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 **Exclusion and Inclusion  
of Dalit and  
Minority Communities In India**



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## Inclusion of Women through Indian Constitution

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### Introduction:

In India more than five women are burned in dowry related disputes every day. Dowry death is the most severe term and domestic violence the violence experienced by women is mastered in various forms. It includes female infanticides, dowry payments, sati, wife battering, sexual abuse and incest, which burning physical abuse, emotional and mental abuse etc. Thus we can say that 'female gender is many times exposed to violence not only after birth but has to face it many a times before birth, which prevents its birth'. Domestic violence affects women of every class, caste, religion, tribe, and age in India. Whenever women are abused, it is considered that it has happened because of her fault and she is held guilty. This is prime because why most of the women never come forward to reveal the atrocities which they had to suffer. Violence within the family is always hushed up all the more. They hesitate to speak about it for various reasons. Two most important reasons are 1) The prestige and good name of the families would be at stake 2) the wife is dependent economically and physically on husband. So even if she has skills and resources to support her, she cannot dare venture out of her married home, because society just does not recognized single women.

"Women constitute half the world population nearly two thirds of works hours, receive one tenth of the world's income and own less than one hundredth per cent of world's property.<sup>1</sup> Half of the Indian population too is women, Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self sacrifice and self denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.<sup>2</sup> The Indian Constitution adopted by the Constituent Assembly on 26<sup>th</sup> November 1949 is a Comprehensive document ensnaring various principles of justice, liberty, equality and fraternity. These objectives specified in the preamble and elsewhere form part of the basic structure of The Indian Constitution. The fundamental law of the land assures the dignity of the individuals irrespective of their sex, community or place of birth. Constitution of India contains provisions which go a long way in securing gender justice. While incorporating these provisions, the framers of the

Constitution were well conscious of the unequal treatment meted out to the fairer sex, from time immemorial. The history of suppression of women in India is very long and the same has been responsible for including certain general as well as special provisions for upliftment of the status of women. The rights guaranteed to the women are on par with the rights of certain special provisions having been allowed to enjoy the benefit of certain special provisions. The general provisions relating to the equal rights available to the women are the right to vote, other political rights and the fundamental rights contained in Part-III of the Constitution and the directive principle etc.

### **Preamble and women:**

The preamble of Indian Constitution proceeds further objectives like; Justice, Liberty, Equality and Fraternity. Justice implies a “harmonious reconciliation of individual conduct with the general welfare of society”. The essence of Justice is the attainment of common good. It embraces, as the Preamble proclaims, the entire social, economic and political spheres of human activity. Equality does not mean that all human beings are equal mentally and physically. It signifies equality of status, the status of free individuals and equality of opportunity. Equality of opportunity implies the availability of opportunity to everyone to develop his or her potential capacity.<sup>3</sup> The preamble to the Indian Constitution contains various goals including “the equality of status and opportunity” to all the citizens. This particular goal has been incorporated to give equal rights to the women and men in terms of the status as well as opportunity. It has been the basis for much legislation like the Modern Hindu Laws which aim at giving equal status and rights to the women.

### **Fundamental Rights and Women:**

Even though, the entire fundamental, rights contained in Part III, Article 12 to 35 are applicable to all the citizens irrespective of sex, certain fundamental rights contain specific and positive provisions to protect the rights of women. Article 15(3) of the Constitution specifically provides that the prohibition of discrimination on grounds of religion, race, caste, sex or place of birth as contained in Article 15, shall not prevent the State from making any special provisions for women and children. In other words, the state is empowered to make any such provisions and it shall not be violation of Art.15. Article 15 (1) prohibits gender discrimination. Article 15 (3) lifts that rigor and permits the State to positively discriminate in favor of women to make special provision, to ameliorate their social economic and political justice and accords them parity. Clause (3) of Article 15, which permits special provisions for women and children, has been widely resorted to, by the State and the courts have always upheld the validity of the special measures in legislation or executive orders favoring women. These provisions could be seen in the sphere of Criminal Law, Labor and Industrial Laws, Service Law and Criminal Procedure etc.<sup>4</sup> Article 15(3) embodies one of the two exceptions to the prohibition contained in the clause (1) and (2) of Article 15. It empowers the state to make special provisions for women and children.

