

Legal perspective and women empowerment in India

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Abstract

In modern era, women have held high chairs including that of the President, Prime Minister, Speaker of the Lok Sabha and Leader of the Opposition etc. During the intervention in policies and programmes of government, many holes are being found such as implementation barriers and misuse of laws. Indian women are marginalized in their access to education and healthcare. They are also influenced with exploring the intersection of gender, colour, caste, ethnicity, religion, marital status, and class as sources of discrimination in Indian society and workplaces. This paper aims to present the challenges face by women due to the discrimination of gender and other forms of identities, impacting on women's personal and professional lives and there will be no discussion about the reasons behind the problems downsizing the status of women, the focus will be only on their present socio-legal support for the empowerment.

Keywords: gender, women, equality, policies & programmes, discrimination, legal aspect, India

1. Introduction

Women are responsible for baring children, yet they are malnourished and in poor health. They are also overworked in the field and complete the all of the domestic work. Most Indian women are uneducated. Although the country's constitution says women have equal status to men, women are powerless and are mistreated inside and outside the home. India is a society where the male is greatly revered. Therefore women, especially the young girls, get very little respect and standing in this country. The women of the household are required to prepare the meal for the men, who eat most of the food. Only after the males are finished eating, the females can eat. Typically the leftover food is meager, considering the families are poor and have little to begin with. This creates a major problem with malnutrition, especially for pregnant or nursing women. Very few women seek medical care while pregnancy because it is considered as a temporary condition. This is one main reason of rise in India's maternal and infant mortality rates. Starting from birth, girls do not receive as much care and commitment from their parents and society in comparison with boys.

The status of women in India was inferior to men in the practical life. However, they had a higher status in scriptures. They are considered as the perfect home maker in the world. With their incomparable quality of calmness of their mind, they can easily handle even toughest situation. Indian women are completely devoted to their families. If equal opportunity and support of family is provided to women then they will be not less than man in any aspect. Certain are crimes are held against women just because they are considered weaker than man.

2. Empowerment of women in India: An overview

The concept of empowerment flows from the power. It is vesting where it does not exist or exist inadequately.

Empowerment of women would mean equipping women to be economically independent, self-reliant, have positive esteem to enable them to face any difficult situation and they should be able to participate in development activities. The empowered women should be able to participate in the process of decision making. In India, the Ministry of Human Resource Development (MHRD-1985) and the National Commission for Women (NCW) have been worked to safeguard the rights and legal entitlement of women. The 73rd & 74th Amendments (1993) to the constitution of India have provided some special powers to women that for reservation of seats (33%), whereas the report HRD as March 2002, shows that the legislatures with the highest percentage of women are, Sweden 42.7%, Denmark 38%, Finland 36% and Iceland 34.9%. In India 'The New Panchayati Raj' is the part of the effort to empower women at least at the village level. The government of India has ratified various international conventions and human rights instruments committing to secure equal rights to women. These are CEDAW (1993), the Mexico Plan of Action (1975), the Nairobi Forward Looking Strategies (1985), the Beijing Declaration as well as the platform for Action (1995) and other such instruments. The year of 2001 was observed as the year of women's empowerment. During the year, a landmark document has been adopted, 'the National Policy for the empowerment of women.' For the beneficiaries of the women, the government has been adopted different schemes and programs i.e. the National Credit Fund for Women (1993), Food and Nutrition Board (FNB), Information and Mass Education (IMF) etc. The most positive development last few years has been the growing involvement of women in the Panchayati Raj institutions. There are many elected women representatives at the village council level. At present all over India, there are total 20, 56, 882 laces Gaon panchayat members, out of this women members is 8, 38, 244 (40.48%), while total Anchalik

panchayat members is 1, 09, 324, out of this women members is 47, 455, (40.41%) and total Zila porisod members is 11, 708, out of this women members is 4, 923 (42.05%). At the central and state levels too women are progressively making a difference. Today we have seen women chief ministers, women president, different political parties leader, well establish businessmen etc. The most notable amongst these are Mrs. Pratibha Devi Singh Patil, Shila Dexit, Mayawati, Sonia Gandhi, Binda karat, Nazma Heptulla, Indira Nuye (pepsi-co), BJP leader Sushma Swaraj, railway minister Mamata Benarjee, 'Narmada Bachao Andolan' leader Medha Patekar, EX-prime minister Indira Gandhi etc.

