



WOMEN EMPOWERMENT: CONSTITUTIONAL PROVISION

Dr. Mukesh Kumar

Lecturer

Govt. Law College, Alwar, Rajasthan

“Yatra Naryastu Pujyante Ramante Tatra Devata”

-----Manu Smriti

Introduction

“Empowering women is a prerequisite for creating a good nation, when women are empowered, society with stability is assured. Empowerment of women is essential as their thoughts and their value systems lead to the development of a good family, good society and ultimately a good nation.” –A.P.J. Abdul Kalam Former-President Govt. of India. Women are main founder of the world as well as men. So that in India women are called ‘Ardhangini’ and in western countries she is called ‘Better women in society. Empowerment of women is very essential for the development of society because women play an import key role in all the fields of development. Women contribute directly or indirectly for the economic development. Women play a strategic role in the development of society in particular and development economy in general. Although from last two centuries, in India, the position of women is so hazardous that year 2001 is announced as the year of “EMPOWERMENT OF WOMEN, 2001.” Empowerment of women involves many things-economic opportunity, property rights, political representation, social equality, personal rights and so on. The process of empowerment is taking place at so many levels that it is quite difficult to gauge the actual nature and extent of empowerment in improving status of women.

Status of Women in India

The status of women in India has been subject to many great changes over the past few millennia. Women have always played an important role in India as in any part of world. They are almost half of the human race. A writer has rightly remarked that the civilization of a country is measured with the freedom its women folk enjoy.

The ancient period of the Indian History was the golden period of women. They enjoyed perfect equality with men. They did not observe purdah. They openly participated in all social,



Legal Research Development

An International Refereed e-Journal

(Peer Reviewed, Refereed & Open Access, Index, Journal of Law)

Web: www.lrdjournal.com, Email: journal1257@gmail.com

Impact Factor : 2.010

ISSN: 2456-3870

Vol. 1, Issue-III
March 2017

e-ISJN: A4372-3116

religious and ceremonial activities of man. After the invasion of the Mughal Empire and later British Empire the position of women started to decline. During the Medieval period in India, the social status of women becomes more deteriorated. In Hindu society practice of Sati, child marriage became started. During the British rule many reformers as Rajaram Mohan Rai, Ishwar Chandra Vidya sagar etc. struggled for improvement the condition of women in India. In spite of the various measures taken up by the Government after independence and even during British rule the women have not been fully empowered.

Women Empowerment

In India women are treated badly in every field whether it is political, social, sports and technology or in education. Women are still victimized in the cases like rape, dowry, sexual harassment, kidnapping, female infanticides, domestic violence and girl trafficking etc. So, there is a need for upliftment of women socially, economically politically simultaneously in a comprehensive manner to undo this vicious cycle. The ground reality is deprivation, degradation and exploitation of women specially those belonging to deprived parts of the society. Hence she should be strengthened so that country can make use of hidden potential for the integrated development. Thus, empowerment of women is necessary in India. They should be empowered in various forms and kinds in order to protect themselves and to secure their dignity.

Constitutional Provisions for Women Empowerment

The framers of our Constitution have incorporated certain provisions within the Constitution to ensure the enforcement of Fundamental Rights; the most important is the Right to Constitutional Remedies under Part III and made it a Fundamental Rights. Fundamentals rights are considered the 'heart' of the Constitution. The fundamental rights are regarded as fundamental because they are most essential for the attainment by the individual of his full intellectual, moral and spiritual status and for development.

As per **Justice P.N. Bhagwati:**

“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.”

