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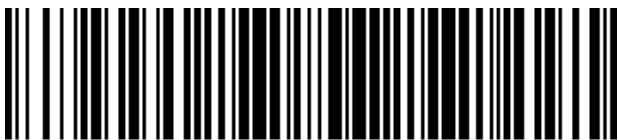
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Article 15(3): Civil Legislations and its Corresponding Execution

Ritika Saraf

INTRODUCTION

The evolution of humankind has taken a huge leap since its inception, from rigid conventional roles of men and women in an unstructured society to laying down new ideals based on equality in a democratic society, we have come a long way. The onus to meet these ideals of a developing society lies on the State. Accordingly, the Drafting Committee of the Indian Constitution enshrined various Articles to recognize equality, to curb any form of discrimination against women and bring both sexes at par. In one such attempt the Constitution under Article 15(3) gives power to the Central and the State Government to enact various legislations and take up initiatives to ensure equal rights, to effectively counter social discrimination, to curb violence and atrocities and to provide support services to working women.

Article 15(3) is rather known to be developed under the concept of Protective Discrimination or to be put more precisely, Protective Discrimination based on sex. It is mainly described as a policy, to uplift the weaker section of the society to bring a balance between the two. Protective discrimination can metaphorically be put forth as a pedestal for the section of the society that do not have the same opportunities, rights, powers, privileges as opposed to the ones who have them. One of the most prominent example amongst others of protective discrimination in India is the reservations provided to the SC, ST, OBC class in the fields of education and employment. On paper it seems to be an almost utopian society, that is to say, the legislative wing has passed laws in consonance with Article 15(3), but when it comes to the implementation of these laws, statistics depict otherwise. Thus, to analyze the same is the purpose of this paper, keeping in mind the scope is only extended to Civil Legislations.

Accordingly, some civil legislations that have special provisions to safeguard women and their interests in varied aspects which form the analyses for this paper are: -

1. The Protection of Women from Domestic Violence Act, 2005
2. Equal Remuneration Act, 1976
3. The Maternity Benefit Act, 1961

ANALYSIS OF LEGISLATIONS

● **THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005: -**

To begin with the nature of The Protection of Women from Domestic Violence Act, 2005 is civil so far as remedy and relief is concerned. Furthermore, the said act is very comprehensive in its nature which in turn gave rise to the Judiciary passing iconic judgements while interpreting the various sections as well as the situations that the courts came across. Thus, showing some improvement in the implementation of these laws but only to the extent wherein reports are logged, and legal remedy is sought. To state some: -

1. In *Ajay Kumar v. Lata Sharuti*ⁱ The Supreme Court under a two-judge bench of Hon'ble Justice Dr Dhananjaya Y. Chandrachud and Hon'ble Justice Hemant Gupta passed a judgement in accordance with the provision to section 2(q) of the said act, indicating that both, an aggrieved wife or a female living in a relationship in the nature of marriage may also file a complaint against a relative of the husband or the male partner as the case may be.
2. In *Binita Dass v. Uttam Kumar*ⁱⁱ The Delhi High Court under a single judge bench of Justice Sachdeva, passed an order dated 09/08/2019 that the Magistrate cannot deny interim maintenance to the wife only because she has earning capacity or is a qualified person.
3. In *Manju Sharma v. Vipin*ⁱⁱⁱ The Delhi High Court Judge Hon'ble Justice Sanjeev Sachdeva passed an order dated 01/07/2019 wherein the court enhanced the maintenance to be given to the wife when it found that the husband was not disclosing his true income where his annual turnover apparently was Rs. 1 crore. The interim maintenance was enhanced from Rs. 10,000 per month to Rs. 30,000 per month keeping in mind the requirements of the petitioner and her daughter.

● **EQUAL REMUNERATION ACT, 1976: -**

The roles of men and women in a society were predetermined, the general perception of women was only in relation to home and family. But as the society evolved equal opportunities to men and women were put in place through constitutional provisions and various legislations. Once equal opportunities are put in place the next step needed is equal remuneration for the same or similar work done without prejudice to sex.

In *Sita Devi and Others v State of Haryana and Others*^{iv} the learned judge held that the "doctrine of equal pay for equal work is recognized as a facet of the equality clause contained in Article 14 of the

Constitution.” Even if this doctrine does not have fundamental importance it is Constitutionally recognized as to be complying with the Directive Principles of State Policy under Article 39.

