

# CONSTITUTIONAL PROVISIONS FOR PROTECTION OF WOMEN'S RIGHTS IN INDIA

**Dr. Sabyasachi Mahanta,**

Professor of Political Science & Principal, Gargaon College, Assam.

E-mail: sabyasachi.mahanta@gmail.com

**Abstract:** Human rights are rights inherent to all human beings regardless of race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more. The Universal Declaration of Human Rights, which declared human rights as being universal and inalienable, adopted an all-inclusive, evenhanded and gender-neutral approach. However, despite the rhetoric of gender neutrality, women found their rights being excluded from the larger sphere of human rights when it came to actual implementation of their rights. It is since the end of Second World War that the advancement and protection of the rights of women has become a major concern of the international community. The discourse of human rights has undergone a qualitative change with the acknowledgement and acceptance of women's rights as an integral part of the concept of human rights. Not only in the international sphere, but also in the national front, various efforts have been undertaken in order to protect and promote the rights of women as per the international guidelines. This paper is an attempt to highlight the provisions incorporated in the Indian Constitution that aim at protecting the rights of women and also to explore the various undertakings at the national level in pursuance of these provisions.

**Key words:** Rights, Human rights, Women's rights, Gender equality, Indian Constitution

## **Introduction:**

Access to equal rights is reckoned to be the cornerstone of a democratic political system. The concept of human rights is comparatively new in the history of evolution of rights. Significantly, it was only in the seventeenth century that the idea of human rights as universal, equal and unalienable was first broached in the advanced countries of the West<sup>1</sup>. Following the two World Wars, human rights movement grew up all over the world to secure the intrinsic rights of every individual. The idea of human rights implies a universal application and may be argued to be those fundamental rights to which every man or woman inhabiting any part of the world should be considered entitled merely by the virtue of having born a "human being".<sup>2</sup> The Universal Declaration of Human Rights, which declared human rights as being universal and inalienable, adopted an all-inclusive, evenhanded and gender-neutral approach. However, despite the rhetoric of gender neutrality, women found their rights being excluded from the larger sphere of human rights when it came to actual implementation of their rights. Unfortunately, an almost inconsiderate attitude was adopted towards the rights of women and the concept of women's equality.

Women and girls represent half of the world's population and, therefore, also half of its potential. Gender equality, besides being a fundamental human right, is essential to achieve peaceful societies, with full human potential and sustainable development. Moreover, it has been seen that empowering women spurs productivity and economic growth. It is since the end of Second

---

<sup>1</sup> Aparna Mahanta, *Implementation of Human Rights with Special Reference to Women Rights* (Jorhat, 2003), p. 115.

<sup>2</sup> Subhash C. Kashyap, *Human Rights and Parliament* (New Delhi, 1978), p .2.

World War that the advancement and protection of the rights of women has become a major concern of the international community. The concern and the efforts made therefore got translated into reality for the first time with the establishment of the United Nations in the year 1945. The Preamble to the Charter of the United Nations talks about the determination of the peoples of the United Nation “to reaffirm faith in fundamental human rights, in the dignity and worth of human process, in the equal rights of men and women”<sup>3</sup>. It further pledges to “employ international machinery for the promotion of the economic and social advancement of people”<sup>4</sup>.

The principle of equal rights of men and women has also been incorporated in the Universal Declaration of Human Rights, 1948. Article 1 of the Declaration lays down that “all human beings are born free and equal in dignity and right”.

Thus, the discourse of human rights has undergone a qualitative change with the acknowledgement and acceptance of women’s rights as an integral part of the concept of human rights. Not only in the international sphere, but also in the national front, various efforts have been undertaken in order to protect and promote the rights of women as per the international guidelines.

This paper is an endeavor to critically look at the provisions enshrined in the Indian Constitution that aim at protecting the rights of women and also to explore the various undertakings at the national level in pursuance of these provisions.

### **Constitutional Provisions for Protection of Women’s Rights in India:**

Having explored the concept of human rights and the evolution of women’s rights as a crucial component of the concept of human rights, it is imperative to elucidate the various efforts embarked on at the national level for the purpose of women’s emancipation. The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favor of women.