This particular advantage has been conferred on the women because the framers of the Constitution were well aware of the unequal treatment meted out to the women in India from the time immemorial. The other reason for making special provisions for them is their physical structure and the performance of maternal functions, which place them at a disadvantage in the struggle for subsistence.<sup>5</sup>

Recently the Supreme Court has upheld the constitutional validity of Proviso to Section 31(1) (a) of the Andhra Pradesh Cooperative Societies Act, 1964 and of the Rules 22 (c) and 22-A (3) (a) framed there under relying upon the mandate of Article 15 clause 3. The proviso read with the said rules provided for nomination of two women members by the Registrar to the managing, committee of the co-operative societies with a right to vote and to take part in the meetings of the committee. The Court upheld the validity of these provisions on the ground that Article 15(3) of the Constitution permitted the making of special provisions for women.<sup>6</sup> Thus it would be no violation of Article 15 if the institutions are set up by the State exclusively for women or places reserved for them at public entertainment or in public conveyances. The reservations made for women in educational institutions and public employment is protected by Article 15(3). The following few cases may be helpful in understanding the concept of protective discrimination in favor of the women.

#### **Protective Discrimination and Indian Women:-**

Indian Constitution providing reserve seats for women in local bodies. At the same time 33% seats are reserved in educational institutions and jobs. The 73<sup>rd</sup> and 74<sup>th</sup> Amendments to the Indian Constitution amended in 1992, provide reservation of seats to the women in Elections to the Panchayat Raj system and the urban local bodies. Perhaps, this is the first attempt by the Parliament to provide reservations for women, in legislatures. According to Article 243-D of the Constitution of India, not less than one third of the total number of the seats to be filled by the direct election in every panchayat shall be reserved for women. Such seats are allotted by rotation to different constituencies in a panchayat. Not less than one third of total number of offices the Chairpersons in the panchayat at each level shall be reserved for women. According to Article 243-T of the Constitution of India, which was added by the Constitution (74<sup>th</sup> amendment) Act, 1992 makes similar provisions for reservation of seats to women in a direct elections to every Municipality. Therefore, there is a successful reservation of 33% seats for women in local bodies which acquire poignant importance. It is well documented that the women of India made a distinguished contributions to the country in all spheres of life therefore; there is nothing unreasonable or unconstitutional in making reservation for women in legislatures. It is important to remember that the Articles 15 (3) of the Constitution of India empowers the States to make special provisions for women and children.<sup>7</sup>

The parliament introduced the Constitution 81<sup>st</sup> Amendment Bill seeking to reserve

one third of the seats in Lok Sabha and State Assembly for women in the month of September, 1996, The Bill has been referred to a joint committee of Parliament, and is yet to be passed. In a way, the move is only an extension of the 73<sup>rd</sup> and 74<sup>th</sup> Constitution Amendments, under which a similar quota has been provided for women in the elected bodies at various levels in the Panchayat Raj and Nagar Palika systems and as such represents a big step forward in empowering the women to play their rightful part in democratic government in the political process at the decision making level. This measure is towards correcting the gender justice.

### **Right against Exploitation:-**

Art.23 of the Constitution specifically prohibits traffic in human beings. In this context traffic, in human beings includes "devadasi system". Trafficking in human beings has been prevalent in India for a long time in the form prostitution and selling and purchasing human beings for a price just like vegetables. On the strength of Art 23 (1) of the Constitution, the legislature has passed the Suppression of Immoral Traffic Act, 1956 (now renamed as The Immoral Traffic (Prevention) Act, 1956) which aims at abolishing the practice of prostitutions and other forms of trafficking. This is an Act made in pursuance of the International convention signed at New York on the 9<sup>th</sup> day of May 1950, for the preservation of immoral traffic. Recently the Andhra Pradesh Legislature has enacted the Devadasi (Prohibition of Dedication) Act, 1988 to prohibit the practice of dedicating women as Devadasi to Hindu deities, idols and temples etc. which invariably results in evils like prostitutions.<sup>8</sup>

### **Directive Principles and Women:**

The Directive Principles of State Policy contained in Part IV of the Constitution incorporate many directives to the State to improve the status of women and for their protection. Article 39(a) directs the State to direct its policy towards securing that the citizen, men and women, equally have the right to an adequate means of livelihood. Article 39(d) directs the State to secure equal pay for equal work for both men and women. The State has enacted The Equal Remuneration Act, 1976, to give effect to this Directive Principle. Article 39(e) specifically directs the State not to abuse the health and strength of workers, men and women. 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 tried to implement this directive by enacting the Maternity Benefit Act.1961. Article 44 directs the State to secure for the citizens a uniform civil code throughout the territory of India. This particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce Uniform Civil Code in India, the judiciary has recognized the necessity of the Uniformity in application of Civil laws like law of marriage, succession, adoption, and maintenance etc.<sup>9</sup>

