

Women empowerment in India: a myth or reality

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Abstract

Women empowerment has been the most talked about topic in socio- economic and political environment for the decades. Numerically women are equal but in terms of power, position and influence they still are in a minority group. We can't advance if half of the populace remains socially, politically and monetarily in reverse. The aim and purpose behind the present paper is to investigate the current provisions of the constitution and women related enactments, their condition of usage and effect on women empowerment. The decision given by higher judiciary and PIL's identifying with women has also reviewed to evaluate the approach and attitude of judiciary towards women. In nutshell studies attempts to investigate laws as well as judgments to protect, safeguard and empower women; so as to suggest reasonable measures to strengthen the process of empowerment of women.

Although discrimination against women is a global problem, it is yet to be properly addressed as a human right issue. The constitution of India also guarantees the equality of rights of men and women and also empowers the state to adopt measures of positive discrimination in favor of women for neutralizing the cumulative socio-economic, education and political advantages faced by them. India also ratified various contentions like 'The U.N Convention on the Elimination of All Forms of Discrimination Against Women (1979)' and observes that discrimination against women is a negation of principles of equality and respect for human dignity. As signatory to these instruments, India is bound to take all necessary steps to combat violence against women and measures to promote women welfare. The present paper explores root cause of this problem, a hardcore reality i.e. violence against women then to overcome this reality; role of law and role of judiciary in protecting women's rights with relation to technological advancements and women rights. These measures would bring salubrious effects on the Governance by women in legislature and executive, which would result in women empowerment. It demonstrates how the law of our nation has contributed its best to change the lives of women, to influence them to live with poise, respect and regard not as a slave.

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Introduction

“Empowerment”, is not a product of a revolution but of evolution. Amid the most recent three decades there has been an ocean change in the idea of Women empowerment. A dialogue from A Doll's House composed by Henrik Ibsen clarifies the internal voice of a woman. Helmer tells Nora—“First and foremost, you are a wife and mother.” Nora replied—“That I don't believe any more. I believe that first and foremost, I am an individual, just as much as you are.” This dialogue carries a forceful message. A woman today expects herself—and which is all well and good—to be dealt with as an individual, a living person, qualified for a similar poise and status, as her male counterparts².

Today, the women empowerment has turned out to be a standout amongst the most critical concerns of 21st century. Be that as it may, for all intents and purposes women empowerment is as yet a deception of reality. We see in our everyday life how women plainly victimized by different social wrongs. Women Empowerment is the fundamental instrument to extend women’s capacity to have resources and to settle on vital life decisions. Women empowerment is basically the procedure of upliftment of financial, social and political status of women, the customarily underprivileged ones, in the general public. It is the way toward guarding them against all types of savagery. The examination depends on absolutely from auxiliary sources. The examination uncovers that women of India are generally disempowered and they enjoy somewhat lower status than that of men disregarding numerous endeavors attempted by Government. The study concludes by an observation that entrance to Education, Employment and Change in Social Structure are just the empowering elements to Women Empowerment.

India was ranked 108th on the annual Global Gender Gap index compiled by Geneva-based World Economic Forum. India has closed its gender gap by 2 per cent in a year and its gap now stands at 68 per cent across the four pillars that WEF measures — economy, education, health and political representation³. This study alludes that India’s Human Development Index is progressing and plethora of gender justice is also diminishing with time to time.

Historical background

²Justice R.C. Lahoti, “Women's Empowerment—Role of Judiciary and Legislature,” (2005) 2 SCC (Jour) 49.

³*Rankings of Countries*, INDIANEXPRESS, <http://indianexpress.com/article/india/india-news-india>.

Through the ages, the woman has been subject of study – from ancient to modern times. The woman has been branded as a mysterious creature as well as a devoted mother and self-sacrificing wife during various periods of time through which the human civilization has evolved out from its primitive roots to an advanced scientific and technical culture.

In ancient India⁴: The Pre-Vedic society was basically matriarchal. It worshipped a goddess of earth- mother type. The Aryan society was patriarchal but the worship of goddess prevailed. Earlier the mother goddess was worshipped in the form of icons but the Aryans almost replaced the icons with matronly women real mothers who were human and humane. The mother was given a high status in all the spheres of life. Since Rig Vedic age education of women was given much importance. Buddha believed that women should be given proper place in the society. The Jain system of education was universal in nature and applicable to all alike, irrespective of sex, caste. Since in Sikhism the equality of sexes was recognized, very few restrictions were put on women's education.