In India, the constitution makers while drafting the constitution, were sensitive to the various problems faced by women and made specific provisions relating to them. The constitution of India has taken a long leap in the direction of eradicating and lingering effects of such adverse forces so far as women are concerned. It recognizes women as a class by itself. Several articles in our constitution makes express provision for affirmative actions in favour of women are as follows-

Article 14 – Equality before Law:

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socioeconomic, education and political disadvantages faced by them. Our Constitution has a substantially elaborate framework to ensure equality amongst its citizens. It not only guarantees equality to all persons, under Article 14 as a fundamental right, but also expands on this in the subsequent Articles, to make room for affirmative action and positive discrimination. Article 14 of the Constitution provides equality before law. It embodies general principle of equality and prohibits unreasonable discrimination between persons. It 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.” In practice this guarantee has been read to infer ‘substantial’ equality as opposed to ‘formal’ equality which is evident from various judicial explanations and elaborations in the judgments of the Supreme Court of India as well as the Indian High Courts. Article 14 has also been invoked to prohibit sexual harassment of working women on the ground of violation of the right of gender equality. Article 14 indeed contains important provisions for protecting the rights of women and the interpretation of this Article by the judiciary enables the establishment of equality between the sexes.

Article 15(3) protective discrimination in favour of women and children:

Article 15 of the Constitution specifically prohibits discrimination on the basis of sex. Clause (1) of this Article provides that, “the state shall not discriminate against any citizen on grounds only of religion, race caste sex, place of birth or any of them.” Where article 15(1) prohibits gender based discrimination and Article 15(3) softens the strictness of Article 15(1) and Constitutes exception to



article 15 (1) and give power to the state to make special provisions for women and children and 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. Women in India have been socially and economically handicapped for centuries and, as a result thereof, they cannot fully participate in the socio-economic activities of the nation on a footing of equality. The purpose of Article 15(3) is to strengthen and improve the status of women. Article 15(3) thus relieves the statue from the bondage of Article 15(1) and enables it to make special provisions to accord socio-economic equality to women.

Article 16 – Equality of opportunity in matters of public employment:

Article 16 is an instance of the application of the general rule of equality before law laid down in Article 14 and of the prohibition of discrimination in Article 15(1) with respect to the opportunity for employment or appointment to any office under the State. Article 16(1) and (2) embody the general rule that the State shall provide equal opportunities for all citizens in matters relating to employment or appointment to any office under the State. There shall be no discrimination on the grounds of religion, race, caste, sex and place of birth, residence or any of them in providing employment. The importance of these provisions is that a woman has the same rights in matters of employment under the State as a man and the state shall not discriminate against women on this count. It operates equally against any such discriminative legislation or discriminative executive action. If any law is passed or any executive action is taken to prevent the women from taking up employment under the State, such law or executive action could be challenged under Articles 16(1) and (2).

Article 19 –

Gives the protection of certain rights regarding freedom of speech to every citizen without any biasness of sex or gender:

Article 21- Protection of life and personal liberty:

Article 21 Contains provisions for protection of life and personal liberty of persons. It states: “No person shall be deprived of his life or personal liberty except according to procedure established by law.” This short one sentence in which Article 21 has been conched has made long strides due to the judicial interpretation received at the deft hands of judges of the Apex Court. Article 21 not only



Legal Research Development

An International Refereed e-Journal

(Peer Reviewed, Refereed & Open Access, Index, Journal of Law)

Web: www.lrdjournal.com, Email: journal1257@gmail.com

Impact Factor : 2.010

ISSN: 2456-3870

Vol. 1, Issue-III
March 2017

e-ISJN: A4372-3116

gives the right to life but it includes the right to life with dignity. In this regard Supreme of India gave a landmark decision for working women in the case of **Vishakha V. State of Rajasthan AIR 1997 SC 3011**. In this case Supreme Court directed the government to form a legislation for working women to stop the sexual abuse at work place. In the case of **State of Maharashtra v. Madhukar Narayan Mardikar**, the Supreme Court has held that even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. Right to life is recognized as a basic human right. It has to be read in consonance with the Universal Declaration of Human Rights, 1948, the Declaration on the Elimination of Violence against Women and the Declaration and Covenants of Civil and Political Rights and the covenants of Economic, Social and Cultural Rights to which India is a party having ratified them. The right to life enshrined in Article 21 of the Constitution also includes the right to live with human dignity and rape violates this right of women.

