

EMPOWRING WOMEN AND GIRLS FOR SHARED PROSPERITY: A CRITICAL ANALYSIS OF LEGISLATIVE FRAMEWORK OF INDIA

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“The empowered woman is powerful beyond measure and beautiful beyond description”. Steve Maraboli

Abstract

In today’s scenario of India empowerment of women has become one of the most important concerns of 21 st century. The concept of equality required equity. When we look deep down on the history ‘women was the first human being that tasted bondage. Women were a slave before slavery exists.’ From centuries, societies in the world over have been trying to fly on only one wing, denying women to their rightful place. When we go on look theory part related to women there was so much done for the women, but if this was the fact then why women’s still struggling to find her social status and respectable place in the society. Whether the term women empowerment is practical or still is in illusion? This paper neither favoring feminism or nor critiquing the laws and amendment done regarding women. The paper attempts to analysis the variables that include geographical, social, educational and age and further analyze the policies of women empowerment that exist at the national, state and local levels in various sector including health, education, economic, gender based violence and political participations and try to find out the key gaps between the policy advancements and actual practice at the grass root level. The paper shall also analyze the role of judiciary to empower the women specifically with current spate of women centric reform in India and the best practice adopted at the International scenario so as to recommend and come out with suggestion in means of concluding remarks.

Key Words: *Women Empowerment; Gender Equality.*

Introduction

Indian society which had undergone a drastic change since the Vedic ages and when we compare Indian culture to other cultures, we realize that Indian culture worship women as Laxmi Maa- Goodness of women, Saraswati maa- wisdom, Dura Maa- power and strength etc. Indian values, nationalism and culture heritage were glorified through the symbolic of ‘Mother India’. Now a days this will limit to Vedas and purans only crime against women are increasing day by day. The empowerment of women in practical reality is debatable issue in all over India and India is not exception to that. Over a past few years the status of women undergoing lot a positive and negative changes. Drawing the strength from the constitutional commitments, the Government of India has been engaged in the continuous endeavor of concretely translating all the rights, commitments and safe guards incorporated in the Indian Constitution for women from de jure to de facto status.

‘Empowering Of Women’: Meaning

‘Empowering of women’ implies the ability in women to take decision with regards to their life and work and giving equal rights to them in all sphere like: personal, social, economic, political, right and so on. We are living in an age of women empowerment where women are working shoulder to shoulder with men. A woman also manages to balance between their commitment to their professional as well as their home and family. They are playing multiple roles at homes as a mother, daughter, sister and wife and at working places as professionals with remarkable simplicity and complexity. [1]

According to United Nations [2], A women empowerment mainly has five components-

- Generating women sense of self-worth
- Women right to have and determine their choice
- Women right to have access to equal opportunities and all kind of resources.
- Women right to have a power to regulates and control their lives, within and outside the home.
- Women ability to contribute in creating a more just social and economic order.

Thus, women empowerment is nothing but reorganization of women basic rights and creating an environment where they are treated equal as men and the expansion in people’s ability to make strategic life choice in a context where this ability previously denied to them[3]

Historical Perspective

From history to present 21th century women condition not remain the static. Socially, economically, politically it goes on changing. In ancient time women was treated equal to men. In Vedic period they are very educated and they are reference as Maitrayi in some of ancient texts. Not after the famous treaty of Manu that is Manuscript the status of women relegated subordinate so as men is concern.[4] Empowerment occurs within sociological, psychological and economical sphere and at various levels such as individual, group and community and challenges our assumptions about the status quo asymmetrical power relationship and social dynamics.[5] After that period all discretionary practices was performed against the women like child marriage, Sati, Devadashipratha etc and the social position of women curtailed.