Christian view⁵: In Christianity, women are considered to be harbinger of evil. No doubt Catholics give a high respectful place to Virgin Mary but both Protestants and Catholics feel that the women brought the evil to the earth.

Islamic view⁶: In holy Quran it is mentioned that “women are the twin halves of men”. Islam gives equality to women in relation to men in many respects. It makes a case for the dignity of women. But in early Islam, female education was highly restricted and their presence was ignored by the society.

Through the past: In India the Calcutta, in *Re Regina Guha*⁷ and the Patna, in *Re Sudhansu Bala Hazra*⁸ High Courts rejected the applications of women for enrolment under the Legal Practitioners Act. The full benches of these courts held that the women were not included in the term ‘person’. To some extent it is observed that our country witnessed improvements in the status of Women after the arrival of British. There were many women reformers who worked for the betterment and upliftment of their other female counterparts.

⁴MAYA MAJUMDAR, SOCIAL STATUS OF WOMEN IN INDIA, Delhi, Dominant publishers. Edition 2009, Pg. No. 7 – 14.

⁵*Ibid* at Pg. 14-19.

⁶*Ibid*.

⁷Re Regina Guha, A.I.R. 1922 Cal. 161.

⁸Re Sudhansu Bala Hazra, A.I.R. 1922 Pat. 269.

A hardcore reality: violence against women

The list of crimes that are committed against women seems amaranthine, varying from simple harassment, physical and mental torture to even denying them the very right to exist. A woman is forced to suffer for the wayward acts of her tormentors and is held to be responsible for their behavior in some way or the other.

1. **Rape; sexual harassment and abuse at work place**: Rape is sexual intercourse with a woman against her will or without her consent⁹. It is the most heinous crime committed against the women by men. At least 34,651 cases of rape were reported across India last year, statistics released by the country's National Crime Records Bureau (NCRB) have revealed.¹⁰

The initiative on a discourse on sexual harassment of women at their workplace in India started with Supreme Court's Vishaka guidelines in 1997. But even today "the issue of sexual harassment has largely been swept under the carpet in India. The provisions have never been successfully invoked because of social taboos still associated with sexual harassment"¹¹

2. **Dowry deaths and bride burning**¹²: In the sordid annals of crimes of greed and cruelty against women, the phenomenon of dowry deaths and bride burning occupies a leading position for years. In 1986 "Dowry Death" was incorporated in the Penal code. Section 304-B IPC will be attracted whenever woman dies within seven years of marriage. In *Soni Bahubahi vs. State of Gujarat*¹³ it was held that it is immaterial whether she committed suicide or was murdered because of dowry; guilty were held liable. By mere extrapolating the figures placed on record by the government – if in 2016, 20 women are killed every day, 4,68,000 married women have been killed in India due to tortures related to dowry¹⁴.

3. **Trafficking; forced prostitution & violence against indigenous**

⁹Section 375 of The Indian Penal Code 1860, No. 45, Acts of Parliament, 1860.

¹⁰India: More than 34,000 cases of rape reported in 2015, ALJAZEERA, <http://www.aljazeera.com/news/2016/08/india-34000-cases-rape-reported-2015-160831140518208.html>.

¹¹Sarpotdar Anagha, *Sexual harassment of Women: Reflections on the Private Sector*, EPW, 47, 18-23.

¹²SHOBHASAXENA, CRIME AGAINST WOMEN AND PROTECTIVE LAWS, Edition 2010, 111-165.

¹³*Soni Bahubahi vs. State of Gujarat*, (1991) 4 S.C.C. 298.

¹⁴Vikram Srivastava, *Dowry Deaths: India's Shame*, COUNTERCURRENTS, <http://www.countercurrents.org/2016/07/06/dowry-deaths-indias-shame/>.

women:Prostitution is the crudest manifestation of societies where women have been driven to sell their bodies as means of survival. The judiciary in *Raj Bahadur vs. Legal Remembrancer*¹⁵ held that traffic in women for immoral purposes is prohibited under Article 23. According to Article 39 (d) the health and the strength of workers should not be abused. Hindu Marriage Act, 1955 and Section 494 IPC prohibits polygamy. The number of women trafficked rose by 22 percent to 10,119 in 2016¹⁶.

