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Women's Human Rights and Indian Constitution.

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Abstract

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Introduction:-

Human Rights are entitled to certain basic and 'natural' rights that define a meaningful existence. Equal dignity of all persons is the central tenet of human rights. As natural rights are intrinsic and independent of rights provided by the State, the latter can be viewed as having the function of protecting these natural, human rights. In other words, the State is merely a guarantor of rights. It was during the French Revolution in 1789 that natural rights were elevated to the status of legal rights with the formulation of the 'Declaration of the Rights of Man'. The Term "women's human rights" and the set of practices that accompanies its use are the continuously evolving product of an international movement to improve the status of women. In any event, human rights must be developed within understandings of specific people's culture, community, and traditions. The concept of human rights should not, however, be frozen in time, but rather be a dynamic principle, capable of adapting within complex, varied, and changing global society. The Universal Declaration of Human Rights (UDHR) emerged as a reaction to the atrocities and oppression caused by the Second World War. Apart from detailing the rights and freedoms of individuals for the first time, it was the first international acknowledgement of the 'inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world'. **The UDHR was premised on the principle of universality and non-discrimination. It stated in Article 1- "All human beings are born free and equal in dignity and rights".** The rights and freedoms contained in the Declaration were regarded as being available to all without 'distinctions of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status'. The UDHR emphasized that 'a common understanding of these rights and freedoms is of the greatest importance for the full realization' of the rights contained therein. About 58 States representing diverse cultures and beliefs and at different stages of development were involved in the drafting process. The UDHR contained rights that were culturally and politically acceptable to most countries across the world, thereby imparting a universal character to the declaration. Some nations have recorded reservations against certain provisions of the Convention on the Elimination of Discrimination against Women (CEDAW).

Women emerged as a distinct interest group in the 19th century primarily because the bourgeoisie democratic revolutions of 17th and 18th century that excluded women from their concept of equality. This distinction was based

on gender. Since then women as a commune had waged struggle for recognition of their rights as a human being. Women's execute multilateral role in the society i.e. as a breadwinner of her family, as a care taker of her family as a mother, wife, daughter and service provider to the society. In spite of the fact that the women's contribution to the country's development is equal to that of their male counterpart, still they experience a number of limitations that restrain them from comprehending their potential for expansion. It was against this background that the government's all over the world felt the need to prioritize the interests of women and their participation at every stage of the development process. Women as a core group of concern emerged as a major theme in the Millennium Development Goal. The Millennium Development Goal are the eight goals set by the United Nations in 2000 which will act as yardstick to determine the advancement in the direction of the obliteration of global poverty. UN stated that 'Gender Equality and Women Empowerment' as one of the Millennium Development Goals to be attained by the year 2015. The term Women's empowerment implies the ability of the women take all the important decisions independently related to her throughout her life span that will ensure her success in all aspects of life. However these goals are far from being realized in a country like India. In fact often women in India are deprived of their fundamental right to dignity also leave alone the question of gender equality.

In most parts of India today, women constitute a disproportionate share of the chronically poor population. As in parts of the world, Indian women face gender discrimination throughout their life within the family, society and at work place that runs common across the country along all class, caste and religion with varying degrees. Gender discrimination of labor prevails in all sectors of employment. Gender discrimination starts from the fetus, in terms selection of sex, childrearing, feeding, education, employment, control over property and resources, participation and influencing decision-making in public and political spheres.

Although the constitution provides legal equality for men and women social and economic equality is yet too achieved. This is the fact why Indian women continue to be recipients of welfare and remain at a lower status with low literacy and poor access to resource and facilities.

The Indian Constitution was framed by the Constituent Assembly of India, which met for the first time on December 9, 1946. The Constitution of India gave primary importance to human rights. To quote Guha, "The demand for a declaration of fundamental rights arose from four factors."

1. Lack of civil liberty in India during the British rule
2. Deplorable social conditions, particularly affecting the untouchables and women
3. Existence of different religious, linguistic, and ethnic groups encouraged and exploited by the Britishers
4. Exploitation of the tenants by the landlords.

The Constituent Assembly incorporated in the Constitution of India the substance of the right; proclaimed and adopted by the General Assembly in the Universal Declaration of Human Rights. Further on 10th December 1948, when the Constitution of India was in the making, the General Assembly proclaimed and adopted the Universal Declaration of Human Rights, which surely influenced the framing of India's Constitution. Viewed from the Indian standpoint, human rights have been synthesized, as it were, not as an integrated fabric by the Preamble promises and various Constitutional clause; of the National Charter of 1950. The Indian Constitution, in fact, exemplifies the 'common understanding' of basic human rights as it incorporates the principles outlined in the UDHR in the form of Fundamental Rights and Directive Principles of State Policy. The Preamble outlines the basic structure of the Constitution and sets out the aims and aspirations of the people that have been translated into various provisions of the Constitutions. Part III of the Indian Constitution contains Fundamental Rights which are available to all persons and citizens with a corresponding duty on the Indian State and its instrumentalities for their implementation and protection.