The Constitution of India declared at the very outset, in unequivocal terms, about the equality of sexes. The Preamble to the Indian Constitution confers justice, liberty and equality to all its citizens without discrimination.<sup>5</sup> The Preamble promises to assure for its citizens – justice, social economic and political; liberty of thought, expression, belief, faith and worship; and equality of status and opportunity.<sup>6</sup>

Further assuring the dignity of the individuals and the unity of the country, the Constitution of India guarantees certain Fundamental Rights and freedoms to all Indian citizens irrespective of religion, race, caste, sex, place of birth or any of them. Thus, Indian women are the beneficiaries of the Fundamental Rights as incorporated in the Part III of the Constitution in the same way as their male counterparts. A few of the significant Fundamental Rights may be mentioned here as follows:

---

<sup>3</sup> Cited in *Ibid.*

<sup>4</sup> *Ibid.*

<sup>5</sup> Ripima Buzarbaruah, “Human Rights of Women: Precepts and Practice”- in Balin Hazarika (ed.), *Human Rights* (Jorhat, 2003), p. 154.

<sup>6</sup> The Preamble to the Indian Constitution states, “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 opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the unity and integrity of the nation....” [See Durga Das Basu, Introduction to the Constitution of India, (New Delhi, 1995), p. 20-21]

- Article 14 (Right to Equality) of the Constitution ensures “equality before law” and “equal protection by the law” to all its citizens<sup>7</sup>.
- Article 15 (Right to Equality) states that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them<sup>8</sup>.
- Article 16 (Right to Equality) guarantees equality of opportunity in matters of public employment for all citizens and is expected to provide a bulwark against considerations of caste, community, religion, sex and race<sup>9</sup>.
- Article 19 (Right to Freedom) of the Constitution provides the basic freedoms and liberty to all citizens without any discrimination among other grounds or that of sex.

The Directive Principles of State Policy embodied in Part IV of the Constitution of India further ensures the advancement of women and equal dignity of men and women. There are sixteen Articles of the Constitution, from Article 36 to Article 51 that deal with the Directive Principles<sup>10</sup>. However, it needs to be mentioned here that the Directive Principles are in the nature of directives to the Central and the state governments and hence are not enforceable in the court of law.

Some of the Directive Principles that strive to secure the interest and protect the rights of women may be discussed as follows:

- The State shall strive to secure and protect a social order, which stand for the welfare of the people [Article 32(2)].
- The State shall direct its policy towards securing
  - (i) Adequate means of livelihood to all citizens;
  - (ii) Equal pay for equal work for both men and women. (Article 39).
- To secure just and humane conditions of work and maternity relief (Article 42).<sup>11</sup>

In addition, Article 39 of the Directive Principles provides for the welfare of the Indian women matters relating to justice. This includes social, political and economic justice<sup>12</sup>.

Further, the idea of dignity of women is enshrined in the Indian Constitution as part of Fundamental Duties (Part IV – A) as well. The constitution proclaims that “it shall be the duty of every citizen of India...to promote harmony and the spirit of brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women”.<sup>13</sup>

### **Legal Provisions for Protection of Women’s Rights in India:**

Besides the constitutional provisions, a number of judicial interpretations of these rights have elaborated the preview of these rights. For instance, the Supreme Court has held that any form of torture or degrading treatment would be offensive to human dignity and would, therefore violate Article 21.

Apart from the Constitutional provisions, certain benchmark Acts were passed by the Indian Parliament that seek to enhance and protect the rights of women. Some of the most significant of them may be mentioned here:

- Minimum Wages Act of 1948.
- Plantation Labor Act of 1951.

<sup>7</sup> See Durga Das Basu, *Introduction to the Constitution of India*, (New Delhi, 1995), p. 85.

<sup>8</sup> M.V. Pylee, *India’s Constitution* (New Delhi, 2005), p. 80.

<sup>9</sup> *Ibid.* p. 81.

<sup>10</sup> *Ibid.* p. 133.

<sup>11</sup> *Ibid.* p. 134.

<sup>12</sup> N. Jayapalan, *Human Rights* (New Delhi, 2000), p. 114.

<sup>13</sup> Majumdar and Kataria, *The Constitution of India* (New Delhi, 1997), p. 22.

- Factories Act of 1952.
- Hindu Succession Act of 1956.
- The Hindu Adoption and Maintenance Act, 1956.
- Immoral Traffic (Prevention) Act of 1956.
- Maternity Benefits Act of 1961.
- The Dowry Prohibition Act of 1961.
- Contract Labor (Regulation and Abolition) Act of 1966.
- The Medical Termination of Pregnancy Act, 1971.
- Equal Remuneration Act of 1976.
- The Muslim Women (Protection of Rights) on Divorce Act, 1987.
- Indecent Representation of Women (Prohibition) Act of 1986.
- Sati Prevention Act of 1987.
- The National Commission for Women Act, 1990.
- The Protection of Human Rights Act, 1993.
- The Pre-natal Diagnostic Techniques (Regulation and Prevention from Misuse) Act, 1994.
- The Hindu Marriage Act of 1995.
- The Protection of Women from Domestic Violence Act, 2005.