3. Empowerment of Women: A Need

According to 2011 census, rate of literacy among men in India is found to be 82.14% whereas it is only 65.46% among women. Thus, increasing education among women is of very important in empowering them. It has also noticed that some of women are too weak to work. They consume less food but work more. Therefore, from the health point of view, women folk who are to be weaker are to be made stronger. Another problem is that workplace harassment of women. There are so many cases of rape, kidnapping of girl, dowry harassment, and so on. For these reasons, they require empowerment of all kinds in order to protect themselves and to secure their purity and dignity. To sum up, women empowerment cannot be possible unless women come with and help to self-empower themselves. There is a need to formulate reducing feminized poverty, promoting education of women, and prevention and elimination of violence against women.

4. Legal Status of Women in India

Women in India enjoy complete equality with men in civil and legal matters, whether they relate to concluding contracts, administering property, practicing in the law courts, or administering justice. Woman also serves as Assessors, Receivers, and Jurors.

Woman can be a witness and her testimony carries as much weight as that of a man. Law treats women and men equally in all law courts. Any woman or man can sue or be sued in her/his name. In criminal matters, the legal capacity is determined by the age of the offender rather than by sex. A woman also has the right to choose where to live and whom to elect.

In order to ensure that legal safeguards actually reach women, National Commission for Women was setup in 1992 with the responsibility of overseeing the working of constitutional safeguards for women.

4.1 Constitutional and Legal Provisions for Women in India

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 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.

4.1.1 Constitutional Provisions

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favor of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

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 Panchayat 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))

3.2 Legal Provisions

To uphold the Constitutional mandate, the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women.

Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc, the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. These are broadly classified under two categories.

3.2.1 The Crimes Identified Under the Indian Penal Code (IPC)

1. Rape (Sec. 376 IPC)
2. Kidnapping & Abduction for different purposes (Sec. 363-373)
3. Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
4. Torture, both mental and physical (Sec. 498-A IPC)
5. Molestation (Sec. 354 IPC)

3.2.2 The Crimes identified under the Special Laws (SLL)

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

1. The Special Marriage Act, 1954
2. The Hindu Marriage Act, 1955
3. The Hindu Succession Act, 1956 with amendment in 2005
4. Immoral Traffic (Prevention) Act, 1956
5. The Maternity Benefit Act, 1961 (Amended in 1995)
6. Dowry Prohibition Act, 1961
7. The Medical Termination of Pregnancy Act, 1971
8. The Contract Labour (Regulation and Abolition) Act, 1976
9. The Equal Remuneration Act, 1976
10. The Prohibition of Child Marriage Act, 2006
11. The Criminal Law (Amendment) Act, 1983
12. The Factories (Amendment) Act, 1986
13. Indecent Representation of Women (Prohibition) Act, 1986
14. Commission of Sati (Prevention) Act, 1987
15. The Protection of Women from Domestic Violence Act, 2005
16. Sexual Harassment (Sec. 509 IPC)
17. Importation of girls (up to 21 years of age)

4. Women Empowerment- stills an illusion of reality

Notwithstanding the remarkable changes in the position of women in free India, there is still a great divergence between the constitutional position and stark reality of deprivation and degradation. Whatever whiff of emancipation has blown in Indian society, has been inhaled and enjoyed by the urban women, their population belonging to the rural areas are still totally untouched by the wind of changes. They still have been living in miserable conditions, steeped in poverty, ignorance, superstition and slavery. There still exists a wide gulf between the goals enunciated in the Constitution, legislations, policies, plans, programmes and related mechanisms on the one hand and the situational reality on the status of women in India, on the other. The human rights scenario in the country continues to be dismal and depressing. Women are being brutalized, commoditized, materialized and subjected to inhuman exploitation and discrimination. Although, gender discrimination has been banned by the Constitution and women have been guaranteed political equality with men, yet there and the rights enjoyed in reality by women.

5. Strengthening Status of women by focusing Socio-Economic perspective

Along with Judicial legal system, social & economic factors can contribute to Women's empowerment

6.1 Legal-judicial system

Legal-judicial system will be made more responsive and gender sensitive to women's needs, especially in cases of domestic violence and personal assault. New laws will be enacted and existing laws reviewed to ensure that justice is quick and the punishment meted out to the culprits is commensurate with the severity of the offence.

6.2 Economic Empowerment of women

- **Poverty Eradication:** Since women comprise the majority of the population below the poverty line and are very often in situations of extreme poverty, given the harsh realities of intra-household and social discrimination, macroeconomic policies and poverty eradication programmes will specifically address the needs and problems of such women. There will be improved implementation of programmes which are already women oriented with special targets for women. Steps will be taken for mobilization of poor women and convergence of services, by offering them a range of economic and social options, along with necessary support measures to enhance their capabilities
- **Micro Credit:** In order to enhance women's access to credit for consumption and production, the establishment of new and strengthening of existing micro-credit mechanisms and micro-finance institution will be undertaken so that the outreach of credit is enhanced. Other supportive measures would be taken to ensure adequate flow of credit through extant financial institutions and banks, so that all women below poverty line have easy access to credit.
- **Women and Economy:** Women's perspectives will be

included in designing and implementing macro-economic and social policies by institutionalizing their participation in such processes. Their contribution to socio-economic development as producers and workers will be recognized in the formal and informal sectors (including home based workers) and appropriate policies relating to employment and to her working conditions will be drawn up.

