

AN ANALYSIS ON THE CONSTITUTIONAL MECHANISMS FOR THE EMPOWERMENT OF WOMEN

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“To awaken the people, it is the women who must be awakened. Once she is move, the family moves, the village moves, and the nation moves”

-Pandit Jawaharlal Nehru

ABSTRACT

Empowerment refers to policies and measures designed to increase the degree of autonomy and self-determination in the lives of the people and in communities in order to enable them to represent their interest in a responsible and self-determined way, acting on their own authority. It provides a greater access to knowledge and resources, more independence in decision making, considerable ability to plan lives, and freedom from customs, beliefs and practices. Thus women empowerment is a process in which women challenge the existing norms and culture, to effectively promote their well-being. The Indian Constitution guarantees that there shall be no discrimination on the ground of gender. There are various legal provisions for women's protection and empowerment in Indian Constitution but in reality half of the population is unaware of their legal rights. In this paper we will discuss about the constitutional and some specific legislations which has been enacted by the Government of India from time to time for the protection and empowerment of women.

Keywords- Women Empowerment, Indian Constitution, Legal Provisions, Specific Legislations, Indian Penal Code

INTRODUCTION

Women empowerment is a process which enables women to establish self-control, power of self-government and self-reliance in a situation of oppressive society. Women empowerment involves their right to have power to control their own lives both within and outside home and their ability to influence the direction of social change to create a just social and economic order nationally and internationally. It means to give the authority of women to take their own decisions by breaking all personal restrictions provided by the society and family. To empower women does not mean to give absolute power to women to dominate others or to use power to establish their superiority over others, as it may be commonly understood by the society. Women's empowerment in reality is to empower herself, and not to overpower men. It means equal status to women. It provides greater access to knowledge and resources, greater autonomy in decision making, greater ability to plan and freedom from the limitations imposed on them by custom, belief and practice. The term women empowerment was first introduced in 1985 at the 3rd International Women's Conference at Nairobi.

HISTORICAL BACKGROUND

Women in ancient India enjoyed equal status with men in all aspects of life. During the Vedic period the status and position of women was glorious on account of freedom and equality. Rigvedic verses suggested that women married at a mature age and were probably free to select their own husbands. During this period the women participated in every walk of life. Women studied in Gurukuls and enjoyed liberty in every sphere. There were two classes of women students as Brahnavadinis and Sadyodvahas where the former were lifelong students of theology and philosophy and the later used to prosecute their studies till their marriage at the age of 15 or 16.ⁱ So in early vedic period, women were very educated and there are references of women sages such as Gargi, Maitreyi, Apala, Visvara, Yamini who stole the lime-light and became front runners in society. They acquired efficiency in art, music and even warfare.ⁱⁱ

During the post Vedic period women had suffered drastic hardships and restrictions as propounded by Manu. He attempted to set up male dominated society by increasing the authority of men. During this period, pre-puberty marriage system was originated, thus the

marriageable age of girls was lowered to 9 or 10 years. Daughters were brought up under surveillance of her father, as a wife of her husband, as a mother of her son. On the other hand, Manu believed that where the women are respected, there all deities are pleased and where they are dishonored there all religious activities became fruitless.

Surprisingly in post Vedic period, the women's right to property was recognized and the concept of stridhan prevailed. As Manu defined-Stridhan means that which was given to her before the nuptial fire, in bridal procession, in token of love and which she is received from father, mother, brother and husband.ⁱⁱⁱ

Women's position was further degraded during the medieval period. Society observed security threats with invading soldiers roaming countryside, consequently, the women were placed behind the veil. Women were deprived of education and participation in community affairs. During the medieval period the social evils like child marriages, sati, female infanticide has been started.^{iv}

During British period the position of women has been change mainly due to the impact of western civilization on the Indian socio-cultural pattern. Many social reformers such as Raja Ram Mohan Rai, Ishwar Chandra Vidyasagar, Jyotirao Phule, Swami Vivekanand, Dayanand Saraswati, Annie Besant were fought for the betterment of women. In 1917, the first women's delegation met the secretary of state to demands women's political rights which was supported by Indian National Congress. In 1927, the All India Women's conference was formed and it proved to be crucial movements towards the right to equality of women. In 1929, the Child Marriage Restraint Act was passed stipulating fourteen as the minimum age of marriage for a girl. Though Mahatma Gandhi himself married at the age of 13, he later urged people to boycott child marriages and called upon young men to marry child widows.^v

Women in India now participate fully in areas such as education, sports, politics, media, art and culture, service sector, science and technology etc. Indira Gandhi who served as Prime Minister of India for an aggregate period of fifteen years is the world's longest serving women Prime Minister.