It is significant to note here that various legislations were passed even prior to Indian independence that sought to protect and uphold the rights of women. The British Government in India passed the Sati Prevention Act, 1829, which prohibited the custom of burning Hindu widows alive in the funeral pyre of her husband. Some of the other crucial legislations that were passed by the British government to protect and promote the rights of women were:

- Prohibition of Sati Act, 1829.
- Widow Remarriage Act, 1856.
- Civil Marriage Act, 1872.
- Married Wife Property Act, 1874.
- Child Marriage Restraint Act, 1929.
- Government of India Act, 1935.
- Hindu Women's Rights to Property Act, 1937.<sup>14</sup>

### **Special Initiatives for Gender Equality:**

In the recent time, a significant step has been taken in the direction of promotion of women's rights with the Sixth Five-Year Plan (1980-1985), for the first time, containing a separate chapter on Women and Development. The Plan emphasized the need for opening up of opportunities for independent employment and income generations for women. Thereafter the objective of raising women's economic and social status has been reiterated as a policy goal. Subsequently, the National Perspective Plan of Action for Women was formulated outlining various administrative, legislative and other measures to promote women's development.<sup>15</sup>

The growing movement towards realization of women's rights in India saw the creation of the National Commission for Women in 1992 following the passing of the National Commission for Women Act in August 1990. The Protection of Human Rights Act, 1993, provided for the constitution of the National Human Rights Commission, State Human Rights

<sup>14</sup> Chandrika Basu Majumder, "Women and Their Rights" – in Balin Hazarika (ed.), *Human Rights in India* (Jorhat, 2003), p. 137.

<sup>15</sup> Yasin and Upadhyay, *Human Rights* (New Delhi, 2004), p. 88.

Commission in individual states and Human Rights Court. Here it also needs to be mentioned that the Government of Assam has also promulgated an Ordinance for the constitution of the State Commission for Women in November 1993. This prompted the State Government to pass the Act of Assam State Commission for Women in January 1994. This is a statutory body under the State Act, which strives to achieve equality and justice. It provides a platform for realizing the expectation of millions of women in the state and gives them an opportunity to work hand in hand and shoulder with men in the development process of the State. The Commission has worked relentless since its inception towards the achievement of the goals of equity, equality, and justice for the women members of the State.<sup>16</sup>

The 73rd Constitutional Amendment Act passed in the year 1992 by the Parliament ensures reservation of one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas. The National Plan of Action for the Girl Child (1991-2000) is an initiative to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child. The Department of Women and Child Development in the Ministry of Human Resource Development has prepared a National Policy for the Empowerment of Women in the year 2001 with an objective to bring about the advancement, development and empowerment of women. Beti Bachao Beti Padhao (BBBP) was launched by the Prime Minister Narendra Modi on 22<sup>nd</sup> January, 2015 at Panipat, Haryana. It is a dream scheme of Prime Minister Modi which addresses the declining Child Sex Ratio and related issues of women empowerment over a life-cycle continuum. The scheme is a tri-ministerial effort of Ministries of Women and Child Development, Health & Family Welfare and Human Resource Development for promotion and protection of women's rights as well as to establish gender equality in India.

### **Conclusion:**

A basic human right, gender equality, is furthermore a necessary basis for a peaceful, prosperous and sustainable world. It is evident that there have been various endeavors at the international as well as at the national sphere for the protection and promotion of the rights of women. Several ventures have been undertaken, keeping in tune with the spirit of the Indian Constitution, to advance the cause of women's rights. Although considerable developments have taken place over the years and decades, but unfortunately, there is still much to be done to achieve full equality of rights and opportunities for women. As remarked by the UN Secretary-General, António Guterres, achieving gender equality and empowering women and girls is the unfinished business of our time, and the greatest human rights challenge in our world. Therefore, it is of utmost importance and the need of the hour to end the manifold forms of gender violence and secure equal access to quality education and health, economic resources and participation in political life for both women and girls and men and boys. Of similar importance is to achieve equal opportunities in terms of access to employment and to positions of leadership and decision-making at all levels.

---

<sup>16</sup> *Annual Report*, Assam Human Rights Commission, 2006-07, p. 1.