During the medieval period the condition of women got worsened with the advent of Muslim rules & during the British regime. But rule also brought western ideas into country.[6] The patrician mindset of the medieval Indian society can be understood from the couplets of the famous Hindi poet Tulsidas who describes the status of women, in his writing, ‘dhor, gangwar, shudra aur nari, ye sab taadan ke adhikari’ which means animals, illiterate, untouchables and females deserves to be punished.[7]

Period where the India fought for the Independence, Indian congress supported the first women delegation which met the secretary of state demand women politician rights in 1917, The Child Marriage Restrain Act in 1929 was passed due to effort of Mohammad Ali jinha; Mahatma Gandhi called upon the

¹ Women Empowerment and Constitutional Provisions, by Anjali2150 www.legalserviceindia.com (visited on 20 Feb, 2021)

²<http://www.yourarticlelibrary.com/essay-on-women-empowerment-in-india/31317> (Visited on 20 Feb, 2021)

³ Kabeer, Naila “reflection on the measurement of women empowerment” in discussing Women’s Empowerment-Theory and practice side studies No.3. Noveum Grafiska AB: Stooekhoim 2001

⁴ NamitSrivatsva <http://www.indiacelebrating.com/social-issues/women-empowermnet> (Visited on 20 Feb, 2021)

⁵ Sharma Sheetal, "Empowerment of women and property, right key to rural development", Kurukeshetra, 54, NO.8, p.14, June2006

⁶ Anita Fabiyoyal <http://www.imrfjournals.in/pdf/MATHS/HRIRJ-NEW-JOURNAL/HRIRJ-31/75.PDF> (Visited on 20 Feb, 2021)

⁷ Sukhdeo Thorat, “Hindu Social System and Human Rights of Dlits”, critical Quest pub.2004

young men to marry the child widows and urged people to boycott the child marriage.[8]

International Commitments and Conventions

India has ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993. India has ratified the convention with two declaratory statements and one reservation. Both the declarations relate to marriage. We have declared that the provisions on marriage and family relations in its Article 16(1) would be ensured in conformity with our policy of non-interference in the personal affairs of any community without its initiative and consent and that while agreeing to the principle of compulsory registration of marriages, failure to get the marriage registered at the same time will not invalidate the marriage. We did not agree to Article 29(1) of the Convention, which establishes compulsory arbitration or adjudication by the International Court of Justice of disputes concerning interpretation. 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" have been unreservedly endorsed by India for appropriate follow up. The Beijing Platform for Action lays down critical areas of concern for the women, which are listed in the box. The commitments made in the international conventions are as far as possible reflected in the Plan documents and the National Policy for the Empowerment of Women. Millennium Development Goals (MDGs) have been established in the Millennium Declaration at the General Assembly of the United Nations in the year 2000. These include promoting gender equality and empowerment of women and improving maternal health. Though only these two are explicitly gender specific, gender equality is at the core of achievement of MDGs – from improving health and fighting disease, to reducing poverty and mitigating hunger, to expanding education and lowering child mortality, to increasing access to safe water, and to ensuring environmental sustainability.[9]

Constitutional Privileges to Women

The constitution of India not only grants the gender equality but also grants some of the privileges to the women. Within the framework of democratic policy, our laws, development policies, planes and programs have aimed at women advancement in different sphere. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the convention of CEDAW in 1993. [10]

Fundamental Rights [11]- Article 14- the state shall not deny to any person equality before law and equal protection so laws within the territory of India, and prohibits any discrimination on the basis of sex. Article 15(3) - the state is empowered to make any special provisions for women. Article 16(2)- no citizen shall be discriminates against or be ineligible for any employment or office under the state on the ground of sex

Directive principle of state policy [12]- Article 39(d) - the state to direct an equal pay for equal work both men and women. Article 39(A) - to promote justice on the basic of equal opportunities and to

⁸ JUDICIAL PRESEPECTIVE OF WOMEN EMPOWERMNET, by Saroj Chhbhra <http://www.ijlljjs.in/wp-content-upload/2015/08/7-Reserchpaperpdf> (Visited on 20 Feb, 2021)

⁹ Report of the working group on Empowerment of women for the XIplan ministry of women and child development Government of India

¹⁰ Social legal perspective and women empowerment in India, by Tauffiqu Ahamad, International Journal of Academic Research and Development, volume 1: issue 1: January 2016: p.no-45-51

¹¹ Part III of Indian Constitution (Article 12-35)

¹² Part IV of Indian Constitution (Article 36-51)

provide free legal aid by sustainable legislation to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Article 42- the state make provisions for securing just and human conditions of work and for maternity relief. Article 46- the state to promote with special care the education and economic interest of the weaker sections of the people and to promote them from social injustice and all forms of the exploitations. Article 47- the state to raise the level of nutrition and standard of living of the people.