Fundamental Rights contained in Part III of the Indian Constitution are enforceable or justiciable rights. This implies that on violation or denial of fundamental rights, a citizen can file a petition in the Supreme Court seeking relief. Article 32 protects a citizen's fundamental rights by giving the courts the power to issue writs. This corrective power is itself a fundamental right. The sanctity of fundamental rights can be gauged from Article 13 of the Constitution, which mandates the State to ensure that no 'law' including orders, rule, regulations, notifications, ordinance, customs or usages is in violation of any fundamental right.

The Indian Constitution, in Articles 14, 15 and 16 provides for equality between men and women. Based on Aristotle's notion that 'equals are entitled to equal things' formal equality is a principle of equal treatment.

Constitutional Provisions:-

1. Equality before law for **women (Article 14)**
2. The State not to discriminate against any citizen on grounds only of religion, race, caste, **sex**, place of birth or any of them (**Article 15 (i)**)
3. The State to make any special provision in favor of **women** and children (**Article 15 (3)**)
4. Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (**Article 16**)
5. The State to direct its policy towards securing for men and **women** equally the right to an adequate means of livelihood (**Article 39(a)**); and equal pay for equal work for both men and **women (Article 39(d))**
6. To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities (**Article 39 A**)
7. The State to make provision for securing just and humane conditions of work and for maternity relief (**Article 42**)
8. The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (**Article 46**)
9. The State to raise the level of nutrition and the standard of living of its people (**Article 47**)
10. To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of **women (Article 51(A) (e))**
11. Not less than one-third (including the number of seats reserved for **women** belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every **Panchayat** to be reserved for women and such seats to be allotted by rotation to different constituencies in a **Panchayat (Article 243 D(3))**
12. Not less than one- third of the total number of offices of Chairpersons in the **Panchayats** at each level to be reserved for **women (Article 243 D (4))**
13. Not less than one-third (including the number of seats reserved for **women** belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every **Municipality** to be reserved for **women** and such seats to be allotted by rotation to different constituencies in a **Municipality (Article 243 T (3))**
14. Reservation of offices of Chairpersons in **Municipalities** for the Scheduled Castes, the Scheduled Tribes and **women** in such manner as the legislature of a State may by law provide (**Article 243 T (4)**)

Special Initiatives for Women:-

- 1- **Reservation for women in Local Self-Government:-** In 73rd and 74th amendments to the Constitution have incorporated 33% reservation for women in the local bodies. These two amendments removed the bottlenecks from the paths of women empowerment at the local level. In fact it has been found that the Karnataka sends maximum number of women to the PRIs followed by Kerala and Manipur. In order to facilitate equal participation of women at the national and state level politics, the bill providing for 33% reservation of seats for women in national and States legislatures has been introduced in Parliament¹⁵. Besides this, the government in India have enacted a variety of laws like Dowry Prohibition Act, Sati prevention Act etc. to guarantee the rights of the women. Women's Reservation Bill that proposes 33.3% seats to be reserved for women in Parliament and state legislatures has been pending for long. The 16th Lok Sabha should urgently pass the Constitution (108th Amendment) Bill, to reserve for women one-third of the seats in the Lok Sabha and in the State Legislative Assemblies, since it will be critical for the success of other policies to have a much higher representation of women in political and public life and in power and decision-making. The Government needs to take urgent steps to sign and ratify the Optional Protocol to CEDAW.
- 2- **The National Plan of Action for the Girl Child (1991-2000):-** The World Summit on Children held in 1990 stressed on "Survival, Protection and Development" of children including the girl child. The Government of India has raised the awareness of society through their intensive studies on the girl child

and her status in the family. The process started from the Seventh Five Year Plan to treat the girl child as a special concern. The plan of Action is 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 key measures planned under the National Plan include:
<ul style="list-style-type: none"> • Strengthening of the existing primary health care infrastructure • Consolidation and maintenance of levels of immunization coverage • Stepping up immunization where coverage is low • Polio eradication through immunization • Ensuring essential supplies and drugs • Training of doctors and para-medical health workers • Educating women and girls on safe motherhood • Providing primary education facilities in unserved areas • Providing child care services Community mobilization and involvement

3- National Policy for the Empowerment of Women, 2001:-The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

