

EMPOWERMENT OF WOMEN THROUGH LAW AND POLICIES – A CRITICAL ANALYSIS

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“You can tell the condition of a nation by looking at the status of its women”.

– Pt. Jawaharlal Nehru

ABSTRACT

Women represent nearly half of the world’s population there are several laws which has been passed by the government to protect and empower women. Empowerment is the process of development through which an individual is more aware, politically active, economically productive and independent, control over the factors which affect life. The theory 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 enables the state to adopt measures of positive discrimination in favour of women.

Even after so many laws both national and international the position of women is not so good, even now she faces all kinds of discrimination, dowry harassment, sexual crimes, acid attacks, domestic violence etc.

This paper tries to analyse the reasons for the position of women when laws and policies are existing. Are laws and policies made for women not implemented properly?

The methodology adopted for this paper is doctrinal in nature. The material for the study is secondary in nature.

Keywords: Empowerment, women, the law relating to women

INTRODUCTION

Women constitute almost 50% of the world's population but India has shown a disproportionate sex ratio whereby the female population has been comparatively lower than males. Regarding their social status, they are not treated as equal to men in all places.

Research problem

Even though there are a good number of laws which have been passed by the parliament and the constitution has emphasised the empowerment of women through the preamble, Fundamental Rights, Directive principles of state policy, statutory law etc but the position of women has not improved in the society. Even now the crimes against her have been happening and she has been suppressed and oppressed in every walk of life.

Empowerment

'Empowerment' may be described as a process that helps people assert their control over the factors affecting their lives. Empowerment of women means developing them as more aware individuals, who are politically active, economically productive, and independent and can make intelligent discussions in matters that affect them.

Women's Empowerment implies the ability of women to take decisions with regard to their life and work and give equal rights to them in all spheres including personal, social, economic, political, and rights and so onⁱ.

Objectives of the Study-

- To know about women's empowerment
- To analyse women's rights and the legal protection of women in the Indian legal regime.
- To analyse the reason for hindrances to women's empowerment.

CONSTITUTIONAL PROVISIONS RELATING TO WOMEN

The status of women in India has changed over the past few decades. Now, Indian women are participating in various spheres like education, politics, media, art and culture, the service sector, science, and technology etc. The Constitution of India guarantees equal rights to men and women. The constitution is mainly based on the ground of liberty, fraternity, equality, and justice. The Government of India has always been attached to the protection and promotion of the Human Rights of women.

The framers of the Indian constitution were well conscious of the discrimination and unequal treatment meted out in the form of sex from time immemorial. However, various provisions were made as laid down in the Preamble with Directive Principles of State Policy by putting women at par with men.

The Preamble of the Indian Constitution

The Preamble to the Constitution of India is a brief introductory statement that sets out guiding people and principles of the document and it indicates the source from which the ordinary document derives its authority, meaning, the people. The Preamble of the Indian constitution gives various goals including ‘the equality of status and opportunity’ to all the citizens. The Hindu Marriage Act aims at giving equal status and rights to women.

(a) **Fundamental Rights**

All fundamental rights are contained in Part III of the Indian constitution. Articles 12-35 apply to all citizens irrespective of sex, and certain fundamental rights contain specific and positive provisions to protect the rights of women. Under the constitution, women are provided with the following fundamental rights.

1. **Article – 14:** This Article guarantees the Right to Equality, “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of Indian prohibition of discrimination on grounds of religion, race, sex or place of birth”. Thus, women in Indian society enjoy the same protection and treatment as men which is guaranteed by the constitution.

2. **Article – 15:** It prohibits any sort of discrimination against women when it declares in clause-1 that “the State shall not discriminate against any citizen on grounds of only of religion, caste, race, sex, place of birth or any of them”. To eliminate the socioeconomic backwardness of women to bring about effective equality between men and women that Article -15 (3) is placed Article-15. In a case the Supreme Court in its judgment between Government of Andhra Pradesh v. P.B. Vijay Kumarⁱⁱ the Supreme Court laid down that its object is to strengthen and improve the status of women.

3. **Article-16:** It guarantees equal opportunity in matters of public employment as Article 16 (1) declares that “there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state”. In C.B. Muthamma v. Union of Indiaⁱⁱⁱ, the female employees to get permission before marriage and denial of the right to employment to married women were held discriminatory.

4. **Article-19:** This gives the citizens (which include both women, men and third gender) the Right to Freedom, which among other things guarantees freedom of speech and expression, freedom of movement, freedom of practising trade and profession etc. In a landmark judgment, the freedom of speech and expression has no geographical limitation, and it comes with it the right of a citizen to gather information and to exchange thoughts with others not only in India but abroad also.

