



WOMEN EMPOWERMENT VS INDIAN LAW

Dr. Vishwas Chouhan
Assistant professor , Govt. state P.G. law college , Bhopal.

ABSTRACT:

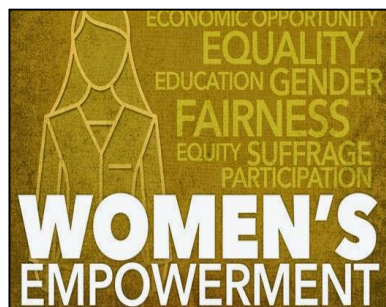
“There is no chance of the welfare of the world unless the condition of women is improved. It is not possible for a bird to fly on one wing.”-Swami Vivekananda. Women empowerment is a debatable subject and is an important tool to bring about the required social changes in the society and in the mindset of the people. At earlier times they used to get equal status just like men. But they later faced some difficulties during post-Vedic and epic ages. Many a time they were treated as slave. From the early twentieth century (national movement) their status has been changing slowly and gradually. In this regard, we may mention the name of the British government. After the independence of India, the constitutional makers and national leaders strongly demanded for equal social position for women. Today we have seen that women have occupied respectable positions all around the world in all walks of life. Yet, they have not been absolutely free from some kind of discrimination and harassment of the society. A few numbers of women have been able to establish their potentialities. Therefore, each and every individual should endeavor to promote the status of women all around the globe.

The objectives of this research paper is to understand the problem, perspective and need for Women Empowerment, and also to attempt and analyze the status of women in India using various indicators like women's household decision making power, legal Policies regarding women empowerment, Role of Judiciary and also the awareness created by different agencies.

KEYWORDS: Women empowerment , society , equal social position.

INTRODUCTION :

“Women are supposed to be very calm generally: but women feel just as men feel; they need exercise for their faculties, and a field for their efforts, as much as their brothers do; they suffer from too rigid a restraint, to absolute a stagnation, precisely as men would suffer; and it is narrow-minded in their more privileged fellow-creatures to say that they ought to confine themselves to making puddings and knitting stockings, to playing on the piano and embroidering bags. It is thoughtless to condemn them, or laugh at them, if they seek to do more or learn more than custom has pronounced necessary for their sex.” - ‘Jane Eyre’ by Charlotte Bronte



In our country Gender equality is, first and foremost, a human right. A woman is entitled to live in dignity and in freedom from want and from fear. Empowering women is also an indispensable tool for advancing development and reducing poverty. Empowered women contribute to the health and productivity of whole families and communities and to improved prospects for the next generation. The importance of gender equality is underscored by its inclusion as one of the eight Millennium Development Goals. Gender equality is acknowledged as being a key to achieving the other seven goals. Yet

discrimination against women and girls - including gender-based violence, economic discrimination, reproductive health Inequities, and harmful traditional practices - remains the most pervasive and persistent form of inequality. There are a variety of understandings of the term empowerment due to its widespread usage. If empowerment is looked upon in terms of ability to make choices: to be disempowered therefore, implies to be denied choice. The notion of empowerment is that it is inescapably bound up with the condition of disempowerment and refers to the processes by which those who have been denied the ability to make choices acquire such ability. Thus, there could be statistical swells indicating improvements in indicators of gender equality, but unless the intervening process involved women as agents of that change, one cannot term it as empowerment

DEFINITION OF EMPOWERMENT OF WOMEN

The Oxford American Dictionary defines "empowerment" as "to make (someone) stronger and more confident, esp. in controlling their life and claiming their rights." It means to give women power and help them face the challenges of being a woman in society. For centuries, women were treated as less-than-equal to men in many ways. Women were not allowed to vote, own property, or work in many jobs. Now that we are out of those dark ages, women are more EMPOWERED to do whatever they want. This means that they have the ability to choose their own destiny, job, vote, and do anything a man can do. When we talk about women's empowerment, we talk about women taking more of a leadership role. Whereas until very recently, women were subordinates Empowerment refers to increasing the spiritual, political, social or economic strength of individuals and communities. It often involves the empowered developing confidence in their own capacities. Empowerment is probably the totality of the following or similar capabilities:

- Having decision-making power of their own
- Having access to information and resources for taking proper decision
- Having a range of options from which you can make choices (not just yes/no, either/or.)
- Ability to exercise assertiveness in collective decision-making
- Having positive thinking on the ability to make change
- Ability to learn skills for improving one's personal or group power.
- Ability to change others' perceptions by democratic means.
- Involving in the growth process and changes that is never ending and self-initiated
- Increasing one's positive self-image and overcoming stigma