Fundamental Duties [13] - Article 51A e – to promote harmony sand the spirit of brotherhood amongst all the people of India and to renounce practice derogatory to the dignity of the women.

73rd and 74th Amendment of Constitution of India[14] - Article 243 D 3- not less than one third of the total number of seats to be filed by the direct election in every panchayats to be reserved for women and such seats to be allotted by rotation to different constitutes in panchayats. Article 243D (4) - not less than one third of the total number of offices of chairperson in the panchayats at each level to be reserved for women Article 243T (3) - not less than one third of the total number of the 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 constitutes in municipality. Article 243T(4)- reservation of offices of chairperson in municipalities for the schedules casts the schedules tribes and women in such manner as the legislation of state may be law provide. Although constitutionally the women has been empowered with equal opportunity but it is still at a nascent stage because at the grass root level the women are only for the name sake as it is dominated by male in decision making¹⁵ and are highly exploited.

Government Initiatives for Women

National Commission for Women [16]- in January 1992, the government set-ups the statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguard provided for women, review the existing legislation to suggest amendment whatever necessary etc.

Reservation for Women in Local self Government [17]- the 73th constitutional amendment acts passes 1992 by parliament ensure one third of the total status for women in all elected officers in local bodies whether in rural areas or urban areas.

The National Plan of Action for the Girl Child (1991-2000) 18– the law of action I to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child

National policy for the Empowerment of Women, 2001[19]- the Department of Women And Child Development in the ministry of Human Development has prepared a National Policy for the empowerment of Women in the year 2001. The goal of the policy is to bring about the advancement development and empowerment of women.

¹³ Part IVA of Indian Constitution (Article 51A0, added by 42nd amendment in 1976 upon recommendation of Swara Singh Committee

¹⁴ 73rd and 74th Amendment of Indian Constitution came into operation on 24th April 1993

¹⁵ NFHS-3 Survey on Women Decision Making Power shows that only one-third of women interviewed took part in decision on house old issues and health; http://rchiips.org/nfhs/a_subject_report_gender_for_website.pdf (Visited on 20 Feb, 2021)

¹⁶ National Commission for Women, Indian Commission of Government of India, www.ncw.nic.in (Visited on 20 Feb, 2021)

¹⁷ 73rd and 74th Amendment of Indian Constitution came into operation on 24th April 1993

¹⁸ THE NATIONAL PLAN OF ACTION FOR THE GIRL CHILD (1991-2000), Ministry of Women and Child Development, Government of India www.wdc.nic.in (19Feb, 2021)

¹⁹ NATIONAL POLICY FOR THE EMPOWERMENT OF WOMEN (2001) , Ministry of Women and Child Development, Government of India www.wdc.nic.in (visited on 19 Feb, 2021)

National Policy for Women, 2016^[20] - to create an effective framework to enable the process of developing policies, programmes' and practices which all ensure equal rights and opportunities for women in the family, community, workplace and in governance.

Various other Women Empowerment Schemes- the various empowerment schemes introduced by the government of India time to time to secure the women from all the social evils, all these schemes are like helping hand throughout her life. These schemes are as follows:

- Beti Bacho Beti Padho Scheme
- One Stop Centre Scheme
- Women helpline Scheme
- UJJAWALA Scheme for prevention of trafficking and rescue victims
- Working Women Hostel
- Ministry approves new projects under Ujjawala scheme and continuous existing projects
- SWADHAR Grah – a scheme for women who are in difficult circumstance
- Support to training and employment programmes' for women (STEP)
- Nari Shakti Puraskar
- Awardees of Stree Shakti Puruskar, 2014
- Awardees of Nari Shakti Puruskar, 2014
- Awardees of Rajya Mahila Samman and Zila Mahila Samman
- Mahila Police Volunteers
- Mahila Shakti Kendras (MSK)
- NIRBHAYA