Constitutional allegiance to empowering women

In this context the date of India's political opportunity (15th August, 1947) is a point of interest in the historical backdrop of women empowerment in India. This is clear from the provisions of the Constitution, which have guaranteed equality amongst men and women as well as gave particularly certain safeguards in interest of women.

Fundamental rights guaranteed to women under the constitution¹⁷: 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.¹⁸”

1. **Article 14- equality before law**: 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 the case of *Mackinnon Mackenzie and Co. Ltd. v. Andrey D’ Casta*¹⁹ the question involved was getting of equal pay for equal work. Their Lordships ruled that when lady stenographers and male stenographers were not getting equal remuneration, that was discriminatory and any settlement in that regard did not save the situation.

¹⁵Raj Bahadur vs. Legal Remembrancer, A.I.R. 1953 Cal. 522.

¹⁶Nita Bhalla, *Almost 20,000 women and children trafficked in India in 2016*, REUTERS, <https://www.reuters.com/article/us-india-trafficking/almost-20000-women-and-children-trafficked-in-india-in-2016-idUSKBN16G29G>.

¹⁷DR. S. C. TRIPATHI AND VIBHA ARORA, *LAW RELATING TO WOMEN & CHILDREN*, Ed. 2004, Pg. 2-17.

¹⁸Maneka Gandhi v. Union of India, A.I.R. 1978 S.C. 597.

¹⁹Mackinnon Mackenzie and Co. Ltd. v. Andrey D’ Casta, A.I.R. 1987 S.C. 1281.

2. **Article 15(3) – protective discrimination in favor of women and children:** Article 15(3) thus relieves the state from the bondage of Article 15(1) and enables it to make special provisions to accord socio-economic equality to women²⁰.
3. **Article 16- equality in matters of public employment:** In *Government of Andhra Pradesh v. P.B. Vijaya Kumar*²¹, the legislation made by the State of Andhra Pradesh providing 30% reservation of seats for women in local bodies and in educational institutions was held valid by the Supreme Court.
4. **Article 23- right against exploitation prohibition of traffic in human beings:** Article 23, which prohibits, among others, traffic in human beings and makes any contravention of the provisions of this Article an offence punishable in accordance with law, guarantees to women a right against exploitation. 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, 1956²².

The role of directive principles of state of policy²³:

Part IV of the Constitution from Articles, 36 to 51 contains what may be described as the active obligation of the State. The Fundamental Duties under Article 51 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.

Women empowerment under personal laws

1. **Hindu adoption maintenance act, 1956:** Section 18-A provides for obligations of husband to maintain his wife²⁴. Section 18(2) provides right of wife to live separately and S. 19 provides for maintenance of widow by her father-in-law.

²⁰JAIN M.P., IN INDIAN CONSTITUTIONAL LAW, 992 (2011).

²¹Government of Andhra Pradesh v. P.B. Vijaya Kumar, A.I.R. 1995 S.C. 1648.

²²Formerly known as the Suppression of Immoral Traffic in Women and Girls Act, 1956.

²³VijiAthreye, *The Directive Principles*, MAPSOFINDIA, <https://www.mapsofindia.com/my-india/india/the-directive-principles>.

2. **Hindu succession act, 1956**: Section 14 of the Act provides for property of female Hindu to be her absolute property. Section 23 provides right of female legal heirs in the dwelling house.
3. **The Hindu minority and guardianship act, 1956**:Section 6 of the Act provides for mother as a natural guardian for minors below 5 years²⁵.
4. **The Hindu marriage act, 1955**: Section 13(2) of the Act provides for wife to present a petition for divorce. Section 13(b) provides equal right for wife for getting divorce by mutual consent. Section 24 of the Act provides for relief for interim maintenance and expenses. Section 25 of the Act provides for right to a wife to seek permanent alimony and maintenance and S. 26 of the Act provides right to claim custody of children.
5. **The Muslim women (protection of right on divorce) act, 1986**:Under the provisions of the Act provides for maintenance of women by the relatives after the iddat period²⁶.

