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Human Rights of women and children

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Abstract - Indian parliament has enacted protection of Human Rights Act 1993. In this act, there is a comprehensive definition of Human Rights, under sec 2 (d) which states 'Human Rights means rights relating to life, liberty, equality and dignity of an individual guaranteed by the constitution or embodied in the international covenants and enforceable by courts in India. The Act aims at protection of Rights in the first place but at the same time it serves the purpose of creating awareness and respect for dignity of an individual.

Joel Feinberg defines Human Rights as 'Moral rights held equally by all human beings unconditionally and unalterably'. In this definition, there is a clear indication that irrespective of desires of the individuals, these rights cannot be materially altered. D. D. Rafel says that 'Human Rights constitute those very rights which one has, precisely because of being a human being'.

Keywords: supreme law, Discrimination, Supremacy, Movement, Impairment, Parliament, Instrument, Protection, Harassment.

Human Rights and Indian Constitution - This study is focused on socio-legal status of women in India. As women, men, youth and children all citizens of this land enjoy the rights bestowed upon them by the constitution. Indian constitution is a social document. The purpose with which it has been drafted is, to cater to the needs and requirements of the people. The constitution is the supreme document of land and hence it is also called as the fundamental law of the land. The constitution basically serves two purposes:

1. It gives legal system to the country.
2. It gives legal rights to the people.

The constitution of India has provisions of protecting fundamental rights of its citizens. When the legislature, the executive fall short of discharging their duties towards the citizens, then judiciary has to play a vital role. This is the protection of fundamental rights of people with the help of all the three organs of government. The constitutional provisions pertaining to fundamental rights ultimately serve the purpose of protecting Human Rights and dignity of human beings. Fundamental rights covered under Article 12-32 are deemed essential for protection of rights and liberties of people. The Supreme Court has played a role of protector for protecting fundamental rights. In a landmark case of Maneka Gandhi v. Union of India,¹ the Supreme Court has held that the provisions of the fundamental rights should be given widest possible interpretation. Thus, Human Rights are those rights which every individual is entitled to have and have a right to enforce them if they are violated. It is a duty of every one to understand that they cannot deprive others of their rights in order to do well to themselves. Even though they are declared in the charter of United Nations, the core element and the very purpose of these rights is:

1. Freedom
2. Equality
3. Liberty

Dr. Ambedkar believed that the directive principles provided in the constitutions should be taken into consideration by the parliament and also by the executive while framing laws and enacting them. The above mentioned fundamental rights and directive principles of state policies seem to have adherence to the articles of universal declaration of Human Rights. The Universal Declaration of Human Rights (UDHR) is an important event in history of Human Rights. This instrument provides a generally acceptable catalog of man's inseparable rights. For example, certain rights mentioned in the declaration are as under -

1. Right to life, liberty and security.
2. Equality before law and equal protection of law .
3. Right to effective judicial remedy.
4. Right to freedom of religious conscience and opinion .
5. Right to freedom of assembly and association.
6. Right to social security, work and favorable working conditions and equal pay.
7. Right to education aimed at full development of human personality .
8. Right to participate in cultural life of the community.

These are some of the articles of UDHR which has similarities with Indian constitution. They are visible in fundamental rights of part-III and directive principles of state policy of Indian Constitution.

Human Rights and Indian Women: Pandit Jawaharlal Nehru, the first prime minister of India said, "You can tell the condition of a nation by looking at the status of its women". This statement reveals that, status of women of any nation is the mirror of its civilization. If women enjoy good status, then it shows that the society has reached the level of maturity and sense of responsibility. Constitution has bestowed us with equal rights. But when it comes to position of women, we observe gender bias and unequal treatment given to women.

This is with respect to educated and literate women. Condition of women belonging to weaker sections, backward class, minorities is still worse. In spite of constitutional provisions, women continue to become a soft target of exploitation.

Researcher's anxiety to examine the role of various legislations in protecting rights of women is due to the ineffectiveness of the statutory provisions in curbing the violence against women. When it comes to sexual harassment, the Indian Supreme Court has given a landmark

decision in the case of Vishakha and others VS State of Rajasthan². The decision was handed down by a three judge bench including chief Justice J.S. Verma, Justice Sujata Manohar and Justice B.N. Kirpal. In this case, the Supreme Court had declared, sexual harassment in the work place to be 'unconstitutional'. Justice Verma held the opinion that sexual harassment at the work place is a violation of fundamental rights of equality and right to life and liberty.