This act majorly lays down: - 1) Duties of the employer (u/s 4); 2) Restricts discrimination while recruitment of men and women workers (u/s 5); 3) Maintenance of a Registrar of all the employees and workers (u/s 8 read with s6). The Judiciary at the same time has upheld this doctrine by passing landmark judgements ensuring proper enforcement of the legislation, namely: -

1. In *Randhir Singh v. Union of India*^v The Hon’ble Supreme Court adopted a sociological ideology shifting its scope of interpretation from that of Strict to Liberal interpretation for the employees. The court, in this case, relied on “socialist’ as envisage in the Preamble to the Constitution in deciding the case, and it was held that the principle of equal pay for equal work was deducible from article 14 and 16 of the Constitution of India, may be properly applied to the cases of unequal scale of pay based on classification, though those drawing a different scale of pay do identical work under the same employer.” Here, the court observed that “equal pay for equal work” is deductible from Articles 14 & 16, understood in the light of the Preamble and Art. 39(d).

2. In *S. Nakara v. Union of India*^{vi} The Constitutional Bench affirmed the decision upheld by *Randhir Singh v. Union of India*. The court held that “having regard to the constitutional mandate of equality and inhibition against discrimination in Articles 14 and 16, in service jurisprudence, the doctrine of “equal pay for equal work” has assumed the status of a fundamental right.” Along with the various articles that are enshrined in the constitution by the drafting committee of the Indian constitution, various statutory provisions have been enacted to protect the interests of both sexes in a workplace environment, to name a few: -

1. The Workmen Compensation Act
2. Payment of Wages Act
3. Factories Act
4. Minimum Wages Act

● **THE MATERNITY BENEFIT ACT, 1961: -**

The Maternity Benefit Act, 1961 protects the employment of women during the time of maternity and entitles them to a full paid absence from work to take care for the child. The amendments in 2017 seeks to increase maternity leave period to 26 weeks in all establishments, including private sector. However, this increase in maternity leave does not apply to women with two or more surviving children. Such women will be entitled to 12 weeks of leave.

However, an important criticism to be noted under this act is that it covers women workers employed in factories, mines, plantations, shops and establishments with 10 or more employees, and any other establishments. This constitutes about 18 lakhs women workers. Note that about 90% of working women are in the unorganized sector and are not covered by the 1961 Act. In 2015, the Law Commission of India recommended that the provisions of the 1961 Act should cover all women, including women working in the unorganized sector. Women workers in the unorganized sector include agricultural laborer's, seasonal workers, domestic workers or construction workers. They often work in unstructured conditions, and may have multiple employers. Due to such employment conditions, they may not be able to prove eligibility under the 1961 Act such as continuous employment for a period of 80 days in the one year prior to the date of delivery.

A similar situation was decided in a Supreme Court decision in *Municipal Corp. of Delhi v. Female Workers*^{vii} wherein the Municipal Corporation of Delhi, appellant herein, used to grant maternity leave only to its regular female workers and not to the female workers on muster roll. Female workers of the latter category raised a demand for grant of maternity leave and the union concerned espoused their cause. The Corporation further contended that the benefits contemplated by the Maternity Benefit Act, 1961 could be extended only to work women in an industry and not to the muster-roll women employees of the Municipal Corporation. The SC held that, a woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labor as it would be detrimental to her health and to the health of the fetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. There is nothing contained in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on a casual basis or on muster roll on a daily-wage basis.

In another lauded decision the Bombay High Court delivered a judgement wherein, in case of birth by surrogacy the parents who have lent the ova and the sperm would be entitled to avail leave, i.e. in *Dr. Ms. Pooja Jignesh Doshi Vs the State of Maharashtra and another*^{viii} The petitioner chose the route of surrogacy and the surrogate mother gave birth to a baby girl on 5th November 2012. Petitioner sought maternity leave to take care of the surrogate child, which was denied by the respondent on the ground that the Leave Rules and the policy governing the Rules do not permit maternity leave for a surrogate child. To which the court held referring to the judgements of *Dr. Mrs. Hema Vijay Menon vs. State of Maharashtra*^{ix}, a Division Bench of this Court relying upon a decision of the Delhi High Court in the case of *Rama Pandey vs. Union of India*^x, held that even in case of birth by surrogacy the parents who have lent the ova and the sperm would be entitled to avail leave. The mother being

entitled to maternity leave and the father paternity leave. The Petitioner is held entitled to the relief sought for in terms of prayer clause [C]; being that the Earned Leave and Half- pay Leave availed of by her should be entered in the record as maternity leave for the purposes of the leave account and that the said leave availed by the Petitioner during various intervals be converted into maternity leave.

IMPLEMENTATION OF LEGISLATIONS

As through the above analysis we see that the Legislative as well as the Judicial wing have almost no lacunae when it comes to Civil Statutory Provisions devised under article 15(3). To further investigate where the actual issue persists, we must turn to the Executive wing, that is to analyze the implementation of these legislations and their interplay in the current societal situations. Which can be achieved with the help of Statistical information gathered that surround the issue of Protective Discrimination.

