

ROLE OF LAW IN EMPOWERMENT OF WOMEN IN INDIA

Dr.Vikram Singh*

ABSTRACT

“Just as a bird could not fly with one wing only, a nation would not march forward if the women are left behind”.

-Swami Vivekananda

Women empowerment is a debatable subject. At earlier time they were getting equal status with men. But they had faced difficulties during post-vedic and epic ages. From early twenty century their status has been changed slowly and gradually. Today we have seen the women occupied the respectable positions in all walks of the fields. Yet, they have not absolutely free from discrimination and harassment of the society. In India, women Empowerment is a buzz word today. The Indian Constitution guarantees that there shall be no discrimination on the grounds of gender. There are various legal provisions for women safety and empowerment in Indian Constitution but the irony is half of the population is unaware of their legal rights. The verdict given by higher judiciary in various appeals and PIL relating to women will also be reviewed to evaluate the attitude and approach of judiciary towards women. There is abundance of legislations and legislative provisions favouring or protecting women. Almost every issue is addressed by these provisions but the biggest problem is the awareness of these provisions among the women.

The aim and object of this paper is to explore the existing provision of the constitution and various women specific and women related legislations, their state of implementation and impact on women empowerment.

In nutshell this research paper attempts to investigate the laws as well as judgements delivered by various courts to protect, safeguard and empower women; so as to suggest reasonable measures to strengthen the process of empowerment of women.

KEY WORDS Women Empowerment, Indian Constitution, Women rights, Legal Provisions, Judicial approach.

*Assistant Professor, School of Law, Maharaja Agrasen University, Vill.Kalujhanda, Teh. Baddi, Distt. Solan. (H.P). Pin:174103.

I INTRODUCTION

Empowerment is multi-faced, multi-dimensional and multi-layered concept. As such, it is not this and that but is the action and interaction of various factors-physical, socioeconomic, political, mental, psychological and attitudinal and so on. Women empowerment could be described as a process in which women gain greater share on control over resources like money and control over decision making at home, community, society and nation, and to gain power.¹

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 favour of women. Within the framework of a democratic polity, our laws, development policies, plans and programmes have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instrument committing to secure equal rights of women. In recent years the empowerment of women has been recognised as the central issue in determining the status of women. The women's movement and a widespread network of non-government organizations which have strong grass-root presence and deep insight into women's concerns have contributed in inspiring initiatives for the empowerment of women.²

However, there still exists a wide gap between the goals enunciated in the Constitution, legislation, policies, plans, programmes and related mechanism on the one hand and the situational reality of the status of women in India, on the other.

II HISTORY OF WOMEN EMPOWERMENT IN INDIA

From the eighteenth century onwards, we have, besides Indian sources, western evidence on the condition of women. This century, in political terms, was a major break from the past with the decline of the Mughal Empire after the death of Aurangzeb in AD 1707. In the nineteenth century the position of women suffered in a big way with the share of education declining to almost nothing. Purdah was observed

¹Khanday, M.I. & others, Empowerment of Women In India- Historical Perspective, European Academic Research, Vol. II, Issue 11, Feb. 2015, p. 14494

²Nagnahalli, V.S., Education and Empowerment of Women in India, (2014), p. 82.

in the north, very widely among Hindus and Muslim of the higher classes, though it was not prevalent among the poor.³

Marriages for women were almost universal. Polygamy was confined to princes and men of high rank and among Kulin Brahmans in Bengal. Remarriage of widows was not common among the higher classes. Non-Brahman women in Maharashtra could remarry.⁴ Sati and selling into slavery of girl children and young women in times of distress was prevalent though they were, in general, treated kindly. Exceptional women, both among the Hindu and the Muslims, asserted themselves politically. Ahalya Bai of Indore was an exemplary ruler. The wife of Mushed Quli Khan, Dardana Begum, urged him to fight against Ali Verdi Khan when he invaded Orissa. Zebunissa Begum, wife of Nawab Shaja-ud-din, assisted her husband in administration.⁵

The Indian social reformers in the first half of nineteenth century had succeeded in opening a few schools for girls but the major impetus came from Christian women missionaries. Many of them started arriving in India from the 1840s. They joined as teachers in zanas, in an effort to convert women of well-to-do households into Christians.⁶ Mrs Sarojini Naidu was the leading light of the Civil Disobedience Movement. She was a powerful voice for Hindu-Muslim unity, intercaste marriage and women's education. The last phase of the national struggle for independence, launched during the Second World War, including the Quit India Movement, Subash Chandra Bose's cry for armed struggle through the Indian National Army, and the struggle of the Indian Communist Party, threw up many women leaders.⁷

They showed once and for all that the Indian woman was as capable of sacrifice as the men and could fight shoulder to shoulder with them.