There are many provisions under the Indian Penal Code, for filing a complaint for physical abuse, cruelty and harassment. The object of Indian Penal Code is to try the criminals and punish them. However there was no rescue in the direct laws for

1. Mental torture
2. Deprivation of finances
3. Denial of maintenance
4. Use of abusive language
5. Right to marry a person of one's own choice.

The Vishakha's³ case which was filed by several social activists and NGO has actually resulted in creation of women's development cells in organizations which have women as its integral part. The Supreme Court had given a special guideline to that effect. It

was in the case of Nargesh Meerza,⁴ where Honorable Justice Bhagwati observed, 'Airhostess not to be having any children interferes with and diverts the ordinary course of human nature. The termination of service of airhostess is not only a callus and cruel but an open insult to Indian womanhood'. Certain landmark precedents clearly indicate that the courts are also sensitive towards issues and status of women. On Indian scene, there is lot of harassment which women have to face for bearing or not bearing a child.

This should absolutely be a right of women to choose what she wants the best. India has gone beyond institutional, legal and educational measures to strengthen the ability of women. Article 14 of the constitution provides for equality for all subjects. Article 15 prohibits discrimination on grounds of sex. Article 16 provides for equality of opportunity in public employment. Article 15(3) of the constitution permits the state to make special provisions for women and children. Our laws, plans and development policies have aimed at women's advancement in different spheres. There has been a change on women's issues from their welfare to development.

In the recent years, women empowerment has been a central issue for determining status of women. There have been international conventions on women issues like Convention on Elimination of all forms of Discrimination against Women [CEDAW] in 1993. The Mexico plan of action 1975, the Nairobi Forward Looking Strategies, the Beijing Declaration, are certain instruments advocating

rights of women as Human Rights.⁵ In the above mentioned paragraph, we have seen the legislative role and different provisions made for the purpose of discussing women's issues. There are 39 central laws laid down by government of India. Despite all these measures, the government was persuaded to pass a new law to prevent domestic violence against women. It is this law which recognizes rights of women as Human Rights.

This study of Human Rights aims at finding out whether status of women has actually been enhanced in the society as a human being, and as an individual at par with men. The researcher has attempted to examine if law has been instrumental in achieving gender balance on the basis of analysis of decided cases related to the following rights of women

1. Right to education
2. Right to life and personal liberty
3. Right to development
4. Right to work
5. Right to medical care and enjoyment of Freedoms granted by the Indian constitution like freedom of speech and expression, freedom of movement, etc.

Evolution of Women's Rights as Human Rights- Women's Rights became a matter of global concern and program of action as a result of various declarations by the United Nations. The United Nations found it necessary to make certain special provisions for women and further direct other nations to follow the guiding principles laid down for curbing gender disparity. The notions about women worldwide showed that women were perceived as a subordinate being. 'The world subordinated women in mutually reinforcing ways perhaps the most enduring conceptual basis for women's subordinate legal and social status is the assumption that while men represent norm of the fully human being, women represent a deviation sometimes superior usually inferior but always different.'⁶

Women's inherent differences are explained with the focus on biological factors. The physiological differences between men and women led to moral, social, economic and perceptible bias. The perception of women as inherently different resulted in a systematic legal disadvantage for women as compared with men. It has also disadvantaged some women against another. Women who closely adapted to expected norms were rewarded than those who revolted. Women differences have been used to gain legal protection and such measures however contribute to women's subordinate status by narrowing their options and reinforcing their use as scapegoats for society's ills such as poverty, immorality and crime⁷.

Even as equitable principles evolved and statutes were enacted to protect women's economic interests, or the

interests of those with whom they or their husbands transacted business, these laws were interpreted in ways that, reinforced women's economic dependency on men.⁸ This means that it is not only the eastern part of the globe but even in the west, women have acquired the place of being treated as a human very recently.

Women's Rights as Human Rights - The Human rights of women and of the girl child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels and eradication of all forms of discrimination on grounds of sex, are priority objective of international community.⁹

United Nations proclaimed to have equality on the basis of sex as their mission. Article 1 of the charter sets out 3 main purposes of United Nations, the last among them includes and defines to protect the rights and freedoms of every individual regardless of sex, race, language or religion. United Nations Universal Declaration of Human rights (UDHR) of 1948, included the proclamation that all human rights and freedoms are to be enjoyed equally by women and men without distinction of any kind.