Article 23 – Right against exploitation and prohibition of traffic in human beings:

For centuries women have been humiliated, exploited, tortured and harassed in all walks of life – physically, mentally and sexually. To safeguard and protect women against exploitation, Article 23(1) of the Constitution of India prohibits traffic in human beings and beggar and other similar forms of forced labour. “Traffic in human beings” means selling and buying human beings as slaves and also includes immoral traffic in women and children for immoral or other purposes. To curb the deep rooted social evil of prostitution and to give effect to this Article, the Parliament has passed the Immoral Traffic (Prevention) Act, 1956. This Act protects the individuals, both men and women, not only against the acts of the State but also against the acts of private individuals and imposes a positive obligation on the State to take all measures to abolish these evil practices.

Additionally, though they are not justiciable and hence cannot be invoked to demand any right there under, or to get them enforced in any court of law, the Directive Principles of State Policy in chapter IV of the Indian Constitution lend support to the paradigm of equality, social justice and empowerment which runs through all the principles. Apart from Part III and Part IV the Constitution contains provisions in other parts also empowering women. These provisions include equality in matters relating to voting right has been assured by the Constitution to both men and women.



Legal Research Development

An International Refereed e-Journal

(Peer Reviewed, Refereed & Open Access, Index, Journal of Law)

Web: www.lrdjournal.com, Email: journal1257@gmail.com

Impact Factor : 2.010

ISSN: 2456-3870

Vol. 1, Issue-III
March 2017

e-ISJN: A4372-3116

Article 39 Indicates about certain principles of policy to be followed by the state. The state shall, in particular, direct its policy towards securing: (a) That the citizens, men and women equally, have the right to an adequate means of livelihood; (b) That there is “equal pay for equal work” for both men and women; (c) That the health and strength of workers, men and women, and the tender age of children are not abused. Under Article 39(d), the state shall direct its policy towards securing equal pay for equal work for both men and women. Further Article 39(e) is aimed at protecting the health and strength of workers, both men women.

Article 42 of the Constitution imposes an obligation upon the state to make provisions for securing just and humane conditions of work and for maternity relief. Some of the legislations which promoted the objectives of this Article are the workmen’s Compensation Act, 1923, the Employees State Insurance Act, 1948, the Minimum Wages Act, 1948, the Maternity Benefit Act 1961, the Payment of Bonus Act, 1965, and the like. In the case of *Dattatraya v. State of Bombay*, the Court held that legal provisions to give special maternity relief to women workers under Article 42 of the Constitution does not infringe Article 15 (1). In a recent action, parliament of India set to pass the maternity benefit (Amendment) bill, 2016, in which 26 week paid leave to be mandatory for the pregnant working women.

Article 51-A the Fundamental Duties under Article 51 A also imposes the duty to renounce practices derogatory to the dignity of women on the citizens of India. In recent years, the judiciary has applied the principle of harmonious construction, which implies reading Fundamental Rights and Directive Principles of State Policy together.

Reservation of Seats for Women in Election to Local Bodies:

The parliament has succeeded in its efforts to provide for reservation of seats for women in election to the Panchayats and the Municipalities. Reservation of seats for women in Panchayats and Municipalities has been provided in Articles 243 D and 243 T of the Constitution of India. Part IX and IX A have been added to the Constitution by the 73rd and 74th Amendment Acts with Articles 243, 243 A to 243 D and Articles 243P, 243ZG. 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 Scheduled Tribes) of the total number of seats to be filled up by direct election in every Panchayat,



shall be reserved for women and such seats may be allotted by rotation to different constituencies provides similar provisions for reservation of seats for women in direct election in every Municipality. Therefore, reservation of 33% of seats for women candidates to hold office and perform all public functions at the Panchayat and Municipal level is within the constitutional mandate. As an extension the 73rd and 74th Amendments to the Constitution, the Constitution (81st Amendment) Bill was introduced in the Parliament way back in 1996 to reserve one-third of seats for women in the Lok Sabha and the State Assemblies. However, this bill has not yet been brought in to shape due to political overtures.