Domestic violence act, 2005 & women empowerment

Domestic Violence Act 2005 is the main noteworthy endeavor in India to perceive domestic violence as a culpable offence, to stretch out its arrangements to those in live in relationships²⁷, and to provide for emergency help to victimized women, notwithstanding legitimate recourse. Domestic violence under the Act incorporates genuine abuse or the danger of abuse, regardless of whether physical sexual & verbal.

The major rights of a woman under the act²⁸:It legislates against husbands who throw their wives out of the house when there is a dispute. Such an action by a husband will now be deemed illegal, not merely unethical. Sections 18 to 23 provide a large number of options for legal redressal. She can assert through the courts Protection Orders, Residence

²⁴NeelamMalhotra v. Rajinder Malhotra, A.I.R. 1994 Del. 234.

²⁵GithaHariharan v. Reserve Bank of India, (1999) 2 S.C.C. 228.

²⁶Danial Latifi v. Union of India, (2001) 7 S.C.C. 840.

²⁷ Chanmuniya vs. Virendar Kumar Singh, (2011) 1 S.C.C. 141.

²⁸DR. S.C TRIPATHI & VIBHA ARORA, LAW RELATING TO WOMEN & CHILDREN, Ed. 2004, Pg. 24-40.

Orders, Monetary Relief, and Custody Order for her children, Compensation Order and Interim/Ex parte Orders. If a husband violates any of the above rights of the aggrieved woman, it will be deemed a punishable offence. Charges under Section 498A can be framed by the magistrate, notwithstanding the charges under this Act. Further, the offences are cognizable and non-bailable. Punishment for violation of the specified rights could stretch out to one year's imprisonment and/or a maximum fine of Rs. 20,000.

The Supreme Court in the case of *S.R. Batra v. Taruna Batra*²⁹, the first judgment on this Act said Even if she is a victim of domestic violence, she retains right to live in 'shared homes' that is, a home she shares with the abusive partner.

In the recent judgment in *V. D. Bhanot v. Savita Bhanot*³⁰, the Apex Court held that, "an estranged wife has a right to stay in her husband's house and is entitled to maintenance from him under the Domestic Violence Act."

Industrial law and women

Under the Industrial laws women have been given the extraordinary position in the perspective of their one of a kind quality, physically, rationally and biologically. Portions of the Acts identified with business were instituted amid British period and in addition after independence. These Acts controlled the hours of work as well as contained arrangements of wellbeing, security and welfare of woman laborers and ensures equality under the steady gaze of law and equivalent treatment to women specialists.

1. **Factories act, 1948**: Factories Act is a work welfare enactment where in measures have been set down to be embraced for the wellbeing, security, welfare, working hours, leave and work of young people and Woman.
2. **Employee state insurance act, 1948**: Under this Act, insured women workers get sickness benefit, disablement benefit, medical benefit and funeral expenses along with insured men worker. However, in addition to these benefits, insured women workers also get maternity benefit in case of certain contingencies arising out of confinement, miscarriage, sickness arising out of pregnancy, confinement, premature birth of child or miscarriage and death.

²⁹S.R. Batra v. Taruna Batra, 2007 (3) S.C.C. 169.

³⁰V. D. Bhanot v. Savita Bhanot, A.I.R. 2012 S.C. 265.

3. **Maternity benefit amendment act, 2017**³¹: Under the Maternity Benefit Amendment Act, this advantage could be availed by women for a period stretching out up to two months previously the normal delivery date and remaining 18 weeks can be availed post childbirth. For women who are expecting in the wake of having 2 kids, the span of paid maternity leave might be 12 weeks.

Judiciary as harbinger for women empowerment

The legislations alone cannot make justice available to citizens in society. Seeking equality in an unequal society is a task demanding concerted action on the part of the individuals, the community, government and the judiciary on a continuing basis. This is what woman, as a class must realize in their struggle for equal justice in the democratic republic of India. Though not welcomed by all, the action initiated by Public Interest Litigations and the pro-active role played by the Judiciary in interpreting these PILs has always been praised by most of the society, later on.

In *C. Ravichandran Iyer v. Justice A.M. Bhattacharjee*³², the court said that 'the role of the judge is not merely to interpret the law but also to lay new norms of law and to mould the law to suit the changing social and economic scenario to make the ideals enshrined in the Constitution meaningful and a reality'.