Growth of Indian Legislation Related To Safeguard Of Women

Though a large number of women related legislation are in place, it is seen that the efficacy of these laws are not satisfactory primarily on account of poor implementation. A major reason for this is the lack of adequate knowledge regarding these special legislations and also absence of gender sensitivity on part of the functionaries such as law enforcement, police, prosecution, medical profession, judiciary etc. The eleventh plan needs to give a very high priority to training and capacity building of these stakeholders not only to educate them about the nuances of the laws but also to inculcate gender sensitivity in the system. The women themselves too need to be made aware of the special legislations that are available for their protection and rights. For this purpose, awareness generation and dissemination of information on a sustained basis will need to be taken up with special modules based on the region and group targets.

- **Indian Penal code, 1860-** IPC defines various provisions of crime against women such as Rape- section 376, Kidnapping and abduction for different purpose-Section 363 to 373, Homicide for Dowry, Dowry Death or attempts- Section 302/304, Torture, both mental and physical- Section 498A, Molestation- Section 509, Sexual Harassment- Section 509, Importation of girl- Section 366 B of IPC.
- **Code of Criminal Procedure Code, 1973-** has certain safeguard for women like obligation of a person to maintain his wife, arrest women by female police etc.
- **Dowry Prohibition Act, 1961-** prohibits the giving or taking of dowry at or before or any time after the marriage.
- **Commission of Sati Act, 1987-** provides for more effective prevention of commission of sati and its glorification on women.
- **Indecent representation of Women (prohibition) Act, 1986 -** prohibits indecent representation of women through advertisement or in publication, writing, paintings, or may other manner.
- **Immoral Traffic (prevention) Act, 1956-** it prevents trafficking in women and girl for the purpose of prostitution.

²⁰ NATIONAL POLICY FOR WOMEN (2016) , Ministry of Women and Child Development, Government of India www.wcd.nic.in (visited on 19 Feb, 2021)

Recent Developments

Social evils like child marriages, dowry, rape, practice of Sati and witch hunting etc. The recently notified Prevention of Domestic Violence Act is a landmark law in acting as a deterrent as well as providing legal recourse to the women who are victims of any form of domestic violence. Apart from these, there are a number of laws which may not be gender specific but still have ramifications on women.

Criminal Law Amendment Act, 2013[21], they insert new sections in the IPC with regard to sexual offence. Some of the new offences recognized as stalking, acid attack, disrobing etc.

Sexual Harassment of Women at Workplace Act, 2013[22], this was the first legislation adopted by India who deals with the issues of workplace sexual harassment, prevention, prohibition and redress able.

Maternity Benefits (Amendment) Act, 2017[23], this year experience on of the bold amendment by amending Maternity Benefits Act, 1961 The act provide adoption of child, maternity leave right o take leave before and after pregnancy.

Decriminalizing of Adultery [24]- on September 27, 2018 a five bench judge struck down another colonial era law, section 497 of IPC that prescribed a maximum imprisonment of five years to men. That 157 years old law struck down by judiciary.

Triple Talaq[25]-it is Islamic practice that allows men to divorce their wife by uttering word talaq three times. After much argument, discussion practicing such practice was against the human value and the sane need to be quashed.

Sabrimala issue [26]- the Supreme Court on September 28, 2019 delivered an awaiting judgment in this case. Justice Nariman held that the customs and usages of sabrimala temple must yield to the fundamental right of women to workshop in the temple.

The Prevention of Witch (Dayan) Practices Act, 1999 (Bihar):- In India Bihar is the first state that enacted the law against such evil and inhuman practices. This Act has only 8 Sections which deal with witch craft in Bihar.