CONSTITUTION OF INDIA AND WOMEN EMPOWERMENT

Constitution is the fundamental legal document in a democratic society. The Indian Constitution which came into force on 26th January 1950 provides the framework for the governance of the country assigning roles to different institutions such as executive, legislature and judiciary. Due to the injustice faced by women in Indian society, most of the women are unaware of what independence freedom is. Therefore the Constitution makes some special provisions to grant equality to women in the society in all spheres just like male. The crucial question that arises for deliberation is: have the women been able to reach/reap the benefits provided for them under the constitution of India? The answer unfortunately is not encouraging. In view of the Supreme Court as observed in *Madhu Krishan v. State of Bihar*^{vi} Justice K. Ramaswamy has stated that, “Indian women have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, inequality and discrimination.”

a. The Preamble:

The Preamble is the key to open the mind of the Constitution. The framers of the constitution were well aware of unequal treatment meted out to the fair sex from the time immemorial. For the removal of these inequalities the Preamble to the Constitution of India assures certain objectives such as justice, social, economic and political, liberty of thought, equality of status and opportunity and dignity to the individual. These objectives have been inserted with the view to give equal status to men and women in terms of opportunity.

b. Fundamental rights:

Part III of the Constitution consisting of Articles 12-35 is the heart of the Constitution which is applicable to all the citizens irrespective of sex. In *Maneka Gandhi v. Union of India*^{vii}, Justice Bhagwati said that, “These fundamental rights represent the basic values cherished by the people of this country since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent.”

Article 14 of the Constitution guarantees equality before law for both man and women. It embodies general principles of equality and prohibits unreasonable discrimination between persons. It states that, “the state shall not deny to any person equality before law or the equal protection of the laws within the territory of India.”

The Apex Court in *Air India v. Nargish Meerza*^{viii} the Supreme Court has held that a woman shall not be denied employment merely on the ground that she is a woman as it amounts to violation of Article 14 of the Constitution. In this case the Indian Air Lines and Air India have challenged the air hostess’s service rules which states that, “Air-hostesses shall not marry for the first four years of their joining; they will lost their jobs if they be became pregnant.” The Supreme Court suggested that the first provision is legal but the second provision is declared as unethical, callous, cruel, detestable, unreasonable, arbitrary, and unconstitutional and an open insult to Indian womanhood.

Article 15(3)

Article 15(3) of the Constitution reads: “Nothing in this Article shall prevent the State from making any special provision for women and children”. Article 15(1) prohibits gender based discrimination and Article 15(3) permits the state to positively discriminate in favour of women to make special provisions to improve their social condition and provide political, economic and social justice. The insertion of Article 15(3) in relation to women is recognition of the fact that for century’s women of this country have been socially and economically handicapped. It is in order to eliminate this socioeconomic backwardness of women and to empower them in a manner that would bring about effective equality between men and women, that clause (3) is placed in Article 15.

Article 16

Article 16 mandates for equality of opportunity in matters of public employment that: there shall be equality of opportunity in matters relating to employment and appointment to any office under the state.^{ix} No citizen shall on grounds only of religion, race, caste, sex, descent,

place of birth, residence or any of them be ineligible for, or discriminated against in respect of, any employment or office under the state.^x

The Constitution therefore provides equal opportunities for women implicitly as they are applicable to all persons irrespective of sex. However, the Court realizes that these Articles reflect only de jure equality to women. They have not been able to accelerate de facto equality to the extent of the Constitution intended. There is still a considerable gap between constitutional rights and their application in the day-to-day lives of most women.^{xi}

Article 21 provides protection of life and personal liberty states that, “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Article 23 prohibits trafficking in human being and forced labour. Trafficking in human beings has been prevalent in India for a long time in the form of prostitution and selling and purchasing of human beings.

In *Gaurav Jain v. Union of India*^{xii}, the conditions of prostitutes in general and the plight of their children in particular were highlighted. The Court issued directions for a multi-pronged approach and mixing the children of prostitutes with other children instead of making separate provisions for them. The Supreme Court issued directions for the prevention of induction of women in various forms of prostitution. It is said that women should be viewed more as victims of adverse socio-economic circumstances than offenders in our society.

c. Directive Principles of State Policy

The Directive Principles of State Policy contained in Part IV of the Constitution are not enforceable in any court of laws, they are essential in the governance of the country and provide for the welfare of the people including women. Article 39(a) directs the State to direct its policy towards securing that citizens, men and women, equally have the right to an adequate means of livelihood. Article 39(d) directs the State to secure equal pay for equal work for both men and women. The State has enacted the Equal Remuneration Act, 1976 to give effect to the directive principles. Article 39(e) specifically directs the State not to abuse the health and strength of workers, men and women.