UNDERSTANDING GENDER EQUALITY AND WOMEN'S EMPOWERMENT

Gender equality implies a society in which women and men enjoy the same opportunities, outcomes, rights and obligations in all spheres of life. Equality between men and women exists when both sexes are able to share equally in the distribution of power and influence; have equal opportunities for financial independence through work or through setting up businesses; enjoy equal access to education and the opportunity to develop personal ambitions. A critical aspect of promoting gender equality is the empowerment of women, with a focus on identifying and redressing power imbalances and giving women more autonomy to manage their own lives. Women's empowerment is vital to sustainable development and the realization of human rights for all. Where women's status is low, family size tends to be large, which makes it more difficult for families to thrive. Population and development and reproductive health programmes are more effective when they address the educational opportunities, status and empowerment of women. When women are empowered, whole families benefit, and these benefits often have ripple effects to future generations. The roles that men and women play in society are not biologically determined -- they are socially determined, changing and changeable. Although they may be justified as being required by culture or religion, these roles vary widely by locality and change over time.

WOMEN IN INDIA

Now the women in India enjoy a unique status of equality with the men as per constitutional and legal provision. But the Indian women have come a long way to achieve the present positions. First, gender inequality in India can be traced back to the historic days of Mahabharata when her husband as a commodity put Draupadi on the dice. History is a witness that women was made to dance both in private and public places

to please the man. Secondly, in Indian society, a female was always dependent on male members of the family even last few years ago. Thirdly, a female was not allowed to speak with loud voice in the presence of elder members of her in-laws. In the family, every fault had gone to her and she was responsible. Fourth, as a widow her dependence on male members of the family still more increased. In many social activities she is not permitted to mix with other members of the family. Other hand, she has very little share in political, social and economic life of the society. The early twenty-century, it was rise of the National Movement under the leadership of Mahatma Gandhi who was in favor of removing all the disabilities of women. At the same time, Raja Ram Mohan Rai, Iswar Chandra Vidyasagar and various other social reformers laid stress on women's education, prevention of child marriage, withdrawal of evil practice of sati, removal of polygamy etc. The National Movement and various reform movements paved the way for their liberations from the social evils and religious taboos. In this context, we may write about the Act of Sati (abolish) 1829, Hindu Widow Remarriage Act' 1856, the Child Restriction Act, 1929, Women Property Right Act, 1937 etc. After independence of India, the constitution makers and the national leaders recognized the equal social position of women with men. The Hindu Marriage Act, 1955 has determined the age for marriage, provided for monogamy and guardianship of the mother and permitted the dissolution of marriage under specific circumstances. Under the Hindu Adoptions and Maintenance Act, 1956, an unmarried woman, widow or divorcee of sound mind can also take child in adoption. Similarly, the Dowry Prohibition Act of 1961 says that any person who gives, takes, or abets the giving or taking of dowry shall be punished with imprisonment, which may extend to six months or fine up to Rs.5000/ or with both. The Constitution of India guarantees equality of sexes and in fact grants special favors to women. These can be found in three articles of the constitution. Article 14 says that the government shall not deny to any person equality before law or equal protection of the law. Article 15 declares that government shall not discriminate against any citizen on the ground of sex. Article 15 (3) makes a special provision enabling the state to make affirmative discriminations in favor of women. Article 42 directs the state to make provision for ensuring just and human conditions of work and maternity relief. Above all, the constitution regards a fundamental duty on every citizen through Articles 15 (A), (E) to renounce the practices derogatory to the dignity of women.

REASONS FOR THE EMPOWERMENT OF WOMEN

Today we have noticed different Acts and Schemes of the central government as well as state government to empower the women of India. But in India women are discriminated and marginalized at every level of the society whether it is social participation, political participation, economic participation, access to education, and also reproductive healthcare. Women are found to be economically very poor all over the India. A few women are engaged in services and other activities. So, they need economic power to stand on their own legs on par with men. Other hand, it has been observed that women are found to be less literate than men. According to 2001 census, rate of literacy among men in India is found to be 76% whereas it is only 54% 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 can not 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.

ISSUES AND CHALLENGES TO WOMEN'S EMPOWERMENT IN INDIA

Although women's empowerment is one of the most serious concerns in the world today, especially in the socio-political milieu of India, the number games depict a rather gloomy picture. Globally, women make up only approximately 9% of corporate board memberships. Women's share of wages of paid employment worldwide is 41%. Although 117 countries have equal pay law, in many cases women are still paid up to 30% less than men for similar work. Women do most of the informal or un-monetized work in all regions, and they represent 50.5% of the 1.52 billion workers in vulnerable employment, often lacking legal and economic protection.