1. **Role of judiciary in giving equal status to women**: In the landmark case of *Randhir Singh Vs Union of India*³³, the apex Court opined that the principle of equal work is not a fundamental right but it is certainly a constitutional goal. Article 39(d) of the Constitution states "that there is equal pay for equal work for both men and women." Similarly, in *Grihakalyan Vs Union of India*³⁴ it was held that the denial of equal pay for equal work becomes irrational classification within the meaning of article 14 of the constitution. In *Air India Vs Nargesh Meerza*³⁵, the Court held that the termination of service on pregnancy was unreasonable and arbitrary, therefore violative of article 14.

³¹Maternity Benefit (Amendment) Act, 2017, WIKIPEDIA, [https://en.wikipedia.org/wiki/Maternity_Benefit_\(Amendment\)_Act,_2017](https://en.wikipedia.org/wiki/Maternity_Benefit_(Amendment)_Act,_2017).

³²C. Ravichandran Iyer v. Justice A.M. Bhattacharjee, 1995 S.C.C. (5) 457.

³³Randhir Singh Vs Union of India, A.I.R. 1982 S.C. 879.

³⁴Grihakalyan Vs Union of India, (1991) 1 S.C.C. 619.

³⁵Air India Vs Nargesh Meerza, A.I.R. 1981 S.C. 1829.

2. **Role of judiciary as protector:** The vibrant judiciary has recently exalted the dignity of women by its golden judgments. In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*, the Supreme Court extended the benefits of the Maternity Benefit Act, 1961 to the Muster Roll (Daily Wagers) female employees of Delhi Municipal Corporation. In this case, the Court directly incorporated the provisions of Article 11 of CEDAW, 1979 into the Indian Law. In *Delhi Domestic Working Women's Forum v. Union of India*³⁶, the Supreme Court suggested the formulation of a segment for awarding compensation to rape victims at the time of convicting the person found guilty of rape. The Court suggested that the Criminal Injuries Compensation Board or the Court should award compensation to the victims by taking into account, the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape.

3. **Role of judiciary as social reformer:** The Supreme Court created liberal judicial trends for protection of women giving favorable decisions not in constitutional matters but in case of customary laws also, such an example is *Shah Bano Case*³⁷ where the apex Court set aside the personal law and bring the Muslim women under the purview of Section 125 Cr.p.c. Similarly, in *Shamim Ara Case*, the Supreme Court declared that the triple talaq is not a valid talaq. The effort of Indian judiciary is commendable, whenever and wherever it gets a chance it interprets the law according to the changing needs of the society as done by it in the case of *Githa Hariharan v. Reserve Bank of India*³⁸ where Section 6(a) of Hindu Minority and Guardianship Act, 1956 and Section 19(b) of the Guardians and Wards Act, 1890 interpreted in such a way that father and mother get equal status as guardians of a minor.

Conclusions and suggestions

“Just as bird could not fly with one wing only, nation would not march forward if the

³⁶Delhi v. Female Workers (Muster Roll), (1995) 1 S.C.C. 14.

³⁷Shah Bano Case, A.I.R. 1985 S.C. 945.

³⁸Githa Hariharan v. Reserve Bank of India, A.I.R. 1999 S.C. 1149.

women are left behind”.

Empowerment of any area of a general public is a myth until the point that they are presented equality under the steady gaze of law. There is no denying the way that women in India have gained an extensive ground over the most recent fifty years however yet they need to battle against many social wrongs in the male overwhelmed society. Empowerment of women is a confounded process. It includes changing the mindset of the entire society. Established arrangements and the enactment authorized by the Government of India to defend the interests of women have been acquiring moderate yet compelling change social, monetary and political status of women in India and consequently establishing a solid framework of women empowerment. The announcing of judgments and civil argument on vital cases has reinforced the certainty of women in judiciary. The laws instituted by the Government of India have immediate and roundabout bearing on the status women. Women empowerment emphasizes that all the women are free to develop their personal abilities and make choices without the limitations set by stereotypes, rigid gender roles, and other prejudices. Their different aspirations should be valued equally and they would be treated fairly according to their needs.