Article 42 of the Constitution incorporates a very important provision for the benefits of women. It directs the State to make provisions for securing just and human conditions of work and for maternity relief. Some of the legislations which promoted the objectives of Article 42 are the Workmen's Compensation Act, 1923, the Employees State Insurance Act, 1948, the Minimum Wages Act 1948, the Maternity Benefit Act, 1961 etc.

d. Uniform Civil Code

Article 44 of the Constitution imposes a duty on the State to secure for the citizens a Uniform Civil Code applicable throughout the territory of India. Its main goal is towards the achievement of gender justice. But women still experiences inequalities and injustice. India comprises of diverse religions, faiths and beliefs and each of these religious dominations are governed by their distinct personal laws which vary from one another. In matters relating to marriage, divorce, adoption, maintenance and succession, different personal laws have treated and placed women on different levels.^{xiii} It is really unfortunate that even after 75 years of independence the state did not find it necessary to make any serious endeavours to fulfill this constitutional obligation.

The Fundamental Duties under Article 51 A also impose the duty to renounce practice derogatory to the dignity of women.^{xiv}

e. Reservation of Seats in Panchayats and Municipalities

According to Article 40 of the Constitution of India the State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government. The Parliament has passed the Constitution Amendment Act^{xv} for the reservation of seats for women in election to the Panchayats and Municipalities. Reservation of seats in Panchayats and Municipalities has been provided in Articles 243D and 243T of the Constitution of India. According to Article 243D(3), "not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Schedule Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to

different constituencies in a Panchayat.” Article 243T(3) of the Constitution provides similar provisions for reservation of seats for women in direct election in every Municipalities.^{xvi} Article 243D(4) further provided that one-third of the total number of offices of chairpersons in the Panchayat at each level shall be reserved for women. Similar reservation of seats has been provided in the Municipalities also for women.^{xvii}

LAWS RELATING TO THE EMPOWERMENT OF WOMEN

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 to women. Indian Parliament enacted several legislations on women for protection of their rights in relation with the fundamental rights guaranteed under Part III of the Indian Constitution. Laws related to women are classified under two major categories

f. Indian Penal Code 1860

- Dowry Death (304-B): Where the death of a women is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon after her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”. Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extent to imprisonment for life.
- Sexual harassment (Section 509): Whoever intending to insult the modesty of any women, utters any word, makes any sound or gesture, or exhibits any objects, intending that such word or sound shall be heard, or that such gesture or objects shall be seen, by such women, or intrudes upon the privacy of such women, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine.
- Outrage the modesty of women (354): Whoever assaults or uses criminal force to any women, intending to outrage or knowing it to be likely that he will thereby outrage her

modesty, shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine.

- Rape (376): Whoever, commits rape shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.
- Kidnapping and Abduction (366): Any person who kidnaps or abducts any women with intent that she may be compelled to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extent to ten years and shall also be liable to fine.
- Cruelty (498A): Husband or the relative of the husband of a woman subjecting her to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.
- Unnatural Offences (377): Any person voluntarily has carnal intercourse against the order of nature with any man, women or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

g. Special Laws for the empowerment of women

- The Immoral Traffic Prevention 1956

The Act underwent two major Amendments in 1978 and 1986, which introduce radical changes in the scope of the legislations. The main purpose of the Act was to inhibit or to abolish commercial act namely, traffic in women, men and children for the purpose of prostitution as an organized means of living. The aim was not to render prostitution per se a criminal offence or punish women merely because she prostitutes herself. But the main aim was to punish the offender for sexual exploitation of women for commercial purpose. The Act makes the practice of prostitution in a certain places such as places of public religious worship, educational institutions, hospitals etc., punishable. ^{xviii}

- The Code of Criminal Procedure 1973

This Code contains some provisions, which specifically relate to women. Section 51(2) provides that whenever it is necessary to cause a female to be searched for arrest, the search shall be made by another female with strict regard to decency.

Section 98 provides that upon complaint made on oath of the abduction or unlawful detention of a woman, or a female child under the age of 18 years, for any unlawful purpose, a District Magistrate, Sub-divisional Magistrate or Magistrate of the first class may make an order for the immediate restoration of such women to her liberty, or of such female child to her husband, parent, guardian or other person having the lawful charge of such child, and may compel compliance with such order, using such force as may be necessary. Section 125 to 128 relate to provisions for maintenance of Wives, Children and Parents.