The functions of the Commission as enumerated under Section 10 of the National Commission for Women Act, 1990 are as follows:

- ❖ Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws.
- ❖ Present to the Central Government, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards
- ❖ Make in such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the Union or any State
- ❖ Review, from time to time, the existing provisions of the Constitution and other laws affecting women and recommend amendments thereto so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations
- ❖ Take up the cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities
- ❖ Look into complaints and take suo moto notice of matters relating to:
 - a. Deprivation of women’s rights;
 - b. Non-implementation of laws enacted to provide protection to women and also to achieve the objective of equality and development;
 - c. Non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities;
- ❖ Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend strategies for their removal
- ❖ Undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity
- ❖ Participate and advise on the planning process of socio-economic development of women
- ❖ Inspect or cause to be inspected a jail, remand home, women’s institution or other place of custody where women are kept as prisoners or otherwise, and take up with the concerned authorities for remedial action, if found necessary
- ❖ Fund litigation involving issues affecting a large body of women

- ❖ Make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil
- ❖ Any other matter which may be referred to it by Central Government.

The Central Government shall consult the Commission on all policy matters affecting women vide Section 16 of the National Commission for Women Act, 1990)

- 4- National Commission for Women:-** In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

Role of National Human Rights Commission of India in Protecting and Promoting Women's Rights:-The NHRC is an embodiment for the promotion and protection of human rights. Ever since it came into existence in October 1993, its efforts to protect and promote the rights of women have evolved in a variety of inter-connected ways over the past two decades. Gender related issues and especially discrimination against women have been a matter of concern for the Commission since it was constituted. During 1994-95, it recommended vigorous implementation of the country's obligations under the CEDAW. It also recommended that well-coordinated steps be taken to act upon the Declaration and Programme of Action adopted at Beijing.

Civil and Political Rights:-

- ❖ Rising sexual crimes against women and girls is a cause of concern. A total of 293 cases of rape were registered in NHRC from January to April 2014, clearly indicating that women and young girls continue to be the worst victims of violence, in particular, sexual violence and have little or no access to justice. The national/state/district legal services authorities must also create awareness among women and girls about women enabling laws and their rights, which is not adequate at present. The NHRC is making efforts in this direction but other concerned agencies also need to devote attention to this issue.
- ❖ Similarly, women continue to be victims of domestic violence in the absence of a coordinated implementation mechanism consisting of protection officers, service in the form of facilities and shelter homes that are mandated to provide better access to justice and other support services under the Protection of Women from Domestic Violence Act, 2005. Despite guidelines issued by the MWCD to State Governments/UTs for proper implementation of the Act, there is still no proper coordination and the designated authorities remain dysfunctional.
- ❖ The Hindu Succession (Amendment) Act, 2005 was enacted to guarantee property rights to a daughter and bring her at par with a son or any male member of a joint Hindu family. However, its implementation is poor on account of deep-rooted cultural mindsets and lack of knowledge and awareness of rights and entitlements among women and girls. There is need for a codification of the property rights of women, regardless of caste, class, religion or ethnicity, which should take precedence over all personal laws and customary practices.

Economic, social and cultural rights:-The Government of India in its combined fourth and fifth periodic reports as well as in its replies to the list of issues and questions in relation to the combined reports has mentioned about health, employment, education and other programmes/measures concerning women. However, the actual status of these areas remain a matter of concern as follows:

- ❖ While there has been an appreciable gain in the overall sex ratio of 7 points from 933 in 2001 to 940 in 2011, the decline in child sex ratio (0-6 years) by 13 points from 927 in 2001 to 914 in 2011 is a matter of grave concern.
- ❖ India leads a group of high-burden countries with respect to one more health indicator – neonatal (0-27 days) deaths. The country, which had a neonatal mortality rate of 29 per 1,000 live births in 2012, recorded an average annual rate of reduction of just 2.6 % during 1990-2012.
- ❖ Gender equality cannot be achieved without economic empowerment. Therefore, the macroeconomic policy framework and economic structures must be tailored to ensure that women have equal access to and control over economic resources.
- ❖ Another limitation which hinders the ability of women to fully participate in the labor market is the unequal sharing between women and men of unpaid work, including care-giving. It is important to promote

practices that would redistribute unpaid work between women and men, including parental leave policies for both genders.