The Prevention of Witch (Daain) Practise Act, 2001 (Jharkhand):-Similar to the Prevention of Witch (Daain) Practices Act, 1999 oThf Bihar government, in 2001 Jharkhand government also enacted similar law to prevent witch hunting.

The Chhattisgarh Tonahi Pratadna Nirvana Act, 2005: - On 30th September 2005 Chhattisgarh government enacted anti witch hunting laws. This Act has 16 Sections.

The Orissa Prevention of Witch – Hunting Act, 2013:- State of Odisha also enacted anti witch hunting law in 2013. Although it is similar to other states but in it various other provisions defined which is not in other laws.

Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 :- On 20 December, 2013 Maharashtra Government pass the Act, 2013 to stop evil and inhuman practice in the state of Maharashtra

Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Bill, 2017:- Karnataka State Government passes, ‘The Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017’ to control witch hunting practices in the state of Karnataka.

Role of Indian Judiciary

Gender justice is not only problem there at India but all over the world. We have seen the constitutional protection, legislature safeguard but still we can't ignore the fact that women still treated badly in society.

²¹ The Criminal Law Amendment Act, 2013 came into force February3,2013

²² The Sexual Harassment of Women at Workplace Act, 2013 came into force at 9 December 2013

²³ The Ministry of Labor and Employment, Government of India notified on 31 March 2017 a Maternity Benefit Act, 2017

²⁴ Joseph Shine vs. Union of India, 2018 SCC On Line SC 1676

²⁵ Shayra Bano and others vs. Union Of India, (2017) 9 SCC 1

²⁶ Indian Young Lawyers Association vs. State of Kerala, WP © 373/2006

Women are victims of ill-treatment from long back history. Judiciary has performed well to active the goal of women justice and women empowerment.

According to analytical jurisprudence a court merely found the law or merely interprets the law. Judges are applying the disciplinary power to provide better justice to women in the new context of the socio economic conditions. Judiciary has played an active role in enforcing and strengthens the constitutional goals towards protection rights of the land.[27]

The Supreme Court in *Muthamma vs. Union of India* [28] and *Air India vs. Nargesh Mirza* [29] struck down discriminatory service conditions female employers to obtain government permission before marriage and denying married and pregnant women the right to be employed.

Vishaka vs. State of Rajasthan [30], Bhanwari Devi, a social worker from Rajasthan was brutally gang raped by five men for preventing a child marriage. Determine to seek justice; she decided to go on the court. In a shocking decision, the trial court acquitted to all five accused. Vishaka, a group of women education and research, took up the cause of victim. They joined the forcer with four other organizations, and filed the petition before the supreme court of India on the issue of sexual harassment at workplace. The court take into consideration all the fact and circumstance and give the guideline which is of the great step at the time of 1977, and that guideline followed further for safe working environment for women.

Mary Roy vs. State of Kerala [31], Women from Syrian christen community in Kerala were prevented from inhering property due to patriarchal tradition. The decree was challenged by the Mary a women right activist and educator. She filed the case against her brother, who denied giving equal share in father property. In 1986, the Supreme Court delivered a landmark judgment that grants of women the right to seek an equal share in their father property.

Centre for enquiry into health and Allied Themes vs. Union of India [32], with the advent of pre natal diagnostic that could determine the sex of fetus, the growing trend of aborting girl fetuses was observed. The government issue PNDT Act, 1996. However the government not properly implements this act. The petition was filed to challenge this act; the court held that all advertisement relating to pre-natal sex determination should be banned with that government need to enact provisions of the existing act.

Laxmi vs. Union Of India [33], In 2006 Laxmi an acid attack victim filed the petition seeking measures to regulates the sale of acid and provide the adequate compensation to victims. Taking into consideration the high number of acid attack cases Supreme Court imposed stringent regulations of the sale of acid in 2013.

Tula Devi and others v. State of Jharkhand

In this case, about 10 people armed with sticks entered the house of the complainant and abused and assaulted her. They used to call her and address her as Dayan for the last 2 years and threatened her to leave the place. Her husband tried to rescue her but he was also assaulted. This caused the women mental agony. Some partition suit was also going on and the woman was accused of being a witch to put pressure on them. However, the case was dismissed on the ground of lack of eye witness.