In the traditional Indian context, since old family structures persist so strongly, women's economic roles are added to her traditional domestic household work. About 70% of people in poverty are women, most of them in rural areas. While representing a large share of the agricultural workforce, women farmers benefit from only 5% of agricultural extension services. Microcredit institutions report that in 1999–2010, the number of poor women reached has increased from 10.3 million to 113.1 million, representing 82% of microloans. Analysis shows a direct interdependence between the country's Gender Gap Index and their Competitiveness Index scores. Despite important gains, the UNESCO reports that in 2010 the basic literacy rate for young females was 87%, compared with 92% for young males. The health gender gap is generally closing, but women-specific challenges persist. Although maternal mortality decreased 47% over the past two decades, in 2010 about 287,000 women died of pregnancy-related complications.

In other words thus, women's empowerment faces a number of massive challenges across the globe generally and in India more specifically. These challenges must be combated, if improvement of women's conditions is considered imperative in the society. This alone will lead to enhanced empowerment of women in the various sectors of the economy and society.

INTERVENTION OF LAW: LEGAL DISCOURSES IN INDIA

In keeping to the historical social and political realities of the patriarchies in India, Part III of the Constitution of the country enumerates certain general as well as specific provisions to uplift the status of women in the country, enforceable as constitutional or fundamental rights.

Articles 14, 15, 16 and 21 of the Constitution attempt to give equal treatment of life and livelihood to both men and women. Embodying the guiding principle of Equality before Law, Article 14 states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Prohibiting discrimination on the ground of sex, Article 15 states that

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—(a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

Providing equal opportunities irrespective of sex, and prohibiting discrimination against women, Article 16 clearly states, Equality of opportunity in matters of public employment—

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be eligible for, or discriminated against in respect of, any employment or office under the State.

Enumerating the right to protection of life and personal liberty, Article 21 provides that No person shall be deprived of his life or personal liberty except according to the procedure established by law. This Article keeps very closely to one of the most celebrated clauses of the Magna Carta, which states “No man shall be taken or imprisoned, disseized or outlawed, or exiled, or in any way destroyed save...by the law of the land.”

In view of the constitutional provision of Article 39 which specifically directs the states to secure equal pay for equal work for both men and women, the Parliament has enacted The Equal Remuneration Act 1976, which provides for payment of equal remuneration to men and women workers for the same work or a work of a similar nature and for the prevention of determination on grounds of sex. The notion of “equal work” depends on a number of various factors such as responsibility, skill, effort and condition of work. In

pursuance of the objectives of the state in order to secure just and human conditions of work and for maternity benefits as enshrined in the Constitution of India, the Parliament has enacted The Maternity Benefits Act of 1961. This Act regulated the employment of women in certain establishments for certain periods before and after child birth as well as provides for maternity and other benefits.

ROLE OF NGO'S IN WOMEN EMPOWERMENT

Governmental Organizations are formal agencies working for the empowerment of women. But this work requires multidimensional approach and hence a large number of voluntary organizations / NGO's have gained increased attention in the field from grass – root level to national & international level. Their role is so impressive because they work with missionary zeal and commitment. The working style of NGO's is open, transparent and personal. So, they are more effective in this direction. They organize seminars, conferences and workshops for the awakening of the masses. Their mass appeal – style contributes to a better understanding of women's rights and of the means to ensure the enjoyment of those rights and the elimination of discrimination. They prepare urban and rural uneducated women for self – employment, which is vital for the economic empowerment of the women. In short, all these programs and functions of NGO's contribute towards the realization of sustainable community development and hence women empowerment

Judicial Pronouncements

1) In the very renowned case of Ms. Githa Hariharan versus Reserve Bank of India, the petitioner and Dr Mohan Ram were married in Bangalore in 1982 and had a son in July 1984. In December 1984, the petitioner applied to the Reserve Bank of India (RBI) for 9% Relief Bond to be held in the name of the son indicating that she, the mother, would act as the natural guardian for the purposes of investments. RBI returned the application advising the petitioner either to produce an application signed by the father or a certificate of guardianship from a competent authority in her favour to enable the bank to issue bonds as requested. This petition was related to a petition for custody of the child stemming from a divorce proceeding which was pending in the District Court of Delhi. The husband petitioned for custody in the proceedings. The petitioner filed an application for maintenance for herself and the minor son, arguing that the father had shown total apathy towards the child and was not interested in the welfare of the child. He was only claiming the right to be the natural guardian without discharging any corresponding obligation. On these facts, the petitioner asks for a declaration that the provisions of Section 6(a) of the Hindu Minority and Guardianship Act of 1956 along with Section 19(b) of the Guardian Constitution and Wards Act violated Articles 14 and 15 of the Constitution of India.

