

Constitutional provisions for women empowerment in Atmanirbhar Bharat

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Abstract

The condition of women in the Indian society has been reported to be deplorable by various government and international organization. This paper makes an attempt to review the measures undertaken for upliftment of women across historical periods. It studies the various reforms undertaken during the colonial period as well as the constitutional safeguards provided to women in the post - independence period. The paper suggests that despite landmark constitutional judgements laying groundwork for equity of women, there is an urgent need for empowering women to make them truly Atmanirbhar

Keywords: Laws, women empowerment, crime against women, constitutional provisions

1. Introduction

Women empowerment and gender equality are two facets of the same coin, both the facets complement each other to a great extent. India is home to 1.39 billion people in the world. India has a population of 662.90 million females. Percentage of female population is 48.04% compared to 51.96% male population. Gender equality and women empowerment are two aspects which are enshrined in the constitution of India. Constitution on every front grants equality to women. It also empowers the state to introduce policies so as to eliminate any sort of discrimination, inequality or cruelty against women. Women empowerment can be defined as a process of elevating status of women living in the society, and to make rules and laws for promoting the same. Women empowerment in the present scenario is a means through which any sort of biological or gender discrimination against women can be curbed in a more efficient manner and through this women of any society or country can get a strong hand at developing themselves and the nation.

“There is an urgent need to tackle the ills of the society against women through active participation of all-men, women, society, and governments. It is imperative to make women empowerment a people’s movement.”

Smt Sushma Swaraj

¹. Advocate, Supreme Court of India

2. Women empowerment: A historical perspective

Discrimination against the women of society dates back to medieval and pre-medieval period. In the ancient times women's were given only one role to act as a medium to bring progeny for men. During those times, women were considered as a puppet in hands of powerful men in society and they were exploited in the society. At many instances when women questioned the powerful men of society they were said to be indulged in "witchcraft" and they were ruthlessly stamped as witches, and false allegations were put against them. In ancient time breast tax was imposed on women in state of Travancore. The women from lower castes were not allowed to cover their breasts, and were taxed heavily if they did so. However, a brave woman called Nangeli who belonged to Ezhava caste, felt humiliated by such acts of collector and hence decided to protest against such cruelty by covering her chest without paying the breast tax. One of the officials of the collector asked her to stop breaking the law. She refused to comply with the law and cut her breasts off. Nangeli's sacrifice benefited all the women of Travancore, and ultimately forced the king to eliminate the law on breast tax and a new revolution for women empowerment started in various countries. Women also faced social evils such as female infanticide, child marriage, dowry and sati system etc. Women during that period were treated as an object and inferior to men in male dominated society. Economically, women were dependent on men.

- To strengthen the position of women in the society.
- To provide them with resources, so that they become financially stronger and self-dependent at par with men.
- To promote education amongst women so that they can compete with men professionally.
- To introduce schemes to train women in self-defense techniques so that they can protect themselves.
- Women have to change with changing society and empower themselves, and equally help the government in making plans
- Elimination of violation against women must be the considered as the beginning of new phase towards the concept of women empowerment.

"Each woman would have faced many challenges but when somebody puts you down, it is when you feel the need to rise up." Smt. Naina Lal Kidwai; Former Country Head, HSBC India

3. Reforms during colonial period

- Education of women
- Prevention of child marriage
- Removal of polygamy
- Act of sati (abolish), 1829
- Hindu Widow Remarriage Act, 1856
- Child Restriction Act, 1929
- Women Property Right Act, 1937

4. Constitutional provisions

- Article 14 :The government shall not deny to any person equality before law or equal protection of the law.
- Article 15 : The Government shall not discriminate against any citizen on the ground of sex. Article 15(3): Special provision enabling the state to make affirmative discriminations in favor of women
- Article 42 : It directs the state to make provision for ensuring just and human conditions of work and maternity relief.
- Article 15 (A) : It renounce the practices derogatory to the dignity of women.

Crime against Women needs to be curbed. Following statistics are shared by National Crime Records Bureau of India.

- More than 228,650 reported incidents of crime against women in 2011.
- Crime against a woman is committed every three minutes in 2012
- There were over 300000 reported crimes against women in 2015
- Dowry death cases were reported in Uttar Pradesh, 2,244 cases were reported.
- Bihar witnessed 1,275 cases of dowry death which is 15.5% of cases nationwide.
- About 5,000 dowry deaths are reported every year.