Apart from these specific provisions all the other provisions of the Constitution are equally applicable to the men and women. This clearly establishes the intention of the

framers of the Constitution to improve the social, economic, educational and political status of the women so that they can be treated with men on equal terms. The Supreme Court has recently dealt with the validity of the Chotanagpur Tenancy Act, 1908 of Bihar which denied the right to succession to Scheduled Tribes women as a right to livelihood under Article 21 of the Constitution. The majority Judgment however, upheld the validity of the legislation on the ground that such enact was in accordance with the custom of inheritance / succession of the scheduled Tribes. However, the dissenting judgment was delivered by Justice K. Rama Swamy who felt that the law made a gender based discrimination and that it violated Articles, 15, 16 and 21 of the Constitution with the right equality enshrined in the Constitution. During the course of his dissenting opinion Justice K. Rama Swamy had an occasion to refer to various International Declarations and Conventions along with the relevant provisions of the Indian Constitution as regards the gender discrimination in India.<sup>10</sup>

“Legislative of Executive actions must be conformable to, and for effectuation of the fundamental rights guaranteed in part III and the directive principles enshrined in Part IV and the preamble of the Constitution which constitute the conscience of the Constitution. Covenants of the United Nations add impetus and urgency to eliminate gender based obstacles and discrimination. Legislative action should be devised suitably to constitute economic empowerment of women in society economic restructure for establishing egalitarian social order. Law is an instrument of social change as well as the defender of social Elimination of all forms of Discrimination Against Women which was ratified by the UNO on 18/12/1979 and which was ratified by the Government of India on 19/6/1993 enjoins this Court to breathe life into the dry bones of the Constitution, International conventions and the Protection of Human Rights Act, to prevent gender based discrimination, and to effectuate rights to life including empowerment of economic social and cultural rights”. These remarks made by the Learned Judge highlight the plight of the Indian Women and also the necessity of the State action that should be taken to rectify the historical inequity that discriminated against the women”.<sup>11</sup>

### **Sexual Harassment of Women:-**

One of the evils of the modern society is the sexual harassment caused to the women particularly the working women by their male counterpart and other members of the society. There is no law in India which is adequate to combat the evil of the sexual harassment, in a Public Interest Litigation (PIL) filed before the Supreme Court recently, the Court has emphasized the need for an effective legislation in India to curb sexual harassment of working women. In Vishaka V/s. State of Rajasthan, a Division Bench of Supreme Court speaking through Chief Justice, J.S.Verma, laid down number of guidelines to remedy the legislative vacuum. The court has defined, having regard to the definition of “Women Right” in Section 2(d) of the Protection of Human Rights Act, 1993” sexual, harassment” as including any unwelcome sexually determined behavior (whether directly or by implication) like physical contact and advances, a demand or request for sexual favors, sexually colored remarked, showing pornography and any other unwelcome physical verbal or non verbal conduct of sexual nature.

In the instance case Supreme Court referred to the Convention on the Elimination of All

Forms of Discrimination against Women (CEDAW) and also the resultant violation of gender equality under Article 14 and 15 and right to life to personal liberty of women under Article 21 of the Constitution. As a result of this judgment, any women employee who is subjected to sexual harassment of any kind can take resources to initiating criminal proceedings, disciplinary action and also seek compensation from the guilty employer and other persons responsible for the harassment. The Supreme Court has demonstrated great judicial activism while coming to rescue of the working women even at the cost of resorting to judicial activism under Article 141 of the Constitution.<sup>13</sup>

### **Conclusion:**

The Preamble, the Fundamental Right, directive principles and fundamental duties are very important initiatives for bringing empowerment in the socio-economic status of women. From 1974 –75 onwards, plans and programmes of the Government have aimed at women's advancement in different aspect of their life. India has an absolute system of laws to protect the rights of women including the Hindu Marriage Act, Equal remuneration Act, Provision of maintenance under section 125 of CRPC, Prevention of Immoral Traffic Act, the Sati Act and the Dowry Prevention Act. Special provision such as Sec. 498-A against cruelty and 304-B of Indian Penal Code, Dowry Death and the new Acts which is very important namely the Domestic Violence Act, 2005 etc. However, the Government is often unable to enforce these laws, due to deep rooted traditions in India. According to the Government study, violence against women has increased over the decades. Violence does not include only molestation, rape, kidnapping, domestic violence etc. but also cruelty, dowry death and so on. Because of that women are not safe anywhere. In Indian society, women play a very important role and even in ancient time women were regarded as important instrument of society. There is a saying that, "If you educate a man, you educate only an individual and if you educate that women, you educate a whole family rather society". However, we find crimes, against women increasing. To prevent crimes against women the Government is taking an initiative and has passed various Laws and Acts especially for women as an attempt of Inclusion of women in main stream.

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