- **Globalization:** Globalization has presented new challenges for the realization of the goal of women's equality, the gender impact of which has not been systematically evaluated fully. However, from the micro-level studies that were commissioned by the Department of Women & Child Development, it is evident that there is a need for re-framing policies for access to employment and quality of employment. Benefits of the growing global economy have been unevenly distributed leading to wider economic disparities, the feminization of poverty, increased gender inequality through often deteriorating working conditions and unsafe working environment especially in the informal economy and rural areas. Strategies will be designed to enhance the capacity of women and empower them to meet the negative social and economic impacts, which may flow from the globalization process.

6.3 Social Empowerment of Women

- **Education:** Equal access to education for women and girls will be ensured. Special measures will be taken to eliminate discrimination, universalize education, eradicate illiteracy, create a gender-sensitive educational system, increase enrolment and retention rates of girls and improve the quality of education to facilitate life-long learning as well as development of occupation/vocation/technical skills by women. Reducing the gender gap in secondary and higher education would be a focus area. Sectoral time targets in existing policies will be achieved, with a special focus on girls and women, particularly those belonging to weaker sections including the Scheduled Castes/Scheduled Tribes/Other Backward Classes/Minorities. Gender sensitive curricula would be developed at all levels of educational system in order to address sex stereotyping as one of the causes of gender discrimination.
- **Health:** A holistic approach to women's health which includes both nutrition and health services will be adopted and special attention will be given to the needs of women and the girl at all stages of the life cycle. The reduction of infant mortality and maternal mortality, which are sensitive indicators of human development, is a priority concern. This policy reiterates the national demographic goals for Infant Mortality Rate (IMR), Maternal Mortality Rate (MMR) set out in the National Population Policy 2000. Women should have access to comprehensive, affordable and quality health care. Measures will be adopted that take into account the reproductive rights of women to enable them to exercise informed choices, their vulnerability to sexual and health problems together with endemic, infectious and communicable diseases such as malaria, TB, and water borne diseases as well as hypertension and cardio-pulmonary diseases. The social,

developmental and health consequences of HIV/AIDS and other sexually transmitted diseases will be tackled from a gender perspective.

- To effectively meet problems of infant and maternal mortality, and early marriage the availability of good and accurate data at micro level on deaths, birth and marriages is required. Strict implementation of registration of births and deaths would be ensured and registration of marriages would be made compulsory.
- **Nutrition:** In view of the high risk of malnutrition and disease that women face at all the three critical stages viz., infancy and childhood, adolescent and reproductive phase, focussed attention would be paid to meeting the nutritional needs of women at all stages of the life cycle. This is also important in view of the critical link between the health of adolescent girls, pregnant and lactating women with the health of infant and young children. Special efforts will be made to tackle the problem of macro and micro nutrient deficiencies especially amongst pregnant and lactating women as it leads to various diseases and disabilities.
- Intra-household discrimination in nutritional matters vis-à-vis girls and women will be sought to be ended through appropriate strategies. Widespread use of nutrition education would be made to address the issues of intra-household imbalances in nutrition and the special needs of pregnant and lactating women. Women's participation will also be ensured in the planning, superintendence and delivery of the system.
- **Drinking Water and Sanitation:** Special attention will be given to the needs of women in the provision of safe drinking water, sewage disposal, toilet facilities and sanitation within accessible reach of households, especially in rural areas and urban slums. Women's participation will be ensured in the planning, delivery and maintenance of such services.

6. Conclusion

Women Empowerment is basically the creation of an environment where women can make independent decisions on their personal development as well as shine as equals in society.

Women want to be treated as equals so much so that if a woman rises to the top of her field it should be a commonplace occurrence that draws nothing more than a raised eyebrow at the gender. This can only happen if there is a channelized route for the empowerment of women as The Constitution of India guarantees to all Indian women equality, no discrimination by the State, equality of opportunity, and equal pay for equal work. In addition, it allows special provisions to be made by the State in favor of women and children, renounces practices derogatory to the dignity of women, and also allows for provisions to be made by the State for securing just and humane conditions of work and for maternity relief. They participate fully in areas such as education, sports, politics, media, art and culture, service sectors, science and technology.

To truly understand what women empowerment is, there needs to be a sea-change in the mind-set of the people in the country. Not just the women themselves, but the men have to

wake up to a world that is moving towards equality and equity. It is better that this is embraced earlier rather than later, for our own good.

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