Section 416 provides that if a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, if it thinks fit, commute the sentence to imprisonment for life.

- The Equal Remuneration Act 1976

This Act provides for payment of equal remuneration to men and women workers for same or similar nature of work. Under this Act no discrimination is permissible in recruitment and service conditions except where employment of women is prohibited or restricted by or under any law.^{xix}

- The Maternity Benefits Act, 1961

This Act aims at regulation of employment of women employees in certain establishments of certain periods before and after child birth and provisions of maternity and certain other benefits. The Act extends to the whole of India and is applicable to every factory, mine or plantation, and an establishment engaged in the exhibition of equestrian, acrobatic and other performances, irrespective of the number of employees, and to every shop and establishment wherein 10 or more persons are employed or were employed on any day of the preceding establishment or class of establishments; industrial, commercial, agricultural or otherwise.^{xx}

- Dowry Prohibition Act 1961

The system of taking dowry in connection with marriage is a deep-rooted social evil or menace in our country. The giving and taking of dowry at or before or at any time after marriage or its abetment or the demand for it has been made an offence to be visited with imprisonment or fine or both.^{xxi} Even an agreement for giving or taking dowry shall be treated as an offence.^{xxii}

- Hindu Adoption and Maintenance Act 1956

This Act has been enacted to amend and codify law relating to adoption and maintenance amongst Hindus. Section 18 and 19 of this Act made specific provisions relating to maintenance of wife and widowed daughter-in-law and section 23 made stipulations regarding amount of maintenance.

- The Commission of Sati Prevention Act, 1987

The Act has been enacted to provide for more effective prevention of commission of sati and its glorification and for matters connected with it. Whoever attempts to commit sati and does any act towards such commission shall be punishable with imprisonment for a term, which may extend to one year or with fine or with both.^{xxiii} The Act provides that if any person commits sati, whoever abets the commission of such sati, either directly or indirectly, shall be punishable with death or imprisonment for life and also be liable to fine.^{xxiv}

- The Indecent Representation of Women (Prohibition) Act, 1986

This Act has been enacted to prohibit indecent representation of women through advertisements or in publications, writings, paintings and figures or in any other manner and for matters connected therewith or incidental thereto. The Act provides for prohibition of advertisements containing indecent representation of women^{xxv} and prohibition of publication or sending by post of books, pamphlets etc. containing indecent representation of women with certain conditions.^{xxvi} Any person who contravenes the provisions of section 3 or section 4 shall be punishable on first conviction with imprisonment of either description for a term, which may extend to two years, and with fine which may extend to two thousand rupees, and in the event of second or subsequent conviction with imprisonment for a term not less than six months

but which may extend to five years and also a fine not less than ten thousand rupees but which may extend to one lakh rupees.^{xxvii}

- The National Commission for Women Act, 1990

The Act was enacted to constitute National Commission for Women and to provide for matters connected therewith or incidental thereto. The function of the Commission has been stipulated in section 10 of the said Act which inter-alia makes provision relating to investigation and examination of all matters relating to the safeguard provided for women under the Constitution of India and other laws; presenting to the Central Government, annual and such other times as the Commission may deem fit, reports upon the working of those safeguards, looking into complaints and take sue-moto notice of matters relating to deprivations of women's rights, non-implementation of laws enacted to provide protection of women and also to achieve the objective of equality and development.

- Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994

This Act seeks to attain the following objectives, such as

- a. Prohibition of the misuse of pre-natal diagnostic techniques for determination of sex foetus, leading to female foetus.
- b. Prohibition of advertisement of the techniques for detection or determination of sex.
- c. Regulation of the use of techniques only for the specific purposes of detecting genetic abnormalities or disorders.
- d. Permission to use such techniques only under certain conditions by the registered institutions.
- e. Punishment for violation of the Act; and
- f. To provide deterrent punishment to stop such inhuman acts of female foeticides.

- The Medical Termination of Pregnancy Act, 1971

Through this Act, termination of pregnancy can take place only on medical ground that too when the registered medical practitioner has done in good faith. If a pregnancy is alleged to be caused by rape, the anguish caused by such pregnancy is presumed to constitute grave injury to mental health of pregnant women. Similarly if the pregnancy is caused as a result of failure

of any family planning device used by any married women or husband, the anguish caused by such unwanted pregnancy is presumed to constitute grave injury to the mental health of the pregnant women. Therefore a pregnancy caused by rape or which is unwanted may be medically terminated under section 3 of the Act.