The Apex Court has interpreted Section 6 of the Hindu Minority and Guardianship Act, liberally holding that the natural guardian of a Hindu minor in respect of the minor's person as well as the minor's property, can be the mother in the absence of the father. The word 'absence' has to be interpreted broadly as meaning the father's absence for any reason whatsoever in the context of taking care of the minor's person or property. If the father is wholly indifferent to the minor even if he/she lives with the mother, or by virtue of a mutual understanding between the father and the mother, the mother is put in exclusive charge of the minor, or if the father is physically staying away from the place where the mother and the minor are living, or in any situation where the father is physically unable to take care of the minor, he can be considered as absent and the mother can be recognised as the natural guardian. She can act validly on behalf of the minor as a guardian. Justice Anand has thus very rightly ensured that the minor's welfare is not neglected when the father is not taking or is not able to take any interest in the affairs of the minor for any reason.

2) In the case of Vishaka and Others Versus State of Rajasthan and Other the Apex Court has stated that gender equality includes protection from sexual harassment and the right to work with dignity as per our Constitution of India. Extra hazard for a working woman compared to her male colleague is clear violation of the fundamental rights of Gender Equality & Right to Life and Liberty. Safe working environment is the most necessary fundamental right of a working woman. In no way should working women be discriminated at the workplace against male employees (If a woman is, then it must be DOCUMENTED in company policies, for example, the stated limitation of women in police and armed forces.) Working with full dignity is the fundamental right of working women. The right to work as an inalienable right of all working women was clearly explained in this landmark judgment. The Vishakha judgment had recommended a Complaints Committee at all workplaces, headed by a woman employee, with not less than half of its members being

women. All complaints of sexual harassment by any woman employee would be directed to this committee. This is significant because an immediate supervisor may also be the perpetrator. The committee advises the victim on further course of action and recommends to the management the course of action against the man accused of harassment.

Amendments Required on Certain Existing Acts Related to The Empowerment of Women

Dowry Prohibition Act Of 1961

The National Commission of Women has proposed recommendation to amend the Dowry Prohibition Act of 1961 in the following manner:

- 1) Amendment to the definition of 'dowry'.
- 2) Provision for registration of lists of gifts received during the time of marriage.
- 3) Provision for separate penalties for giving and taking of 'dowry'.
- 4) Penalties for non-maintenance of lists of gifts received at the time of the marriage.
- 5) Incorporating a new clause providing an opportunity to the woman to file a case at the place where the offence was committed or where she permanently/temporarily resides.

Protection Of Women From Domestic Violence Act Of 2005

Some of the major amendments proposed for the amendment of the Protection of Women from Domestic Violence Act of 2005 come from the State Social Welfare Board of Kerala. These amendments include setting up of special courts to try cases on domestic violence and in the process bringing women under the ambit of the term 'respondent' and enhancing the punishment term in case of violation of court orders. These amendments are part of a report prepared by the Board, which is the Implementing Agency of the Domestic Violence Act in the state. Since the Act was implemented in Kerala in 2008, one of the first such reports is the comprehensive assessment report accessed by 'Express'. Parts of the report state that "In the wake of rise in cases of domestic violence, it was felt that constitution of special courts will help tackle such cases more effectively. Also the Act now defines the respondent, who is the perpetrator of the violence, as an 'adult male person'. We have suggested replacing this with 'any adult' as the present provision does not cover violence from women members of the family", as narrated to the Express by the Kerala State Social Welfare Board (KSSWB) Chairperson Qamarunnisa Anwar. The report also recommends enhancing the punishment prescribed under Section 31 of the Act, stating, "A breach of any order or an interim order by the respondent shall be a crime under this Act and shall be punishable with imprisonment of either description for a term which may extend to 3 years (as against two years in the Act) or with a fine which may extend to Rs 25,000 (as against Rs 20,000 in the Act)."