Article 2 of UDHR states that everyone is entitled to all the rights and freedoms set forth in the declaration without distinction of any kind such as color, sex, language and religion, political or other opinion, national or social origin, property birth or other status.¹⁰ All the general human rights conventions at regional and international level have provisions of equality and non discrimination on the basis of sex. It is also rightly observed that there has been marginalization of women at Economic, political, and social levels in most countries of the world. In order to implement the Human rights of women, Human rights committee has been constituted and this committee has been confronted with number of cases initiated by women concerning an alleged violation of Article 26.

Discrimination on the basis of sex - A case of Mauritian resident is an apt evidence of Discrimination. A statutory provision in Mauritius proved expressly discriminatory towards women. It so happened that legislation failed to grant resident status to foreign men married to Mauritian women but at the same time Non-Mauritian women married to Mauritian men were granted permanent resident status and were not subject to the threat of deportation.

This was held to be discriminatory on the grounds of sex. Actually laws should be framed or altered without deviating from the basic ideology of the legislation. This was a case of *Ameeruddy Cziffra v. Mauritius*, in which the government did not grant permanent resident status to the spouse (foreign men) married to Mauritian women.¹¹

Rights of children - The United Nations' 1989 Convention on the Rights of the Child, or CRC, is the first legally binding international instrument to incorporate the full range of human rights - civil, cultural, economic, political and social rights. Its implementation is monitored by the Committee on the Rights of the Child. National governments that ratify it commit themselves to protecting and ensuring children's rights, and agree to hold themselves accountable for this commitment before the international community.¹² The CRC is the most widely ratified human rights treaty with 196 ratifications; the United States is the only country not to have ratified it.¹³

The CRC is based on four core principles: the principle of non-discrimination; the best interests of the child; the right to life, survival and development; and considering the views of the child in decisions that affect them, according to their age and maturity. The CRC, along with international criminal accountability mechanisms such as the International Criminal Court, the Yugoslavia and Rwanda Tribunals, and the Special Court for Sierra Leone, is said to have significantly increased the profile of children's rights worldwide.¹⁴

In addition to meeting legal obligations of the Convention to spread awareness of children's rights to children and to adults, teaching children about their rights has the benefits of improving their awareness of rights in general, making them more respectful of other people's rights, and empowering them to take action in support of other people's rights¹⁵. Early programs to teach children about their rights, in Belgium, Canada, England and New Zealand have provided evidence of this. Children's rights in schools were taught and practiced as an ethos of 'liberating the child' well before the UN Convention was written, and that this practice helped to inform the values and philosophy of the Convention, the IBE and UNESCO, though sadly these practices, and this history are not really acknowledged or built-upon by the UN. This is one reason that children's rights have not become a foundation of schools despite 100 years of struggle.¹⁶

Rights of a child in India

There are several standards and rights guaranteed by the laws that govern our country and the international legal instruments which we have accepted by ratifying them. Various rights have been conferred in the Constitution of India specially for children. In addition, just like any Indian adult male or female, children too, as equal citizens of India, have several other common rights. These rights are applicable to everyone irrespective of any restrictions. The basic rights of children in India include:

Right to equality - Article 14 of the Constitution of India states that every person is equal before the law and has equal protection of the laws. Thus, this right is applicable to children of India, as well, because, they too, are the citizens of this nation.

Right against discrimination - Article 15 of the Constitution talks about the prohibition of discrimination

based on race, caste, etc. Under Article 15(1), no citizen shall be discriminated against based on his religion, race, caste, sex, place of birth or any of them. Further, Article 15(3) states that the State shall not be prevented from making any special provisions for women and children.

Right to freedom of expression¹⁷ - **Article 19(1)(a)** has conferred a right to freedom of speech and expression to each and every citizen of India. This right is applicable to everyone, including the children of India. Children have the liberty of expression as long as their opinions and knowledge do not harm others.

Right to life.¹⁸ - According to **Article 21** of the Constitution of India, every person has the right to life, liberty and security. It also states that no individual must be deprived of his life or personal liberty unless according to procedure established by law. Similarly, every child in India has the right to personal liberty and due process of law.

Right to health- Under Article 21 of the Constitution of India, although indirectly, every child has the right to lead a healthy life. Issues like HIV infections, lack of safe drinking water, adequate sanitation, malnutrition, inter alia, come under the protection of life¹⁹.

Right to education- Under Article 21A of the Constitution of India, every child in the age group of 6-14 has the right to free and compulsory elementary education. Moreover, Article 45 states that the State shall strive to provide early childhood care and education for all children under the age of six years.

