality of status and of opportunity; and to promote among them all of the brotherly relations with the guarantee of human dignity and the unity and integrity of the nation. It aims to be fully aware of the whole of the Law. In order to achieve these goals, in Part III, and Part IV of the Constitution, the fundamental rights in and to the guiding principles of public policies, and efforts have been made to achieve and maintain human dignity.

The absolute is the idea of Freedom and Equality, it is extremely difficult to achieve in today's society, and well-being. Therefore, the fundamental rights are not granted in absolute terms. These rights include, in the form of restrictions that the Government should be guided in the exercise of dominion over the land. However, the exercise of these rights is dependent on the interests of the people. Therefore, the State will be able to enter into the scope of those rights in the name of the common good or the public interest. Or the fundamental rights and freedoms may be restricted in the name of the common good or the public interest; it will depend on the conditions and circumstances prevailing at the time. The Constitution provides, first of all, for the equal status of women relative to men, and the second, to the benefit of, to the advantage of women. In view of the subordinate role of women, the treatment of choice for women does not discriminate on the basis of their gender, but rather on the social issues related to women, as well as in the classroom.

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4 N.R. Madhava Menon, Empowerment of Women: Role of Law in a Rule of Law Society in Reading Materials provided in Refresher course for Law Teachers under the ASC Programme, Bangalore: National Law School of India Univirersity, 1989 – 90, p. 2.
5 The Constitution of India, Article 14.
8 Ibid
The Constitution guarantees to every person the fundamental rights not to be denied, by the State, equality before the law or the equal protection of the laws within the territory of India. It prohibits State to discriminate against any citizen on grounds only of religion, race, caste, sex, place or birth or any of them. Ensuring equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State and provides that no citizen shall, on grounds, inter – alias, of sex be ineligible for, or discriminated against in respect of, any employment or office under the State.

Article 16 is an instance of the application of the general rule of equality before law laid down in Article 14 and the prohibition of discrimination guaranteed by Article 15 (1) with special reference to the opportunity for employment or appointment to any office under the State.

Explaining the relative scope of Articles 14, 15 and 16, Das, J. said:

Article 14 guarantees the general right of equality; Article 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 115 is more general than Article 16, the latter being confined to matters relating to employment or appointment to any office under the State.

Apart from the guarantee of equality, the Constitution provides for special protection and preferential treatment in favour of women. Clause (3) of Article 15 says that “nothing in this Article (Article 15) shall prevent the State from making any special provision for women and children. “This clause embodies exception to the prohibition contained in clauses (1) and (2) of Article 15. Reading clauses (1) and (3) together it follows that while there can be no discrimination in general on the ground of sex, special provisions in the case of women and children are permissible. This, it would be no violation of Article 15 if institutions are set up by the State exclusively for women or places reserved for women at public entertainments or in public conveyances. Section 354 of the I.P.C. is not valid because it protects the modesty only of women and section 488 (now 125) of the Cr. P.C. is valid although it obliges the husband to maintain his wife but not vice versa. The language of clause (3) is in absolute terms and does not appear to restrict in any way the nature or ambit of special provisions, which the State may make in favour of women. The Supreme Court has held that the special provisions referred to in clause (3) need not be restricted to measures which, are beneficial in the strict sense. The decision of excise authorities to prefer men over women in granting licenses for opening liquor shops was struck down as coming within the prohibition of Article 15(1) and not saved by Article 15 (3).

Besides fundamental rights, the Directive Principles of State Policy contained in Part IV of the Constitution direct the State to take certain measures for the protection and welfare of women. According to these principles the state of required to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life, to direct its policy, in particular, towards securing -that the citizens, men and women equally, have the right to an adequate means of livelihood that there is equal pay for equal work for both men and women, 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 avocation unsuited to their age or strength, and to make provision for securing just and human conditions of work and for maternity relief.

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9 The Constitution of India, Article 14.
10 The Constitution of India, Article 15.
11 The Constitution of India, Article 16 (1).
12 The Constitution of India, Article 16 (2).
15 Section 354 of the I.P.C. says, “Whoever assaults or uses criminal force to woman, intended to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
19 The Constitution of India, Article 38 (1)
20 The Constitution of India, Article 39 (a)
21 The Constitution of India, Article 39 (b)
22 The Constitution of India, Article 39 (d)
23 The Constitution of India, Article 42
The Directive Principles of State Policy set out the aims and objectives to be taken up by the State in the governance of the country. These principles are the expression of the socio-economic objective of the Constitution. The idea of welfare State envisaged by our Constitution can only be achieved if the State endeavours to implement them with a high sense of moral duty. It indicates that the framers of the Constitution wanted to establish economic democracy. Through the Directive Principles they wanted to give socio-economic content to the political freedom. These principles constitute a very comprehensive political, social and economic programme for a modern democratic State.24