- ❖ There should be greater investment in infrastructure, such as energy, water and sanitation, childcare facilities and transportation systems, which would facilitate the participation of women in the labor market.
- ❖ Greater attention should be given to social protection measures such as unemployment insurance schemes, universal health coverage and social pensions, which have played critical roles in promoting gender equality and the empowerment of women.
- ❖ Measures such as cash transfers, the provision of cheap fertilizers, microcredit schemes, the establishment of women's cooperatives and the promotion of women's entrepreneurial activities, including through reservations and allotments for women's self-help groups, should be used to tackle women's poverty.
- ❖ Poverty alleviation programmes should focus on the rights and the empowerment of women.
- ❖ Closer attention must be paid to the critical role of holistic education and human rights education. While the school curriculum might vary between States, all States should adopt a uniform message on gender equality, conducting a thorough review of text-books, weeding out passages that perpetuate gender stereotypes, and instilling an enlightened and modern approach on gender issues in the minds of children.
- ❖ The education of the girl-child is crucial, in itself and as a catalyst of social and economic change. It is essential to meet national targets for improving girls' access to education at the primary level. Along with this, it is important to ensure secondary, senior secondary and university education for girls. There is need to bridge the gender gaps in enrolment ratios at all levels, especially for scheduled castes and scheduled tribes children. Dropout rates among girls need to be brought down. One of the factors responsible for high dropout rates among girls is the lack of toilet facilities in schools in many States. Other reason is also that girls have to walk long distance to reach schools. This is in spite of the fact that implementation of Sarva Shiksha Abhiyan has made lot of improvement in the availability of physical infrastructure relating to schools. However, lot more needs to be done.

Conclusion:-

As per Census of India 2011, women constitute 48.46 per cent of the total population. Hence, the importance of women as human resource in the overall development and progress of the country is without doubt. The Constitution of India has enshrined the principle of gender equality. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive intervention in favor of women. Within the framework of a democratic polity, the development policies, programmes and laws have been aimed at women's empowerment. In the Government of India, the Ministry of Women and Child Development (MWCD) is the nodal Ministry for all matters concerning women. At the state level there are similar Departments dealing with women issues. Protection of human rights defenders, especially women, is another area of concern.

The women in India are positioned at a receiving end primarily because they have remained ignorant of their fundamental civil and constitutional rights. Patriarchal system impinges on every sphere of a woman's life. In such a situation often a majority of them are forced to accept the traditional practices that are detrimental for both their and their children's development. Although women have acquired a level of financial and political autonomy and consciousness about their rights, yet they experience helplessness in bringing about basic changes for eliminating gender inequalities from the society. The idea of self-reliant independent women taking independent decisions of her life can be achieved only by educating women that will help them in achieving economic independence, as well as knowledge and awareness about their rights. Special emphasis must be provided in educating women on the legal and Human rights provided to them by the constitution. A well-known feminist writer Martha Nussbaum argued that the key to development of women is to provide them with the cover of justice. The women's organizations must try to empower women by changing the attitudes of the society towards the harmful traditional practices. One of the most vital tasks of the various women organizations and NGOs is to help women in rebuilding their lives and confidence. These goals can be achieved only if the women are adequately educated about their legal rights and are economically independent enough to take independent decisions of their own life.

Today, 50 years after the adoption of the Constitution, the time is appropriate to take stock. In assessing women's progress, one must also examine the interconnections between women's un-freedoms and several other factors. Social customs and attitudes, levels of literacy and health, patterns of economic growth, structures of private and public decision making, political commitment – all these combine to define the functional boundaries of freedom and choice, equality and exploitation in our society.

There has always been a discourse on women position in the historically of India and elsewhere, the global history has been one sided throughout its growth in terms of human rights. The history has always given a prime importance to man and his existence and never gave any chance to think of women rights. The state and human rights relations dominated the historical process without seeking any participation in the above concept for women. Lately, the concept of women rights has made its mark on the global horizon, and the globe has been endeavoring to protect women by protecting women rights. The modern states have done enormous efforts to empower women through legislations, Yet the clear concept of women might has not seen of the days. Despite laws to safeguard women rights, the rights are still continuously resolved at various levels, but my feeling deciphered after glossing over the rights history is that the human kind needs to be empowered in totality to be a boon for safe sustenance of women rights on continuous basis at state and global level. Thus in short, the Millennium Development Goal on gender equality and women's empowerment can be realized in India only when the traditional practices like female infanticide, dowry deaths, honor killings by khap panchayats, domestic violence, or sexual abuse is eliminated. It is only then that gender equality and women's empowerment can become a reality.

We are in 21st century; despite progress in direction of gender equality much is still required to be done. 'Will there be complete gender justice' is for future to answer. About a quarter century ago Robert Kennedy said,

'Some men see the things as they are and say why, I dream things that never were and say why not?'

If we think about gender equality there is no reason why we will not achieve it. And by God's grace – despite male chauvinism – we will.

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