

**The Indian Constitution and Legislation relating to Rights of Women  
under Women Empowerment**

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**Abstract**

Women empowerment has become a popular concept in the discourse on development. Women empowerment aims at eliminating discrimination and challenging gender inequality. Victimization of women is an age old problem. Empowerment can be political, social and economic. In India gender discrimination is the biggest issue and has been going on since ancient time because of the cultural and social differences. The root cause of gender inequality in Indian society lies in its patriarchy system. Various types of strategies can be applied for the empowerment of women. Women constitute almost half of the world's population. However, they are denied equality. They are powerless, disadvantaged and socially and educationally backward and their access to resources and ownership of properties are minimal. Of the 1.3 billion people who live in absolute poverty around the globe, 70 percent are women. For these women, poverty doesn't just mean scarcity and want. It means rights denied, opportunities curtailed and voices silenced.

**Key words:** *Women empowerment, Article, Constitution, Right*

**I. Introduction**

The worth of a civilization can be very correctly assessed from the status that is bestowed on its women. Women constitute almost half of the world's population. However, they are denied equality. They are powerless, disadvantaged and socially and educationally backward and their access to resources and ownership of properties are minimal. Gender Equality is not only a fundamental human rights but a necessary foundation for a peaceful, prosperous and sustainable world. Nature does not discriminate men from women. But women worldwide have been the victim of inequality not only in terms of social and political rights but also on ground of employment

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opportunities. In India gender discrimination is the biggest issue and has been going on since ancient time because of the cultural and social differences. The root cause of gender inequality in Indian society lies in its patriarchy system. The system of Patriarchy finds its validity and sanction in our religious beliefs whether it is Hindu, Muslim or any other regions.

In India irrespective of the Caste, Creed, religion and social status the overall status of a woman is lower than men and therefore a male child is preferred over a female child. A male child is considered a blessing and his birth is celebrated as opposed to a female child where her birth is not celebrated and is considered more of a burden. Therefore education and health care of the female child in India is an important social indicator to measure equality between men and women. Extreme poverty and lack of education are also some of the reasons for women's low status in society. Poverty and lack of education derives countless women to work in low paying, domestic service, organized prostitution or as migrant labourers. Women are not only getting unequal pay for equal or more work but also they are being offered only low skill jobs for which lower wages are paid. This has become a major form of inequality on the basis of gender.

At present women empowerment has become a popular concept in the discourse on development. Women empowerment aims at eliminating discrimination and challenging gender inequality. Victimization of women is an age old problem. Empowerment can be political, social and economic. Over the decades attempts have been made from different spheres to ensure the power of women in societies. The Millennium Development Goals (MDGs) also want to achieve the empowerment of women across the globe. In order to enhance the empowerment of women numerous programmes are undertaken by the national governments along with local NGOs and INGOs supported by international donors. According to the MDG goal 3 the

numbers of women representatives in national parliament should be increased. The need for women's representation in the local governments has also been underscored by the UN Millennium Project Task Force report on Education and Gender equality. Apart from this political mobilisation, many other programmes like microcredit scheme for women, education opportunity for girls, introducing ICT programmes and income generating programmes are in place in order to promote empowerment of women in many developing countries. Children have a voice and personality and parents have a responsibility to detect early signs of abuse. There is need to let go of taboos and talk about things that can have a far reaching effect in the life of the child. This approach will help her to grow stronger and communicate openly. Women need freedom to move around. Coming to political freedom 67 per cent of active Indian voters are women. In terms of economic freedom for women, India ranks along with some Saudi Arabian countries, which is very low. India needs to do a lot here.

## **II. Process of Empowerment**

In the process of empowerment, changes take place with regard to the knowledge level, awareness, level of self-esteem and leadership qualities of women. Four components of process of women's empowerment are identified:

- i. Acquiring knowledge and an understanding of gender/power relations and ways in which these relations may be changed.
- ii. Developing a sense of self-worth, a belief in one's ability to secure desired changes and the right to control one's life.
- iii. Gaining the ability to generate choices and thereby acquiring leverage and bargaining power, and

iv. Developing the ability to organize and / or influence the direction of social change to create more just social and economic orders nationally and internationally.