At present, there are 84 Service Providing Centres across Kerala which have been set up by the KSSWB for implementation of the Act. SPCs are recognized NGOs working in the field of women's welfare. As Anwar is quoted to have said, "Due to procedural delay in obtaining order of protection for victims, we have recommended that SPCs and also Commissions constituted to protect women's interests should be given the power to issue protection orders restraining the perpetrators from further harassing the victims."

Empowering Women: Suggestions for the Way Forward

Both rural and urban societies, as we have seen, cling on to the 18th century dogmas and beliefs of subjugation of women. They are not prepared to give women the basic safety, security and respect that is needed to normal sustenance, as we discuss in this article. After a brief outline of the prevailing political, social and economic conditions which are the primary hindrances to empowerment of women in society, and after discussing in detail the legal discourses and nuances which have intervened to better the conditions of empowered women in society, I enumerate here, my set of suggestions which I think, are critical aspects to bring the way forward for women empowerment in India. The suggestions are as follows:

- 1) Women must be respected in the family, their choices and decisions must be given equal importance, like the male counterparts at home. In the everyday living, there must be no difference made in the importance of the man and the woman in the family.
- 2) The girl child must be respected and loved, in both the public and the private spheres. She must not be made to feel inferior to the boys either at home, in school or in other public places. This sense of equality and

pride, when inculcated in a female infant, goes a long way to build her confidence and self-image of herself and her sex in the society.

3) Recognizing women's reproductive rights and providing effective family planning are crucial to curb maternal deaths and to reduce maternal mortality to 120 deaths per 100,000 live births by 2015, as the UNESCO has proposed.

4) Mothers should use their educational role in the family to assertively nurture gender equality, among both the sexes. This educative role of the mother (as well as the father) is critical for the child to think freely and not be oppressed by patriarchal structures.

5) Basic services such as preschools and child care should be integral part of strategies to improve the status of women.

6) The Judiciary System in India is one of the most crucial pillars of change in the society. Though there are very effective laws that protect women's rights and empower them, but most of us are not well-aware of the impact of these laws. These laws must be implemented more rigorously and uniformly, such that all sections of the society, the rich and the poor, become well-aware of the need to empower women in society.

7) Mass awareness through the role of the media is also an imperative step to bring about women's empowerment. Campaigns, advertisements, social awareness programmes, workshops, interactive shows, debates on television are some of the weapons of change in this misogynist framework in which the society operates. This must be made use of increasingly, and rapidly, for women's conditions to better in India.

8) Last but not the very least, the proper kind of education system is required in this country, for any sort of freedom of women, for women empowerment and employment, for women to frequent the public spaces.

CONCLUSION

This paper has aimed to emphasize how women empowerment has historically been one of the strongest drivers of social evolution over the past century. It also attempts to show why and how women empowerment is acknowledged as essential for addressing challenges facing humanity as a whole. Women are increasingly taking control of public spaces, being engaged in decision making, promoting their own views and requests, and demanding accountability over various kinds of work. Patriarchal structures are increasingly challenged around the world—the process towards an equal political and economic society for both the sexes, men and women seems irreversible. Yet the process is never complete, always already in a state of chaos, facing the most severe challenges and hurdles from more than one institutional structures.

It is in the face of this, that we attempt to look at some legal nuances and some historic judicial pronouncements in this country, to problematize the issue of women empowerment, and as an answer, provide some basic guidelines which must be followed for women to realize their true potentialities in the Indian context. In this, the article humbly locates the need for more rigorous and stringent legal interventions in the Indian judicial structure.

REFERENCES

1. MamtaRao, 'Law Relating to Women and Children', Eastern Book Company, Lucknow, 2012
2. Kamala Bhasin and Nighat Khan, 'Kali for Women', Delhi, 1986
3. D.D. Basu, "Introduction to the Constitution of India", 19th Edition, Reprint 2007, Wadhwa Publishers, Nagpur
4. Linda Mayoux, "Participatory Programme Learning for Women's Empowerment in Micro-Finance Programmes: Negotiating Complexity, Conflict and Change", 1996
5. Conger and Kanungo (ed)., "The Empowerment Process, Intergrating Theory and Practice", Academy of Management Review, 13(3), 1988
6. D.C. Korten, "Community Management: Asian Experience and Perspectives", Kumarian Press, Hartford, 1986
7. Peggy, "The Empowerment of Women", Westview Press, Boulder
8. E. Bhatt, 'World Development'
9. Smita Mishra Panda's working paper, "Women's Empowerment: A Framework Assessment"
10. GLOBAL FUTURE Studies and Research by The Millennium Project