5. **Article-21:** “No person except according to procedure established by law shall be deprived of his life or personal liberty. Fundamental rights under Article 21 of the object personal liberty except according to procedure established by law are to prevent encroachment on and loss of life”. Anyone, including women, can seek protection under this.

6. **Article-23:** This article brings out specifically prohibits traffic in human beings. In Vishal Jeet v. Union of India^{iv}, the Supreme Court laid down that trafficking in human beings has been prevalent in India for a long period in the form of prostitution and selling and purchasing human beings for a price just like vegetables. In a case, Peoples Union for Democratic Rights vs. Union of India^v the exaction of labour and services against payment of less than the minimum wage was held as forced labour and violative of Article -23.

7. **Article -25:** It deals with all persons either man or woman of any caste or creed being equally entitled to freedom of conscience and the right to freely profess, practice, and propagate any religion- subject to public order, morality, and health of the community.

8. **Article-32:** This Article gives us the right to us to seek constitutional remedies through the Supreme Court of India for violation of Fundamental Rights mainly.

NATIONAL COMMISSION FOR WOMEN

National Commission for Women^{vi} is a statutory body of the Government of India, generally concerned with advising the government on all policy matters affecting women. It was established in January 1992 under the provisions of the Indian Constitution, as defined in the 1990 National Commission for Women Act. The objective of the NCW is to represent the rights of women in India and to provide a voice for their issues and concerns. The subjects of their campaigns have included dowry, politics, religion, and equal representation.

The 73rd and 74th Amendments^{vii} (1993) to the Constitution of India have provided for the reservation of seats in the local bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision-making at the local levels.

A National Policy for Empowerment of Women

Along with constitutional safeguards, there are further rights that women have guaranteed under the law.

Legal Provisions for empowering women

- The Indian penal code –
- Code of criminal procedure code 1973
- Indian Evidence Act 1872
- Hindu adoption and maintenance act 1956
- Hindu marriage act 1955
- The dowry prohibition act of 1961
- The factories act of 1948.

- The equal remuneration act 1976
- The maternity benefit act 1961
- Medical termination of pregnancy act 1971
- The immoral trafficking (prevention)act 1986
- The prenatal diagnostic technique (regulation and prevention of measure) Act 1994
- The family court act 1984
- The protection of women under the domestic violence act 2005
- Commission of sati act 1987
- Indecent representation of women (prohibition) act 1986
- The sexual harassment of women at workplace act 2013

Not only the above-mentioned act or laws are enforced to empower women but there are many policies passed to improve her status in society to empower her.

Women Empowerment Schemes in India

1. *Beti Bachao Beti Padhao* Scheme
2. One Stop Centre Scheme
3. Women Helpline Scheme
4. *UJJAWALA*: A Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Re-integration of Victims of Trafficking and Commercial Sexual Exploitation
5. Working Women Hostel
6. Rajiv Gandhi National Creche Scheme for the Children of Working Mothers
7. Ministry approves new projects under *Ujjawala* Scheme and continues existing projects
8. SWADHAR Greh (A Scheme for Women in Difficult Circumstances)
9. Revision under IGMSY in Accordance with National Food Security Act, 2013 in XIIth Plan
10. *Support to Training and Employment Programme for Women (STEP)*

11. *NARI SHAKTI PURASKAR*

12. Awardees of *Stree Shakti Puruskar, 2014 & Awardees of Nari Shakti Puruskar*

13. Awardees of *Rajya Mahila Samman & Zila Mahila Samman*

14. Archived Maternity Benet Programme

15. *Mahila* police Volunteers

16. *Mahila E-Haat*

Apart from the above-mentioned schemes, there are various schemes made by the state governments for the states as per the needs.

ROLE OF JUDICIARY

The role played by the judiciary in India's empowerment of women is favouring the empowerment of women. Judiciary has played an active role in supporting, strengthening, and empowering her rights.

There are various circumstances where the supreme court has passed judgments which have empowered and strengthened women in India.