● DOMESTIC VIOLENCE RATES: -

The rates of Domestic violence in the country have ever so increased beginning from 2017 to 2019. The National Commission for Women in their annual survey for the year of 2017-2018 annual report^{xi} depict the rate to be as high as 5770 cases with highest number of atrocities to women to be in the state of Uttar Pradesh with 8454 cases. Over an analysis in their annual report the commission reveals that the largest number of complaints concern the right to live with dignity under which Domestic Violence, Harassment and Cruelty cases are included along with dowry harassment/cruelty to married women and police apathy. In the year 2018-2019, the National Commission for Women in their annual report^{xii} depicted the complaints for Protection of Women against Domestic Violence to be 462. Which again revealed that many complaints concern the right to live with dignity, dowry harassment/cruelty to married women and police apathy.

● WAGE GAP RATE: -

According to the annual report of the International Labor Organization for the year 2017-2018 women are paid the most unequally in India, compared to men, when it comes to hourly wages for labor. Overall real wages grew just 1.8% globally (136 countries) in 2017. The report stated that the gender wage gap is visible even with women with higher levels of education, the report advocated that “emphasis needs to be placed on ensuring equal pay for women and men”. Along with which it stated that the gender wage gap has remained unchanged at 20% from 2016 to 2017. In the year 2018-2019

according to the Global Wage Report 2018-2019 India ranks 108 in the World Economic Forum's gender gap index.^{xiii}

● **MATERNITY BENEFITS COMPLAINTS:** -

The National Commission for Women has been receiving several complaints from women all over the country to whom maternity leave or other benefits have been denied by their employers as per the provisions of the Maternity Benefit Act, 1961 as amended in 2017. Most of these women are employed on contractual, temporary, daily wage, informal as well as on ad-hoc basis in various Government and private organizations. Taking cognizance of such practices, the Chairperson, the National Commission for Women had a meeting with the Secretary, Ministry of Labor and Employment, Government of India. The complaints received by the Commission were, thereafter, forwarded to the Ministry of Labor and Employment. The Ministry of Labor and Employment issued suitable directions to the State/UT Labor Commissioners to effectively enforce the provisions of the Maternity Benefit (Amendment) Act, 2017 and take strict punitive action against defaulting employers. But no details of the number of complaints along with its success rates have not been posted in the annual report of 2017-2018. Whereas in the annual report of 2018-2019 a total of 26 complaints were stated to be registered under Denial of Maternity Benefits to Women.

CONCLUSION

Thus, in conclusion after an in-depth analysis of all the three wings i.e. Legislative, Executive and Judiciary we see that the laws developed under Article 15(3) are very much at par with the evolving society, the staggering statistics of the years 2017- 2018 and 2018-2019 depicts the problem at hand. Better implementation institutions and facilities must be developed to reduce these numbers. Apart from these civil legislations certain special initiatives have been taken up by the Central Government for Women under: -

1. The National Commission for Women
2. Reservation for Women in Local Self- Government
3. The National Plan of Action for the Girl Child (1991-2000)
4. National Policy for the Empowerment of Women, 2001

The statistical data denotes an extremely high rate of physical atrocities faced by women even in 2019, for which special measures must be taken immediately to curb such atrocities of violence based purely on sex. Thus, we see that Article 15(3) under The Constitution of India stands as a huge gateway to analyze these problems and take measures to diminish all forms of discrimination on the grounds of sex.

ⁱ Ajay Kumar v. Lata and Ors. AIR 2019 SC 2600

ⁱⁱ Binita Dass v. Uttam Kumar, 262 (2019) DLT368

ⁱⁱⁱ Manju Sharma v Vipin, SCC OnLine Del 8960

^{iv} Sita Devi & Ors v. State of Haryana & Ors, AIR 1996 SC 2764

^v Randhir Singh v. Union of India & Ors, AIR 1982 SC 879

^{vi} D.S Nakara v. Union of India, AIR 1983 SC 130

^{vii} Municipal Corporation of Delhi v. Female Workers (Muster Roll) & Ors, AIR 2000 SC 1274

^{viii} Pooja Jignesh Doshi v. State of Maharashtra, 2019 SCC OnLine Bom 1433

^{ix} Hema Vijay Menon v. State of Maharashtra, 2015 SCC OnLine Bom 6127

^x Rama Pandey v. Union of India, 2015 SCC OnLine Del 10484

^{xi} http://ncw.nic.in/sites/default/files/ANNUALREPORT2017_18.pdf

^{xii} <http://ncw.nic.in/sites/default/files/FINAL%20NCW%20ENGLISH%20ANNUAL%20REPORT%202018>

^{xiii} https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_650553.pdf