The process of empowerment has five dimensions i.e. cognitive, psychological, economic, political and physical:

- a. The cognitive dimension refers to women having an understanding of the conditions and causes of their subordinating at the micro and macro-levels. It involves making choices that may go against cultural expectations and norms.
- b. The psychological dimension includes the belief that women can act at personal and societal levels to improve their individual realities and the society in which they live;
- c. The economic component that women have access to and control over productive resources, that ensuring some degree of financial autonomy. However, she notes that changes in the economic balance of power do not necessarily alter traditional gender roles or norms;
- d. The political element entails that women have capability to analyze, organize and mobilize for social change; and
- e. There is physical element of gaining control over one's body and sexuality and the ability to protect oneself against sexual violence through the process of empowerment.<sup>1</sup>

### **III. Strategy of Women Empowerment**

It is not an easy task to achieve empowerment. The resistance may arise from family, society or the mental condition of un-empowered women. However, strategy for women's empowerment needs special attention. There are various methods and means for women empowerment. some of popular methods of women empowerment include education, entrepreneurial

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<sup>1</sup>. [www.unifem.org](http://www.unifem.org)

training programmes, formation of self-help groups, social action (feminist movements), legislation, mass communication and propaganda etc. Empowerment trends can be visualized in literature, religion and politics.

Various types of strategies can be applied for the empowerment of women. Empowerment strategies are categorized under the following headings:

- a. Financial intervention strategies which aim to increase women's access to credit which will follow the social and cultural changes side by side or as a consequence.
- b. Enterprise development strategies which facilitate women's increased access to skill/business/ management training and improved technologies/ production packages entrepreneurship is a higher level manifestation of empowerment.
- c. Marketing strategies which seek to ensure markets for products produced by women, and increase their knowledge about markets. This knowledge boosts up their enterprising behavior;
- d. Bargaining strategies which organize women to struggle for higher wages, better working conditions and job security This strategy contemplates the negotiation methods; and
- e. Social-political strategies which include creation of enabling environment through social legislation and reservation policies.

#### **IV. International efforts for protection and empowerment of women**

Article 16 of the Universal Declaration of Human Rights, 1948 provides for the equal fundamental freedoms for both men and women.

Article 1-6 of the Elimination of All forms of Discrimination Against Women, 1993 focuses on non-discrimination, sex stereo types and sex trafficking. Article 7 to 9 outlines women's rights in the public spheres with

an emphasis on political life, representation and rights to nationality. Article 10 to 14 describes the economic and social rights of women particular focusing on education, employment and health. It also includes special protection for rural women and the problems they face. Article 15-16 outlines women's right to equality in marriage and family life alongwith the right to equality before the law.

## **V. Status and Policies of the Government for Protection of women**

Indian constitution provides for positive efforts to eliminate gender equality, the preamble to the constitution talks about goals of achieving social, economic and political justice to everyone and to provide equality of status and of opportunity to all its citizens.

The Constitution of India guarantees all the rights to women at par with men, but in reality women have been denied these rights. However, in some instances, the rights have been ensured or restored by judicial intervention. In this context, an attempt is made here to review the rights, their denial and judicial intervention as evidenced in cases described below.

**(a) Right to Equality:-** Under the Provision of Article 14, as enshrined in the Constitution, it has been interpreted to mean that it is the duty of the state not to deny to any person equality before law and equal protection of the laws. The term equality puts forth clearly that among equals, the law should be equal and equally administered and that like should be treated alike. However, the term equality doesn't imply absolute equality among human beings, which is not possible to achieve. It indirectly means absence of special treatment of privileged favours based on place of birth, sex etc. Just as all men cannot claim the right to equal salary, education and comfort, women similarly cannot claim them at their birth right. What the constitution guarantees is that equals will not be treated unequally, without

any proper reason. Article 15(1) of the Constitution prohibits the state from discriminating against any citizen on the ground of sex.