- Vishaka V/S State of Rajasthan (1997)6 SCC 241
- Mary Roy V/s state of Kerala 1986 AIR 1011
- Laxmi V/S Union of India wp (2014)4SCC427
- Air India Vs Nargesh Meerza, [(1981) 4 SCC 335]
- Mohammad Ahmed Khan Vs Shah Bano Begum, 1985 AIR 945, 1985 SCR (3) 844
- Tuka Ram And Anr vs State of Maharashtra, 1979 AIR 185, 1979 SCR (1) 810
- Mackinnon Mackenzie Vs Audrey D'costa, 1987 AIR 1281
- Lata Singh v/s state of UP (2006)5 SCC475
- Vineeta Sharma v/s Rakesh Sharma (2020)9 SCC 1
- Secretary, minister of defence v/s Babita Puniya and others (2020) 7SCC 469
- State of Gujarat v/s Ramesh Chandra Rambhai Panchal

- C.B, Muthamma, I.F.S v. Union of India (1979) 4 SCC260
- Gaurav Jain v/s Union of India 1990AIR292

Judiciary empowers the women through both traditional and by its activist role. The judiciary's traditional role is to provide justice through the interpretation of laws. Sometimes through the wide interpretation of the provision of various legislation and the provision of the constitution judiciary can empower women. Another role of the judiciary is the activist role which is popularly known as "Judicial Activism".

Problems for women's Empowerment in India

- Loopholes in the legal structure - Although there are several laws to protect women against all sorts of violence yet there has been a significant increase in the episodes of rapes, extortions, acid, attacks etc. This is due to delays in legal procedures and the presence of several loopholes in the functioning of a judicial system.
- Lack of Political Will: The still-pending Women's Reservation Bill underscores the lack of political will to empower women politically. Male dominance prevails in the politics of India and women are forced to remain mute spectators.
- Education of women- While the country has grown by leaps and bounds since independence where education is concerned. the gap between women and men is severe.
- Society- Society does not allow women to empower themselves, they always target women and their family members. If the father wants to support his daughter society discourages the father telling, "he wants to enjoy his life on his daughter's earnings", if a husband wants to support his wife, society focuses on the husband telling "jour ka Gulam" and so on. Society never encourages women to empower but lip service is showered.
- Women – women are a big hurdle to empowering themselves. She never asks or raises her voice against exploitation. Women are always advised by other women not to raise their voices and need to adjust.
- Religious issues- the mess of women in India is deeply rooted in religion. She has faced a lot of discrimination in the name of religion. The boy is preferred to a girl as per the religion. As per *Manu* or *Manu smriti* the person will reach heaven or attain *Mukti* if

the last rights are performed by the son and the daughter does not have the right to perform the last rights of the parents.

Right from dowry, not allowing into temples to the exploitation of catholic women, every religion has shown bias against women.

- Health and Safety: The health and safety concerns of women are paramount for the well-being of a country and are an important factor in gauging the empowerment of women in a country. However, there are alarming concerns where maternal healthcare is concerned. In many places menstrual periods are treated as impure.

SUGGESTIONS

- National Commission for Women and the National human rights commission must play an important role in addressing the violation of women's rights.
- Judiciary should be more vigilant in protecting the rights of women and should be stringent in taking decisions to protect the rights of women and empower women.
- Legal awareness of women needs to perform for creating awareness among women.
- Women need to be educated.

Indian society is a male-dominated society. They are offences done to a girl child before she is born. Female is considered a liability due to many social practices. Societal practices have restricted women from performing family errands, reproduction, and caring for people and families. Her first importance is family and then other things in life.

In the Indian circumstances, equality will happen only if women have access to development, access to equality and justice which should include ownership of property, right to health, reproductive rights, getting a good education, part of decision making in the family, choosing her life partner, etc.

ENDNOTES

ⁱhttps://www.researchgate.net/publication/353751792_Critical_Analysis_of_Legislative_Framework_of_Women_Empowerment_in_India visited on 20/03/2023.

ⁱⁱ 1995 SCC(4) 520

ⁱⁱⁱ (1979)4 SCC 260

^{iv} (1990)3 SCC 318

^v 1982 AIR 1473

^{vi} The National Commission for Women was set up in 1992 under the National Commission for Women Act, of 1990. This body was established to review the constitutional and legal safeguards for women.

It recommends remedial legislative measures, facilitates the redressal of grievances, and advises the government on all policy matters affecting women. It enjoys all the powers of a civil court

^{vii} Panchayati Raj Institution was constitutionalized through the 73rd Constitutional Amendment Act, 1992.

This act has added a new Part-IX to the Constitution of India and consists of provisions from Articles 243 to 243 O. In addition, the act has also added a new 11th Schedule to the Constitution and contains 29 functional items of the panchayats.

74th Constitutional Amendment Act:

Urban local governments were constitutionalized through the 74th Amendment Act during the regime of P.V. Narsimha Rao's government in 1992. It came into force on 1st June 1993. It added Part IX -A and consists of provisions from Articles 243-P to 243-ZG. In addition, the act also added the 12th Schedule to the Constitution. It contains 18 functional items of Municipalities.