Legal Provisions for Women Empowerment

In India women are still victim of abuse and violent crimes. To uphold the constitutional mandate the state has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and to provide support services especially to women. The crimes against women are broadly classified in two categories.

A. The Crime identified under the Indian Penal Code (IPC)

- (i) Rape (Sec. 376 IPC) (Recently amended in 2013 after Nirbhaya rape case)
- (ii) Kidnapping (Sec. 363 IPC)
- (iii) Homicide for Dowry, Dowry Death attempt (Sec.302/304-BIPC)
- (iv) Molestation (Sec.354 IPC)
- (v) Assault or use criminal force to woman with intent to disrobe her (Sec. 354 A- IPC)
- (vi) Stalking (Sec. 354 D - IPC)
- (vii) Torture both Physical & Mental (Sec.498-A IPC)
- (viii) Sexual Harassment (Sec. 509 IPC)
- (ix) Kidnapping, abduction or including women to comple her. etc/ (Sec 366 IPC)
- (x) Voyeurism (Sec354 C- IPC)

B. The Crimes Identified under the Law

The provisions of law affecting women significantly and their amendments carried out to keep pace with the emerging requirement of women.



The Indecent Representation of Women (Prohibition) Act, 1986

An Act to prohibit indecent representation of women through advertisements or in publications, writings, paintings, figures or in any other manner and for the matters connected therewith or incidental.

The Hindu Succession Act of 1956

This Act recognized an equal rights for women in the matter of inheritance of property. She can also or mortgages the inherited property or use it for herself. After the amendment in 2005 this act includes women in coparcenary and makes a female Hindu, absolute owner of her property.

The Suppression of Immoral Traffic in Women and Girls Act of 1956

This Act aims to deal with the problem of prostitution of women and girls. The main purpose of this act is to abolish the scope of prostitution and to reform the welfare of fallen women by set up the protective homes.

The Hindu Marriage Act 1955

This Act recognized an equal rights of men and women in the matters of marriage and divorce. Under the provision of this Act the man or woman have got equal rights to present a petition in a court of law for divorce. In fact it gives women more bases to dissolve her marriage than men.

The Equal Remuneration Act 1976

This Act ensures equal remuneration to men and women worker performing the same work. It also prohibits discrimination in recruitment, promotion, and training of jobs.

The Companies Act 2013

According to this act companies have sought to create quota for women directors, which is standard norms in European countries. This act recognized to breaking the glass ceiling in the board rooms.



The Dowry Prohibition Act 1961 (Amended in 1986)

This Act prohibits the giving or taking of dowry that is any property or valuable security given or agreed to be given either directly or indirectly by any party or parents of either side at the time of marriage ceremony. The dowry system has been a great social and health problem such as cases of burns or suicides. These cases are mainly due to the fact the dowry was not given according to the expectation of bridegroom party. If any person violates the act may be punished with the imprisonment for a term not less than 5 years and with fine which shall not less than Rs 15000/- or the amount of the value of such dowry. Still this Act makes some effort in bringing social change.

Protection of women from Domestic Violence Act 2005

An Act to provide for more effective protection of the rights of women guaranteed under the constitution who are victims of violence of any kind occurring within the family. Domestic violence against women includes actual abuse or threat or abuse that is physical, sexual verbal, emotional or economic. This act provides the rights of women to reside in her matrimonial home or shared household whether or not she has any title or rights in such home or household.

The Pre-Natal Diagnostic Technique (Regulation and Prevention of Misuse) Act 1994, Amendment Act, 2002

The purpose of this Act is to provide for the prohibition of sex selection, before or after conception, and for regulation of prenatal diagnostic technique for the purpose of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex linked disorder and for the prevention of their misuse for sex determination leading to female feticide.