They could also see justice of discrimination when it protected the essential interest of woman. The Founding Fathers of our Constitution also expressed the fear that discrimination will continue even after enacting Article 14, providing for equality before law and equal protection of laws to all citizens of India. They prohibited discrimination on the basis of religion, race, sex, caste or place of birth. They provide under clause (1) of Article 15 that:

“The state shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them.”

Article 15 of the Constitution of India mandates that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them be subjected to any disability, liability, restriction or condition with regard to access to shops, public places, public restaurants, and hotels and 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.

The framers were also conscious of the fact that the pitiable condition of India women cannot be improved by only prohibiting discrimination on the ground of sex. It can be improved by giving special protection in the form of discrimination to the women. Thus, they provide under clause (3) of Article 15 that:

“Nothing in Article 15 Clause (1) shall prevent the State from making any special provision for women and children.”

This clause empowers the State to make laws in favour of women. Thus, special care has been taken to provide socio-economic justice to

women. Not only this, the framers of the Constitution of India also laid down clear guidelines for the future legislators to enact laws for providing socio-economic justice to women. The State is under an obligation to promote the welfare of the people including women by securing the protecting as effective as it may a social order in which justice, social, economic and political shall pervade all the institutions of national life.

In *Yusuf Vs State of Bombay*<sup>2</sup>, it has been held that Section 497 of the Indian Penal code, 1860 which say that in an offence of adultery though the man is punishable for adultery, the woman is not punishable as an abettor, is not unconstitutional, because such immunity is necessary for the protection of women in view of their existing position in Indian society.

#### **(b) Article 16: Equality of opportunity in public employment**

Right to Equality is one of the basic fundamental rights that the constitution of India guarantees to all the citizens of the country. Article 16 deals with the equality of opportunity in matters of public employment. Equal Employment Opportunity (EEO) principles apply to:

- Access to jobs
- Conditions of employment
- Relationships in the workplace
- The evaluation of performance and
- The opportunity for training and career development.

Article 23 of the Indian Constitution provides 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

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<sup>2</sup>. A.I.R. 1954 SC 321



exploitation, Article 23(1) of the Constitution of India prohibits traffic in human beings and beggar and other similar forms of forced labour.

Under Article 29 and Article 30 certain cultural and educational rights are guaranteed.

In case *University of Madras Vs. Santhabai and another*<sup>3</sup>, the High Court of Madras took a different view to deny admission to Santhabai in a newly opened college. The Court held the view that the University of Madras is not a State as defined in Article 12 of the Constitution and thus its regulation will not be subject to prohibition of Article 15(1) of the Constitution of India. Another point is that admissions are regulated within the ambit of Article 29(2) and the regulation of the University required that colleges should have the necessary infrastructure to provide essential facilities for women before they could be admitted. This fact is not discriminatory on ground of sex.

Article 38 seeks the State to secure a social order for the promotion of welfare of the people. The State shall strive to promote the welfare of the people by securing and protecting effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life.

Article 39 of the Constitution runs like a golden thread; Clause (a) provides that the State shall in particular, direct its policy towards securing adequate means of livelihood to men and women equally. Clause (b) enunciates that there shall be equal pay for equal work for both men and women, Clause (c) directs that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age of

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<sup>3</sup>. A.I.R. 1954 Madras 67.

strength. It has been obligated upon the State to make endeavours to secure just and humane condition of work and maternity relief by Article 42.

In *Kesavananda Bharati Vs State of Kerala*<sup>4</sup>, it has been stated that the object of the Article 39 is creation of Welfare State.

In the Constitutions of Socialist countries, fundamental right to work has been provided. There work has to be provided by the State to the citizens to earn their livelihood. Indian Constitution does not provide 'right to work' as fundamental right under Part III. However Article 39(a) states that 'the citizens men and women equally have the right to an adequate means of livelihood'. This is not a fundamental right of a citizen but only a Directive Principles so that the State strive to provide facilities.