Other crimes against women are as follows

- Honour killings
- Branding women as witches (accusing them of witch craft) & their murder

- Sexual Crimes Against Women
 - Outraging modesty of women
 - Rape
 - Marital rape
 - Human trafficking and forced prostitution
 - Domestic violence
 - Child marriage
 - Acid attack
 - Abduction
 - Perpetuation
 - Eve teasing

Domestic violence is widespread predominantly against women. Around 70 % of women in India are victims of sexual violence, a women is raped every 29 minutes. Dowry death occurs every 60 minutes. Cases of cruelty against women occur every nine minutes. These crimes in the society against the women are making the concept of “Women Empowerment” meaningless day by day.

The case of C.B.Mathamma make it left align Versus Union of India - pointed that not only political parties but also the judiciary is working hard towards eradicating gender injustice. In the present case, the validity of Indian Foreign Services (conduct and discipline) rule of 1961 was challenged, it was said that female employer will have to obtain written permission of the government before her marriage and at any time after her marriage a women member of the service may be required to resign from service. Hon’ble Supreme Court held that such a provision is discriminatory against women and hence unconstitutional.

In the case of Vishakka & others Versus State of Rajasthan, Hon’ble Supreme Court held that the harassment of women at work places amount to violation of gender justice and right to life and liberty which is clear violation of article 14,15 and 21 of constitution of India.

5. Plans and policies for women empowerment

- Fifth five year plan (1974-78) onwards, there has been a marked shift in the approach to women issues from welfare to development.
- National commission for women (NCW) setup by act of parliament in 1990 to safeguard the rights of women.

- 73rd and 74th amendment: reservation of seats for women in panchayats, municipalities.
- Convention on elimination of all forms of discrimination against women (CEDAW) in 1993.
- Equality principles at second world conference on human rights at Vienna in June 1993, and in fourth world conference on women held in Beijing in 1995.
- Other international conventions for women protection are:
 - Universal declaration of human rights(1948)
 - Convention on the political rights of women(1952)
 - Declaration on the elimination of all forms of discrimination against women(1967)
 - Declaration on the protection of women and children in emergency and armed conflict(1974)
 - Inter-American convention for the prevention, punishment and elimination of violence against women(1995)
 - Optional protocol to the convention on the elimination of all forms of discrimination against women(1999)
 - Convention on consent to marriage, minimum age for marriage and registration of marriages(1964)

Smt Indira Gandhi rightly quoted, “To be liberated woman must feel free to be herself, not in rivalry to men but in the context of her own capacity and her personality.”

6. Landmark Supreme Court & other important judgments on women rights and protection

Some of the significant judgements which empowers women in Atmanirbhar Bharat are given below:

- i. Vishaka Versus State of Rajasthan:**² (Sexual Harassment at Work Place):
- Social worker from Rajasthan was brutally gang raped by five men for preventing a child marriage.

². ((1997) 6 SCC 241)

- In a shocking decision, Trial court acquitted all five accused.
- Vishakha (group for women's education and research), joined forces with four other women organizations and filed a petition before the Supreme Court of India on the issue "sexual harassment at work place". On August 13, 1997 supreme court commissioned the Vishakha guidelines that defined sexual harassment and put the onus on the employers to provide a safe working environment for women.

ii. Vineeta Sharma Versus Rakesh Sharma³ (Daughter's Coparcenary Right)

(2020) The Supreme Court held that daughters have equal coparcenary rights in Hindu Undivided Family (HUF) property. The court held that this right arises by taking birth. So when a daughter is born, she also steps into the coparcenary as that of a son. However, a daughter born before can claim these rights only with effect from the date of the amendment, i.e., September 9, 2005, with saving of past transactions as provided in the Section 6(1) along with Section 6(5). Further, the court also clarified that since the right in coparcenary is by birth, father coparcener doesn't need to be living as on 9.9.2005.

iii. The Secretary, Ministry of Defense v. Babita Puniya and Ors

The Supreme Court in this case, ushered for transformative constitutionalism by breaking gender stereotypes in Indian Army. The court said that all women army officers are eligible to be appointed in commanding roles and are also entitled to permanent commissions. The Court further said the submissions made by the Ministry of Defense, "are based on sex stereotypes premised on assumptions about socially ascribed roles of gender which discriminate against women. Underlying the statement that it is a "greater challenge" for women officers to meet the hazards of service "owing to their prolonged absence during pregnancy, motherhood and domestic obligations towards their children and families" is a strong stereotype which assumes that domestic obligations rest solely on women." The Court held that such notions are flawed and are in clear violation of Article 14 of the Constitution of India. This judgment shall always be celebrated which paved the way for gender equality in defence services.

iv. State of Gujarat v. RameshchandraRambhai Panchal⁴

It held that "Whether a survivor is habituated to sexual intercourse before the assault has absolutely no bearing on whether she consented when the rape oc-

³. Decided by Supreme Court on 11 August 2020.