This provision was introduced by the Eighty-sixth Amendment, 2002. Prior thereto, this provision asserted that free and mandatory education must be provided for children under 14 years of age. But, after the Amendment, the right to education for all children between the ages of 6 and 14 has been made a fundamental right. Moreover, the position today is that early childhood care and education for children below the age of 6 years is a Directive Principle, whereas free and compulsory education for all children between the age of six and fourteen years is a Fundamental Right.

Right to being protected from trafficking and forced into labour²⁰

Article 23 of the Constitution of India states that every person (including children) has the right to be protected from trafficking, begging and other similar forms of bonded labour.

Right to be protected from hazardous employment

Under Article 24 of the Constitution of India, every child below the age of 14 has the right to be protected from employment in factories or mines or be engaged in any other precarious employment conditions.

Right to be protected against abuse

Article 39(e) of the Constitution of India states that the health and strength of workers and the young age of children are not violated, and that, there is a right to be protected from being abused and not forced by economic necessity to enter avocations or minor occupations that do not suit their age or energy.

Right to equal opportunities and facilities

Article 39(f) of the Constitution of India states that children must be provided with just opportunities and facilities to progress in a healthy way and conditions of liberty and dignity. Also, children and youngsters are given protection against ill-treatment and moral and material abandonment.

Rights against social injustice and all forms of exploitation -

Article 46 of the Constitution discusses the rights of the weaker sections of the society and that they should be safeguarded from social injustice and all forms of exploitation²¹.

Right to Identity - Another important factor for child rights is their right to identity and registration. Only 41% of births in India are registered. Having an identity is a fundamental human right that gives an individual the liberty to enjoy all of their other rights. Identity consists of a family name, surname, date of birth, gender and nationality of the individual. By identification of such identities, an individual will hold rights and obligations specific to their status (woman, man, child, etc).

Types of offences against children- Human beings are capable of doing marvellous things. We have rewritten the meaning of what is possible a hundred thousand times, and yet, we continue to leave lakhs of children behind. We have been accepting this loss of human potential as 'normal'. From lack of education to protection from exploitation to child labour, the basic rights of millions of children are held back or violated.

Since we now know the basic rights of a child, let us learn about the types of transgressions against children that are violations of child rights. Here are some of the many offences against children that violate children's rights:

Child marriage- Child marriage denies children their basic rights. Many a time, children who are subjected to this offence have to drop out of school, thus, denying their basic right to education bestowed under Article 21 and Article 45 of the Constitution.

Moreover, they are also exposed to violence (sexual, physical and emotional), thus denying their right to personal liberty which is also vested under Article 21 of the Constitution of India. Child marriage leads to experiences that their young minds and bodies are not prepared for, say for example- motherhood.

Punishments under Juvenile Justice Act. Chapter IX of the Juvenile Justice Act, 2015 re-enacts the provisions relating to special offences with regards to juveniles. To be specific, Section 74 to 89 of the Act deals with the punishment for offences committed against children. They have the following heads²² :

1. Provision on disclosure of Identity of children (Section 74).
2. Punishment for cruelty to children (Section 75).
3. Employment of a child for asking alms (Section 76).
4. Penalty for giving intoxicating substances to a child (Section 77).
5. Utilising the child for carrying and smuggling intoxicating substances (Section 78).
6. The exploitation of a child employee (Section 79).
7. Punitive measures for adopting a child by not following a proper procedure (Section 80).
8. Sale and procurement of a child for any purpose (Section 81).
9. Corporal punishment (Section 82).
10. Use of children by militant groups (Section 83).
11. Kidnapping and abduction of a child (Section 84).
12. Offences committed on physically impaired children (Section 85).
13. Classification of offences and designated court (Section 86).
14. Abetment (Section 87).
15. Alternative punishment (Section 88).
16. Offences committed by a child under this chapter (Section 89).

Conclusion - There is an age-old Bible saying "Children are a gift from the Lord; they are a reward from him", but with the aforementioned horrendous instances the saying enters into a realm of absurdity.

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Foot Note

- 1 Maneka Gandhi v. Union of India AIR 1978 SC P.597
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- 4 Air India v. Nargesh Mirza. 1981,4 SCC P.335
- 5 Report of the Fourth World Conference on Women.1995. p.177
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- 8 Women and Social Change in India, New Delhi Heritage, 1979. By Ratna Kapoor and Brenda Cossman in subversive sights, Chapter 2 P. 152, Sage publications.
- 9 See Universal Declaration on Human rights, December 10, 1948
- 10 UDHR 1948 article 1, 7 and 23
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