III EMPOWERMENT OF WOMEN AFTER INDEPENDENCE

After independence of India, the constitution makers and the national leaders recognized the equal social position of women with men. The Hindu Marriage Act, 1955 has determined the age for marriage, provided for monogamy and guardianship of the mother and permitted the dissolution of marriage under specific circumstances.

³Majumder, R. C., History and Culture of Indian People-The Maratha Supremacy, Vol. VIII, (1951), p. 757.

⁴Ibid, p. 758

⁵Ibid.

⁶Forbes, G., Women in Modern India, The New Cambridge History of India, Vol. II, (1996), p. 37.

⁷Supra note 1, p. 14500

Under the Hindu Adoptions and Maintenance Act, 1956, an unmarried women, widow or divorce of sound mind can also take child in adoption. Similarly, the Dowry Prohibition Act of 1961 says that any person who gives, takes, or abets the giving or taking of dowry shall be punished with imprisonment, which may extend to six months or fine up to Rs.5000/ or with both. The Constitution of India guarantees equality of sexes and in fact grants special favour to women. These can be found in three articles of the constitution. Article 14 says that the government shall not deny to any person equality before law or equal protection of the law. Article 15 declares that government shall not discriminate against any citizen on the ground of sex. Article 15 (3) makes a special provision enabling the state to make affirmative discriminations in favour of women. Article 42 directs the state to make provision for ensuring just and human conditions of work and maternity relief. Above all, the constitution regards a fundamental duty on every citizen through Articles 15 (A), (E) to renounce the practices derogatory to the dignity of women.⁸

IV LAWS FOR WOMEN EMPOWERMENT IN INDIA

The Special Provisions in the Constitution of India designed to secure equality of sexes and non-discrimination are:

- Equality before law and equal protection of law. Article 14
- State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. And the state is permitted to make any provision for women and children. Article 15
- Equality of opportunity in public employment. Article 16
- Equal rights for men and women to adequate means of livelihood.Article 39(a)
- Humane conditions of work and maternity relief for women. Article 42
- To secure for all citizens a uniform civil code throughout the country.Article 44
- It is a constitutional duty of every citizen of India to renounce practices derogatory to the dignity of women. Article 51 A (e).
- Not less than one-third of the total number of seats to be filled by direct elections 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).

⁸Hazarika D., Women Empowerment in India: A Brief Discussion, International Journal of Educational Planning and Education, Vol.1 No.3, (2011), p. 200

- 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).
- Not less than one-third of the total number of seats to be filled by direct elections in every municipality to be reserved for women and such seats to be allotted by rotation to different constituencies of a municipality. Article 243 T (4)
- Reservation of the offices of Chairperson in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislation of a State may by law provide. Article 243 T (4)

Yet after half a century, considering the status of women in the Indian society, it has become necessary to emphasize the need for empowerment of women and awaken the society to the guarantees in the Constitution.

A. SPECIAL LAWS

Consistent with Constitutional Provisions as well as their spirit, the Government has also enacted specific laws for the protection of women and for the up gradation of their status.

a. Marriage Related Laws

•**Special Marriage Act, 1954**- Any girl of 18 years of age or boy of 21 years can take resort to this law irrespective of caste or religious considerations.

•**Hindu Marriage Act, 1955**- Marriage is deemed to be solemnised on the performance of certain rites, especially Saptapadhi; while first marriage subsists, second marriage is forbidden; right to judicial separation and divorce is made available on certain grounds like, for example, unsound of mind, conversion to a different religion, incurable or communicable diseases, etc.

•**Dowry Prohibition Act, 1961**- Giving, abetting or taking dowry is a cognizable, non-bailable offense against the state and is not punishable with less than five years of imprisonment and a fine of Rs. 15,000 or the amount representing the value of the dowry.

•**Hindu Adoption and Maintenance Act, 1955** -An unmarried women, a widow or a divorcee of sound mind can also take a child in adoption.