The Directive Principles of State Policy differ in one vital respect from the fundamental rights incorporated in the Constitution. Whereas the former is non-justiciable rights, the latter are justiciable rights. However, the significant thing to note about the Directive Principles of State Policy is, as Methew, J. pointed out in the Kesavananda Bharti case, that, although they are expressly made unenforceable, that does not affect their fundamental character. They still very much form part of Constitutional law of the land.25 Directive Principles of State Policy and Fundamental Rights together constitute the ‘conscience’ of the Constitution, and represent the basic rights inherent in human beings in this country. Both are in fact equally fundamentals and an effort should be made to harmonize them by importing The Directive Principles in the constitution of Fundamental Rights.26

Besides the special provisions discussed above, Article 23 of the Constitution forbids “traffic in human beings”.27 This Article embodies two declarations. First, that traffic in human beings, beggar and other similar forms of forced labour are prohibited. The prohibition applies not only to State but also to private persons, bodies and organizations. Second, any contravention of the prohibition shall be an offence punishable in accordance with law. Under Article 35 of the Constitution laws punishing acts prohibited by this Article shall only be made by Parliament, though existing laws on the subject, until altered or repealed by Parliament, are saved.28

Traffic in human beings means to deal in men and women like goods, such as to sell or let or otherwise dispose of, though there is no clear provision in the Article directly forbidding ‘traffic in women’ - the most prevalent form of this sort of exploitation, the expression ‘traffic in human beings’ would include traffic in women and children for immoral or other purposes.29 The Suppression of immoral traffic (Prevention) Act, 195630 is a law made by Parliament under Article 35 of the Constitution for the purpose of punishing Acts which result in traffic in human beings. Slavery is not expressly mentioned but there is no doubt that the expression "traffic in human beings" would cover it.31

It is one of the fundamental duties of every citizen of India to renounce practices derogatory to the dignity of women.32 The fundamental duties which were added by the Forty-second Amendment of the Constitution in 1976, in addition to creating and promoting a culture, also strengthen the hands of the legislature in enforcing these duties vis-a-vis the fundamental rights. Since the duties are imposed upon the citizen and not upon the State, legislation is necessary for their implementation.33

In tune with the constitutional provision for the protection of women Indian Judges have also played a very important role for their emancipation by resorting to social engineering device in the process of interpretation and implementation of laws.34

3. OBJECTIVES:

The objectives of this research paper are to analyse the provisions given in the Indian Constitution with a specific impact on women empowerment and to critically analyse the role of the Constitution as an instrument for the women empowerment, and to support the constitutional provisions with the reference of Judicial pronouncement declarations of the Supreme Court and various High Courts.

4. RESEARCH METHODOLOGY:

27 Article 23 (1) says, “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.
30 Formerly known as the Suppression of Immoral Traffic in Women and Girls Act, 1956.
31 Dubar V. Union of India, A.I.R. 1952 Cal. 496
The methodology used is doctrinal and the subject matter of the research paper is supported by secondary sources in the form of Constitutional Provisions and text books, commentaries and research papers on the subject along with the judicial decisions.

5. HYPOTHESIS:
The Constitution of India has been an instrument for the emancipation, upliftment and empowerment of women in India. The hypothesis shall be tested with the secondary sources including: Constitutional and statutory provisions, commentaries, and research papers and judicial decisions.

6. CONCLUSION:
Thus, the Indian constitution contains a wide range of provisions sufficient to protect and preserve the interest of women in India. Keeping in view the spirit of the Constitution successive Parliament enacted several laws touching upon almost every sphere for the welfare and upliftment of women. But law alone is not enough for the emancipation of women or for that matter any section of society. The proper implementation and application of laws in practice is lacking. Therefore, we do not have satisfactory results in the sphere of women’s rights. There is variety of reasons for this. One of the major reasons is non – availability of easy access to justice, which involves various dimensions. It envisages information or knowledge on the part of those affected by it. Women are largely handicapped at the very threshold of access to justice due to legal illiteracy. Secondly, it presumes the readiness of parties to have resources to law and legal process, which is a doubtful proposition in Indian society, particularly amongst women. Thirdly, availability of free or cheap and competent legal aid is a must. To facilitate social transformation of laws for the emancipation of women following measures are suggested – Firstly, legal literacy must be emphasized as an important aspect of women’s education. Secondly, free and competent legal aid should be available to women. Thirdly, there should be structural and procedural changes in the system of administration of Justice which include establishment of special institution like Family Courts, employment of more women personnel in the system, immediate and positive action in reported cases of the violation of women’s rights, particularly cases of atrocities against women. Fourthly, Voluntary and non – governmental social action groups and organizations should be encouraged to come forward to facilitate access to justice, administration of Justice and implementation of justice. So far, we have been adopting an impediment removal operation for equal Justice. Now we need to have a dynamic affirmative action programme if we have to achieve results. 35

Now there is need to inculcate the constitutional values and legal norms into the society and create a feeling of fraternity towards women in the people having power and authority in the society and also among the masses.

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27. Article 23 (1) says, “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.
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