Moyna Murmu v. State of W.B

In this case, the High Court of Calcutta passed a slew of directions to enable the State to combat the evil of witch-hunting. It also directed that the victims be provided assistance through the Legal Services Authority as aggrieved persons who are entitled to legal aid under [The Legal Services Authorities Act, 1987](#). It also directed the State Government to formulate a Comprehensive Victim Compensation Scheme under [Section 357A](#) of the Code of Criminal Procedure for victims of witch hunting.

²⁷ Trishala A, Laxmi T and Rajeskumar S, "physicochemical profile of acacia catechu bark extract- An In Vitro Study," International Research Journal Of Multidisciplinary Science and Technology, Volume No.3, Issue No. 4, p-no 26-30, April 2018.

²⁸ *Muthamma vs. Union of India* (1979) 4 SCC 260

²⁹ *Air India vs. Nargesh Mirza* AIR 1981 SC 1829

³⁰ *Vishaka vs. Sate of Rajasthan* (1997) 6 SCC 241

³¹ *Mary Roy vs. State of Kerala* 1986 AIR 1011

³² *Centre for enquiry into health and Allied Themes vs. Union of India* Writ petition civil) 201 of 2000

³³ *Lama vs. Union Of India* WP (crl) No.129 of 2006

Suggestions and Recommendations to Achieve Women Empowerment

1. With technological advancement, there has been incidence of frauds. Misuse of information uploaded on the cyberspace and hence there is need to developing protective measures for citizens keeping in view that victims of such frauds are largely women.
2. Judiciary and local authorities need to be more vigilant in protecting the rights of women. The existing legislation affecting relating to women will be reviewed to enhance their effectiveness and additional legislation measures or amendment to be taken up based on the emerging needs.
3. Education plays the most crucial role in empowering women; education helps to develops both mental and psychological growth to stand for them. Action Plans for Women's Empowerment at national and State levels should be drawn up in consultation with civil society including women's groups, lawyers, activists, women's studies centers etc.
4. Give encouragement to women to develop the quality of entrepreneurship, so that gives attainable strength to women and remove gender inequality.
5. Certain existing laws have been amended and modifies according to need of time by creating penal sanction against certain type of behavior, which deprive or derogate the dignity of women.
6. State need to give much attention to nutrition and health of the women. And that too such programmers need to arrange at rural level to monthly checkup and take of health status. Policy should ensure women friendly accessible, free, comprehensive primary health care accessible to all, specially marginalized groups with full preventive, primitives and curative care.
7. Make efforts to render woman victims quick, speedy and effective justice true to its meaning. Place women as leaders and give them decision making roles. Provide training, sensitization and capacity building of Protection Officers, Service Providers, members of the judiciary, police, medical professionals, 135 counselors, lawyers, etc on the issue of domestic violence and the use of law (PWDVA and other criminal and civil laws) to redress the same.
8. The legal framework to ensure that wherever the reservation is granted to women they must have a fair decision making powers and mobility.

Conclusion

As we heard quote quoted by Ms. Leela Seth that “we all know that women are half the world and hold up half the sky but where are they when it comes to equality”. The concept of gender equality has roots in long back to history. To resolve the discussion on gender equality the concept women empowerment grows. The present condition of women depend upon and ancient time, British rule and social culture of India. Judiciary time to time playing an important role when the circumstances arise When we look into 21st century we can see women are doing great in each and every filed. Empowering women is to make them independent in all aspects from mind, thought, rights, decisions etc by leaving all the social and family limitations. It is also bring equality in the society for both male and female in all areas. Women empowerment is very necessary to make the bright future of the family, society and country. Still its long route to see its men is equal to women in society. It's not enough to enact a number of legislation, laws, regulation there is need to accomplished social, economic, educations, social status of women. Lastly we have a long way to go, but we will get there one day as “The moment we empower a woman, we empower our family.”