•**Prohibition of Child Marriage Act 2006** -To overcome the shortcomings of the Child Marriage Restraint Act, the Government of India enacted the Prohibition of Child Marriage Act 2006, which receives the assent of the president of India on 10 January, 2007. The Act came into effect from 1 November, 2007 to overcome the

constraints of the former legislation in effectively dealing with the problems of child marriage in India and to put in place a comprehensive mechanism.

b. Property Related Laws

- **The Hindu Succession Act, 1956**- It vests women with rights in the matter of inheritance as well as the alienation of property at par with males.
- **Equal Remuneration Act, 1976**- This Act is enacted for providing equal remuneration to men and women, thereby to prevent discrimination against women on the grounds of sex.

c. Violence Related Laws

- **Immoral Traffic (Prevention) Act, 1986** - This Act was adopted in India as a follow-up of the International Convention on Immoral Traffic, 1950. This Act underwent several changes and exists today as the Immoral Traffic (Prevention) Act 1986. This Act aims at the prohibition of illegal traffic for purpose of sexual exploitation or abuse. It lays out procedure for rescue of a women or girl.
- **Commission of Sati (Prevention) Act, 1987**- This Act provides for the prevention of the commission of sati and its glorification. The Act lays out extensive provisions to check attempts to commit abet or glorify sati. The collector or District Magistrate is empowered by Act to offences relating to Sati.
- **Protection of Women from Domestic Violence Act, 2005** - This Act of Parliament received the assent of the President on 13th Sep., 2005. The act provided for more effective protection of the rights of women guaranteed under the Constitution who are victims of any kind occurring within the family and for matters connected therewith or incidental thereto. Under the Act 2005, Domestic Violence covers any abuse or threat thereof that is physical, sexual, verbal, emotional or economic.
- **The Sexual Harassment of Women at Work Place (Prevention, Provision and Redressal) Act 2013**- It is an Act to provide protection against sexual harassment of women at work place and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.
- **Criminal Law (Amendment) Act, 2013**

This amendment focuses on protection of women from sexual offences, acid attacks, voyeurism, stalking etc. and enhance the punishment up to death penalty in rarest of rare case.

d. Health Related Law:

- **The Maternity Benefit (Amendment) Act, 2017-** Under this amendment Act maternity leave available to the working women to be increased from 12 weeks to 26 weeks for first two children. Maternity leave for children beyond the first two will continue to be 12 weeks. Every establishment with more than 50 employees to provide for crèche facilities for working mothers and such mothers will be permitted to make four visits during the working hours to look after and feed the child.

V INTERNATIONAL COMMITMENTS OF INDIA FOR EMPOWERMENT OF WOMEN

India is a part to various International conventions and treaties which are committed to secure equal rights of women. One of the most important among them is the Convention on Elimination of All Forms of Discrimination against Women (CEDAW), ratified by India in 1993.

Other important International instruments for women empowerment are: The Mexico Plan of Action (1975), the Nairobi Forward Looking Strategies (1985), the Beijing Declaration as well as the Platform for Action (1995) and the Outcome Document adopted by the UNGA Session on Gender Equality and Development & Peace for the 21st century, titled “Further actions and initiatives to implement the Beijing Declaration and the Platform for Action”. All these have been wholeheartedly endorsed by India for appropriate follow up.

These various national and International commitments, laws and policies notwithstanding women’s situation on the ground have still not improved satisfactorily. Varied problems related to women are still subsisting; female infanticide is growing, dowry is still prevalent, domestic violence against women is practised; sexual harassment at workplace and other heinous sex crimes against women are on the rise.

Though, economic and social condition of women has improved in a significant way but the change is especially visible only in metro cities or in urban areas; the situation is not much improved in semi-urban areas and villages. This

disparity is due to lack of education and job opportunities and negative mind set of the society which does not approve girls' education even in 21st century.

VI ROLE OF JUDICIARY IN WOMEN EMPOWERMENT

The legislations alone cannot make justice available to citizens in society. Seeking equality in an unequal society is a task demanding concerted action on the part of the individuals, the community, government and the judiciary on a continuing basis. This is what women as a class must realize in their struggle for equal justice in the democratic republic of India. The Indian Courts have played a significant role during the last five decades with the support of the liberal provision of the Constitution, with the aid of a series of pro-women international human rights instruments and an increasingly assertive women's movement within and outside the country. Despite of plethora of legislations due to ineffective enforcement, women are exploited by the male dominant society. Male dominant society has always found the ways to circumvent the provisions of the Act and act as a blockade against the women empowerment. Due to failure of legislations to protect the women the judiciary has come forward to protect women. The judiciary by its landmark judgments had filled up the gap created by the legislative machinery. The judiciary has extended helping hand to women when the legislature had denied it and enabled their political and social empowerment in the society.