- Protection of Women from Domestic Violence Act 2005

An Act to provide for the more effective protection of the rights of women guaranteed under the constitution that are victims of violence of any kind occurring within the family and for matters connected therewith or incidental thereto.

- The Sexual Harassment of Women at Work Place (Prevention, Provision and Redressal) Act 2013

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. It is applicable and enacted whereas sexual harassment results in violation of the fundamental rights of a women to equality under article 14 and 15 of the constitution of India and her right to life and to live with dignity under Article 21 of the Constitution and the right to practice any profession or to carry on any occupation, trade or business which includes a right to safe environment free from sexual harassment.

- The Criminal Law Amendment Bill 2013

This legislation is the result of protest against Delhi rape case also known as Nirbhaya case.^{xxviii} This legislation provides amendment in Indian Penal Code, Criminal Procedure Code and the Indian Evidence Act on laws related to sexual offences. This bill introduces and amended offences like acid attack, act with intent to disrobe a women, voyeurism, stalking and sexual harassment into the Indian Penal Code.

- Women's Reservation Bill (The Constitution 108th Amendment Bill)

It proposes to amend the Constitution of India reserve one third of all seats in the Lok Sabha, and in all state legislative assemblies for women. This will be helpful in increasing the political participation of women.

- Triple Talaq law 2017

The Muslim Women (Protection of Rights on Marriage) Bill popularly known as Triple Talaq Bill 2019 has been passed by both the House of Parliament which makes the practice of instant divorce among Muslims a punishable offence.^{xxix} Triple talaq is the process of divorce under Sharia Law, where a husband can divorce by pronouncing Talaq three times in a single tuhr which is instant and irrevocable which has been invalidated under this Act.

CONCLUSION

From the above analysis it is clearly shows that women in India have a satisfactory degree of laws for the protection and empowerment of women. Despite of a lot of growth and development in gender based legislation some glaring discrimination still exists. Physically man is stronger than woman. In some of our Indian laws the status of women is considered to be lower than that of men. Under Section 497 of Indian Penal Code adultery is an offence and under Section 198 of the Criminal Procedure Code, only husband of adulteress can take action against the counterpart in the offence of adultery i.e. men. A wife of the adulterer has no such right of action.

Thus we find that a lot has been done but we have yet to go a long way to make women's empowerment a living reality. It is the strong and effective People's Campaign and People's Movements which is urgently needed to take place to bring about real empowerment of women.

ENDNOTES

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- ⁱ A.S. Altekar, *The Position of Women in Hindu Civilisation*, Motilal Banarasidas, Delhi 1962 page no. 10
ⁱⁱ S.C. Tripathi & Vibha Arora, *Law relating to Women and Children*, Central Law Publications, Allahabad, Second Edition 2006
ⁱⁱⁱ Supra note 1
^{iv} Supra Note 2 Page 2
^v Id pp 2,3
^{vi} (1956) 5 SCC 148
^{vii} AIR 1978 SC 597
^{viii} AIR 1981 SC 1829
^{ix} Article 16(1) of the Constitution of India

^x Id Article 16(2)

^{xi} women-empowerment-with -special-reference-to-constitutional-provision available at www.legalserviceindia.com/article/1955/visited on 2016

^{xii} AIR 1997 SC 3021

^{xiii} Sarla Mudgal v. Union of India (1995) 3 SCC 635

^{xiv} Article 51 A(e) of the Constitution of India

^{xv} The Constitution(73rd Amendment) Act, 1992 and the Constitution(74th Amendment) Act 1992 popularly known as Panchayati Raj and Nagarpalika Constitution Amendment Act

^{xvi} 74th Constitutional Amendments- w.e.f. 1-6-1993

^{xvii} Article 243D(4) of the Constitution of India

^{xviii} Section 7, 8 of the Immoral Traffic Prevention Act 1956

^{xix} Section 5 of Equal Remuneration Act 1976

^{xx} Section 2 of the Maternity Benefit Act, 1961

^{xxi} Section 4, 6 of the Dowry Prohibition Act 1961

^{xxii} Id Section 5

^{xxiii} Section 3 of the Commission of Sati Prevention Act, 1987

^{xxiv} Id Section 4

^{xxv} Section 3 of the Indecent Representation of Women (Prohibition) Act, 1986

^{xxvi} Id Section 4

^{xxvii} Id Section 6

^{xxviii} Mukesh v. State for NCT of Delhi, (2017) 6 SCC 1

^{xxix} Shayara Bano v. Union of India, 2017 (9) SCC 1