Article 39(d) of the Constitution, the State shall, in particular direct its policy towards securing that there is equal pay for equal work for both men and women. In *Randhir Singh vs. Union of India*<sup>5</sup>, it has been observed that to the vast majority of the people of India the equality clause 14 of the Constitution would mean nothing if it is not concerned with the work they do and the pay they get.

Article 39 (e) (f) : State directing its public policy towards securing the health and strength of workers, men and women.

In *M.C.Mehta vs State of Tamil Nadu*<sup>6</sup>, it has been held that in view of Article 39, the employment of children within the match factories directly connected with the manufacturing process of matches and fireworks cannot be allowed as it is hazardous and therefore not permissible. However, children can be employed in the process of packing by following guidelines laid by the court without detrimental to their education and health.

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<sup>4</sup> . A.I.R. SC 1973

<sup>5</sup> . A.I.R. 1982 SC 879

<sup>6</sup> . A.I.R. 1991 SC 417

## **VI. Women Reservations**

Provisions providing for reservation of seats for women in local bodies or in educational institutions are valid. The Supreme Court has held in case of *Govt of Anndhra Pradesh Vs. P.B.Vijay Kumar*<sup>7</sup> that the reservation to an extent of 30% made in the State services by Andhra Pradesh Government to women candidates is valid. The Division bench of the Supreme Court emphatically declared that the power conferred upon the State by Article 15(3) is wide enough to cover the entire range of State activity including employment under the State. Thus making special provisions for women in respect of employment or posts under the State is an integral part of Article 15(3). This power conferred under Article 15(3) is not whittled down in any manner by Article 16. In *Union of India Vs. K.P.Prabhakaran*<sup>8</sup> the Supreme Court upheld the decision of the Railway Administration to reserve the posts of Enquiry cum Reservation Clerks in Reservation offices in metropolitan cities of Madras, Bombay, Calcutta and Delhi exclusively for women and the further decision that the Reservation Officers in the said metropolitan cities should constitute a seniority unit separate from the rest of the cadre of Enquiry-cum-Reservation clerks. The Court while coming to the above conclusion relied upon the decision of Govt of Andhra Pradesh Vs. P.B.Vijaya Kumar where in it was stated that since Article 15(1) and 15(3) go together, the protection of Articles 15(3) would be applicable to employment under the State falling under Article 16(1) and (2) of the Constitution.

## **VII. Judicial response in case of Employment Rules or Service Rules**

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<sup>7</sup> A.I.R. 1995 SC 1648.

<sup>8</sup> . (1997) 11 SCC 638

In *Bombay Labour Union v. International Franchise*<sup>9</sup>, some employment rules, which were challenged as they specifically restrict the married women from being employed or continued to be employed once they get married. The justification sought by the employer was that the nature of work required team work, which is possible only when worker attends regularly and the married women are prone to absenteeism on various counts. However, the Supreme Court rejected the argument by holding that there was no evidence that the married women compared to the unmarried, were more likely to abstain from work. It is submitted that the disparity between married and unmarried women is only due to the fact that the former makes use of the maternity benefit. But such an absence can be balanced with the help of reserve employees. Motherhood is considered as a social obligation of women and is respected as gift of God. Discrimination based on the marriage and motherhood should be condemned.

In *Air India v. NageshMirza*<sup>10</sup>, the service rules of Indian Airlines and Air India provided (i) that “air hostesses” shall not marry for the first four years of their joining (ii) they will lose their jobs if they become pregnant, and (iii) they shall retire at the age of 35 years, unless the Managing Director extends the term by ten years at his discretion. The Supreme Court described the first provision as not illegal but the second and third provision as unethical, collous, cruel, detestable, abhorrent, unreasonable, arbitrary and unconstitutional acts and an open insult to Indian womanhood. It is submitted that women are as much human beings as men and are entitled to equal rights. If they work on equal terms with men, have children and lead a normal happy settled life. Corporation has no right to curb the natural course of human nature by compelling an air hostess

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<sup>9</sup>. A.I.R 1996 SC 942-44

<sup>10</sup>. AIR 1981 SC 1829,

to marry late and remain childless. The intervention of the court and its remarks has boosted the moral of the women employees.