In *Bombay Labour Union v. International Franchises Pvt. Ltd.*⁹, the Supreme Court has declared unconstitutional the clause in the regulation of the Corporation which required that unmarried women were to give up service on marriage. In *Uttarakhand Mahila Kalyan Parishad v. State of Uttar Pradesh*¹⁰ the Apex court, very positively allowed the writ in favour of lady teachers and female officials, where they demanded equal remuneration as their male counterparts for the similar work carried out by them.

In *Maya Devi v. State of Maharashtra*¹¹, where the requirement of husband's consent for wife's application for public employment was struck down as an anachronistic obstacle to woman's equality and economic justice, reflects this approach. In *B. Shah v. Presiding Officer*¹², labour court, the Supreme Court pointed out that, "Performance of the biological role of childbearing necessarily involves

⁹AIR 1966 SC 942

¹⁰AIR 1992 SC 1695

¹¹1986) 1 SCR 743

¹²1978 AIR 12, 1978 SCR (1) 701

withdrawal of a woman from the workforce for some period and she cannot work for her medical expenses also. In order to enable the woman worker to subsist during this period and to preserve her health, the law makes a provision for maternity benefit so that the women can play both her productive and reproductive roles efficiently”.

In *State of Punjab v. Gurmit Singh*¹³, the Supreme Court has advised the lower judiciary, that even if the victim girl is shown to be habituated to sex, the Court should not describe her to be of loose character. In *Vishakha Vs State of Rajasthan*¹⁴ has applied its latent and most cogent weapon and laid down certain guidelines to protect women against sexual harassment at work place in consonance with international conventions and declarations (CEDAW-1979 and Beijing Declaration for protection of women at work place against sexual harassment). In *Delhi Domestic Working Women's Forum v. Union of India*¹⁵, the Supreme Court suggested the formulation of a segment for awarding compensation to rape victims at the time of convicting the person found guilty of rape. The Court suggested that the Criminal Injuries Compensation Board or the Court should award compensation to the victims by taking into account, the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape.

The Supreme Court in *Sakshi vs. Union of India*¹⁶ had recognized the inadequacies in the law relating to rape and had suggested that the legislature should bring about the required changes and based on these recommendations Criminal Amendment Act, 2013 has been passed that came into force on February 3, 2013. And recently on September 13, 2013 the four convicts in the December 16, 2012, Delhi gang-rape case were awarded death penalty by a Delhi Court and said the gravity of the offence cannot be tolerated, thus playing a deterrent role in the society.¹⁷

The role of the judiciary is not confined to the interpreter but it also worked in the direction of social welfare. In *Cehat and Ors. Vs Union of India*¹⁸, the Supreme Court of India played such role and monitored the implementation of the Pre Natal Diagnostic Techniques Act and issued several beneficial directives. This petition put the issue of sex selection and sex selective abortion on fore front and as a

¹³1996 SCC (2) 384

¹⁴AIR 1997 SC 3011

¹⁵(1995) 1 SCC 14

¹⁶AIR 2004 SC 3566

¹⁷The Times of India, September 13, 2013

¹⁸(2003) 8 SCC 412.

consequence many activities have been taken up by the government and non-governmental agencies on this issue.

VII CONCLUDING REMARKS

It is true that judiciary cannot step into the legislature's shoes but it can "certainly go beyond mere legality insulating women against injustice suffered due to biological and sociological factors." The legislations, which take care of rights and privileges of women, are numerous in number. But due to ignorance and illiteracy those legislations cannot be properly enforced. The plethora of Indian Legislations aims at women empowerment. The judicial decision rendered by the Indian courts depicts the active role played by the judiciary to protect women from exploitation at a stage where legislations are uniformed due to lack of adequacy of enforcement machinery.

"The judge infuses life and blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society, "was rightly said by Justice P.N. Bhagwati. Thus both the legislative and judicial initiatives have placed the women in a better place in the society. Yet the woman in India has to go for miles to achieve cent per cent empowerment.

The need of the time is to educate and sensitize male members of the society regarding women issues and try to inculcate a feeling of togetherness and equality among them so that they would stop their discriminatory practices towards the fairer sex. For this to happen apart from Government, the efforts are needed from various NGOs and from enlightened citizens of the country. And first of all efforts should begin from our homes where we must empower female members of our family by providing them equal opportunities of education, health, nutrition and decision making without any discrimination.

Because India can become a powerful nation only if it truly empowers its women.