The Sexual Harassment of Women at Workplace Act 2013

In 2013 India finally enacted the Sexual Harassment of women at workplace (Prevention, Prohibition and Redressal) Act, 2013 for prevention of Sexual Harassment against women at the workplaces. The Central Govt. vide notification SO 3606 (E) appointed 9 Dec. 2013 as the date on



which the provisions of the Act came into force on the same day. This act allows that no women shall be subjected to sexual harassment at any workplace.

Role of Judiciary in Women Empowerment

Vishaka v. State of Rajasthan (AIR 1997 S.C.3011)–

the apex court held that the sexual harassment of working woman amounts to violation of right of gender equality and right to life and personal liberty. The employer or other responsible persons in work places or other institutions are under an obligation to prevent or deter the commission of acts of sexual harassment and to provide the proceedings for the prosecution of acts of sexual harassment by taking all steps required.

Delhi Domestic working Women's forum V. Union of India(AIR 1995 SCC 14(19)-

The Supreme Court stated that the national commission for women should be asked to frame schemes for compensation and rehabilitation to ensure justice to the rape victims. It has been further stated that because of the directive principle contained in Article 38(1) it is necessary to set up criminal injuries compensation board whether or not, a conviction has taken place.

Govt. Initiatives for Woman Empowerment

The Constitution empowers the central and state government to adopt measures of women empowerment. Thus the Govt. of India has been trying to empower the women through various schemes or initiative related to women empowerment in India.

A) Ministry for Women and Child Development

Ministry of Human Resource and Development take initiative step in the year 1985. The Ministry for women and child Development was set up as a department for the development of child & women in the country. In 2006 this department was given the status of Ministry with powers to make plans, programmes, schemes for the development of women and child.

B) National Commission for Women

In 31st Jan. 1992, the Government of India was setup the National Commission for women under The NCW Act 1990 (Act No. 20 of 1990 of Govt. of India) with Mrs. Jayanti Patnik as



chairperson. NCW was exclusively set up to help women via the constitutional by reviewing legal and constitutional safeguards for women, recommending remedial legislative measures by fascinating quick redressal of grievance and by advising Govt. on all policy matters related to women.

C) National Policy for The Empowerment of Women

In year 2001 Govt. of India declared the year 2001 as the year of women empowerment and the National Policy for the empowerment of women was passed. The policy was aimed to ensuring women empowerment through positive political, economic and social policies for the full development of women.

(D) Pradhan Mantri Ujjwala Yojana (PMUY)

It is a welfare program of the government of India launched by India Prime Minister Sh Narendra Modi in 2016. The stated objectives of the program is providing 50,00,0000 LPG Connections to women from families below the poverty line.

Conclusion

Yet many changes are still needed. laws must protect women from exploitation and oppression. Education must make women aware of the problem which they have to face. 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. Government and society must take initiative to create a climate in which there is no gender inequality and women have full opportunities of self-decision making and participating in the economic, social and political life of the country. The empowerment of women has become one of the most important concerns of India. Efforts by the Govt. of India are taken to ensure gender equality but govt. initiatives alone would not be sufficient to achieve this goal. The Indian women have got strong practical sense and an inherent sagacity and thus there is a roseate future for them. We always with the best to our women.

References -

1. Neera Desai & Usha Thakkar. "Women in Indian Society." (2001) New Delhi.
2. Smita Tiwari. "Daughters of the Earth." (2001) New Delhi.
3. A.R. Kidwai. "Higher Education, issue & challenges." (2010) New Delhi.
4. Nadeem Hasnain. "Indian Society and Culture." (2004) New Delhi.
5. C.N. Shanker Rao "Indian Society Structure and Change." (2005). Manglore.
6. J.N. Pandey, "Constitution of India.