### **VIII. Women Reservations in Election to Local Bodies:**

The 73<sup>rd</sup> and 74<sup>th</sup> Amendment to the Indian Constitution affected in 1992 provides for reservation of seats to the women in Elections to the Panchayat and the Municipalities. Article 243 D of the Constitution of India, not less than one third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for woman. According to Article 243T of the Constitution of India which was added by the Constitution (74<sup>th</sup> Amendment) Act, 1992 makes similar provisions for reservation of seats to women in the direct elections to every Municipality.

Article 243T(4): Reservation of offices of Chairperson in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may provide.

In consonance of the Constitution scheme, many laws have been enacted or amended in the interest of the working women in India. Some social consciousness about the status of women and the protective laws has been aroused in recent years by education, mass media and the efforts of the social workers. The number of protective laws which seek to protect these rights has increased, but when women go to seek redress under these laws it is only the frustrating failures and disappointments that they get in return.

### **IX. Conclusion**

Looking at the global scenario women have a unique position in every society whether developed, developing or underdeveloped. This is particularly due to the various roles they play during various stages of their life as a daughter, wife, mother and sister etc. In spite of her contribution in the life of every individual human being, she still belongs to a class or group

of society which is in a disadvantaged position on account of several social barriers and impediments. She has been the victim of tyranny at the hands of men who dominate the society.

Since independence many new laws have been enacted and the Indian Penal Code, the Cr.P.C and Indian Evidence Act have been amended to protect women but these have shown poor result. At present women finds no security at home and she is ill treated by her husband and in laws, on the streets, she is mishandled by bad elements. At workplace, they are also vulnerable and fall prey to the anti-socials, men colleagues and bosses. In every walk of her life she is threatened by crimes. She is teased and kidnapped as a girl abducted and at times raped as a young women, beaten and harassed as a house wife and distasted and discarded in her old age as a burden. Everyday hundreds of poor women either enter into profession of prostitution to earn their livelihood or commit suicide to end the miseries of their lives. In this modern age, women still continue to be the worst sufferers of the quaint traditions prevailing in many forms. Social sanction is against women in regard to the right to self determination,. She is prone to be castigated in the event of having an offspring before marriage and to date she gets her recognition by relating her to her father, husband and son only. Independent recognition of women in society simply is absent and she is always reflected in relative terms. In society a big segment of women are still unconscious of their own rights. Besides political and economic revolutions, today we need a revolution which can affect the status and living condition of whole women community of India and abroad. It is rightly said that the best way to judge the position of a nation is to find out the status of its women.

Enormous initiatives have been taken up worldwide to uplift the downtrodden women of our country and let them enjoy all the privilege that

their equivalents enjoy. However, they have not yet arrived on a par with the rest of the society in true sense of the spirit due to varied failure with regard to implementation.

### **References**

- Agarwal Nomita, 2005. *“Women and Law in India”*- New Century Publications, Delhi.
- Ashwin N. Karia, 2007. *“Law Relating to the Welfare and Protection of Women & Children”*, Deep & Deep Publication, Delhi.
- Prahalad and Garg, Vikash (2018), “Women Empowerment in India: A changing Scenario with the help of Legal Perspectives”, Asian Resonance, Vol. 7, Issue-2, April, 2018, pp. 149-154.
- Prasad, Satish (2018) “Problems and Issues of Women Empowerment in India”, Shrinkhla Ek Shodhparak Vaicharik Patrika, Vol. 5, Issue-10, June, 2018, pp. 34-48.