⁴. Criminal appeal no. 122/1996 & criminal appeal no. 25/1996: high court of Gujarat, date of decision: 17.01.2020; Coram: J.B. Pardiwala & Bhargav D. Karia, JJ.

curred. Section 155 of the Indian Evidence Act, does not allow a rape victim's credibility to be compromised on the ground that she is "of generally immoral character. The two finger test is unconstitutional. It violates the right of the victim to privacy, physical and mental integrity and dignity. Thus, this test, even if the report is affirmative, cannot ipso facto, give rise to a presumption of consent."

v. Punjab and Sind Bank & Ors V Mrs Durgesh Kuwar⁵

It held that, "*sexual harassment at work violates women's fundamental right to equality, their right to live with dignity and to practice any profession.*"

vi. Bhuvaneshwari V. Puranik⁶

The Karnataka High Court held that such rules which create division based on gender by permitting a married son but denying a married daughter are discriminatory and unconstitutional. The court held that, "*Marriage does not determine the continuance of the relationship of a child with the parent, whether son or a daughter. Son continues to be a son, both before and after marriage and a daughter should also continue to be a daughter, both before and after marriage. This relationship should not get affected because of marriage.*"

vii. Kajal Mukesh Versus State of Maharashtra⁷

The Bombay High Court held that prostitution is not an offence under Immoral Traffic (Prevention) Act, 1956. As per the Act, what is punishable is the sexual exploitation or abuse of a person for commercial purpose. The court held that an adult woman has the right to choose their vocation while setting free three sex workers who were detained from a women's hostel in Uttar Pradesh.

viii. Hina Haneefa Versus State of Kerala

A Trans woman, challenged Section 6 of the National Cadet Corps Act which considers only males and females to be eligible for enrollment. The Kerala High Court observed that this is discriminatory and against the state's transgender policy and said that "*a person cannot be denied a legitimate right only because she is a transgender (person).*" The court has asked the NCC unit of the University College in Thiruvananthapuram to keep the seat vacant until the matter is finally disposed of.

ix. Laxivmi Versus State of India (2006)⁸ (Acid Attacks)

The Supreme Court acid cannot be sold to a person below 18 years of age. Seller must receive a valid identity proof before selling the acid to a customer.

⁵. CA 1809/2020

⁶. WRIT PETITION NO. 17788/2018.

⁷. Criminal writ petition no. 6065 of 2020.

⁸. 2015 SC 3662.

x. Indian Young Lawyer’s Association Versus The State of Karnataka⁹
(Access to Places of Worship)

It was held that the exclusionary practice at Sabrimala was violating the rights of the women, since it imposed a restriction on their freedom and as such the rule which placed a reaction on their entry was violative of their right to worship. It was also held that exclusion of women cannot be considered as a religious practice.

xi. Vidya Bal Versus The State Of Maharashtra¹⁰

The court opened the gates of ShaniShingarpur Temple in Maharashtra to everyone irrespective of their gender.

xii. Pawan Kumar & Ors Versus The State Of Haryana (Dowry Deaths)¹¹

It was held that cruelty and harassment would not only mean physical but also mental. As such the husband had committed the dowry death of the deceased.

xiii. C.B. Muthamma Versus Union of India (Discrimination/Equality)¹²

It was held that if a woman has to obtain permission from the government before marriage then the same set of reasoning is also applicable to men. Government was advised to relook rules to remove any discrimination from them.

xiv. D. Velusamy Versus D. Patchaiammal (Domestic Violence)¹³

Supreme Court recognized the concept of live-in relationships. It was held that in order to prove a live-in relationship, it would have to be shown that in spite of no marriage, the couples were living together as if they were husband and wife.

7. Conclusion

Government, time and again, has taken various steps to empower women and has introduced many new laws . Government has also signed number of treaties and conventions in order to advance the position of women in the society. “BETI BACHAO BETI PADHAO” is one such initiative introduced by our PM Shri Narendra Modi. In order to be progressive, a nation must treat its men and women equally, there should not be any sort of discrimination especially on basis of gender. Empowering women is highly critical for a

⁹. W.P. (C) NO. 373 OF 2006

¹⁰. PIL NO. 55 OF 2016

¹¹. (1998(3) SCC 309)

¹². AIR 1868 1980 SCR (1) 668 1979 SCC (4) 260

¹³. (2010) 10 SCC 469.

progressive nation. Indeed, various constitutional provisions would make women 'Atmanirbhar in true sense in 'Atmanirbhar Bharat'.

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