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ROLE OF INDIAN JUDICIARY IN WOMEN EMPOWERMENT

Rahul Yadav,¹
Shweta Chaudhary,²

ABSTRACT
"The Best thermometer to the progress of nation is its treatment of women"

- Swami Vivekananda,

Women empowerment includes empowerment within the family and empowerment in the society. Involvement of women in decision making, earning, sharing of basic needs and commanding respect for self is a pre-requisite to the empowerment of women in Indian society. Women are also required to participate actively in the process of development namely policy making, planning, implementing and evaluation along with their male counterpart. The raising social status of women, increasing educational opportunities, obtaining employment opportunities, sharing economic resources, raising of standard of living, active participation of women in governance and so on constitute the process of ‘empowerment of women’ in letter and spirit. Gender injustice is a problem that is seen all over the world. Whatever the causes may be, it is our duty of humans to protect the human rights of those who are victims. Women have been ill-treated in every society for ages and India is no exception. Indian judiciary feel convinced of the need for women's empowerment—by law and by legal means. The Constitution of India has taken a long leap in the direction of eradicating the lingering effects of such adverse forces so far as women are concerned. Our Constitution makes express provision for affirmative action in favour of women. It prohibits all types of discrimination against women and lays a carpet for securing equal opportunity to women in all walks of life, including education, employment and participation. Present article discusses about various legislations adopted by Government of India for empowering women and how the Indian judiciary has broadened its scope by various landmark pronouncements.

Key words – Gender, Women, Empowerment, equality, Judiciary.

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1. INTRODUCTION

In the past few years, the safety of women in India has been down because of some continuous and terrible crimes against women. There has been decline in the women status from ancient to medieval period which is continued in such an advanced era. Women of India have equal rights as like as men of this country as they occupy almost half population of the country and involved in half proportion in the growth and development of the country. It is true that women in modern India are joining high offices (President, Speaker of Lok Sabha, Union Ministers, Leader of Opposition, Chief Minister, Governor, etc) however on the back of curtain they are being exploited too. According to the Constitution of India, they have equal rights of dignity, equality, and freedom from gender discrimination. Indian women are continuously facing numerous problems such as sexual harassment, violent victimization through rape, acid attack, dowry deaths, forced prostitution, and many more.

Gender injustice is a problem that is seen all over the world. Whatever the causes may be, it is our duty of humans to protect the human rights of those who are victims. Women have been ill-treated in every society for ages and India is no exception. Indian judiciary feel convinced of the need for women's empowerment-by law and by legal means. The Constitution of India has taken a long leap in the direction of eradicating the lingering effects of such adverse forces so far as women are concerned. Our Constitution makes express provision for affirmative action in favour of women. It prohibits all types of discrimination against women and lays a carpet for securing equal opportunity to women in all walks of life, including education, employment and participation.

According to analytical jurisprudence a court merely found the law or merely interpreted the law. Judges are applying the discretionary power to provide better justice to women in the new context of the Socio-Economic conditions. Judiciary has played an active role in enforcing and strengthening the constitutional goals towards protection/rights of the women of the land.

Not only the legislature but judiciary also plays a very vital and important role in case of women empowerment. The wide interpretation of provision of various legislations and also the provision of constitution, judiciary is able to empower the women. Another role of judiciary is the activist role which is popularly known as “Judicial Activism”.

The court directed the State of Maharashtra to provide separate lock ups for female suspects guarded by female constables, ensure interrogation of females by female police officers. Legal assistance be provided to prisoners and a lady judge make periodical visits to police lock ups in the city of Bombay to hear grievances of women prisoners.\footnote{Chhabra ,\textit{S Legislative And Judicial Perspective Of Women Empowerment}.(n.d.). International Journal of Law and Legal Jurisprudence Studies.retrieved from http://ijlljs.in/wp-content/uploads/2015/08/7-Research-PaperLEGISLATIVE-AND- JUDICIAL-PERSPECTIVE-OF-WOMEN-EMPOWERMENT.pdf}

Gender equality refers to the right of men and women to enjoy the same opportunities to achieve their full potential and to pursue happiness, to contribute to nation building, and to share in the fruits of progress and development. All these would be possible with the State and its agents giving due recognition to the status of all persons as free and equal in dignity and rights, regardless of gender. Awareness of and sensitivity to the problem of gender bias International Journal of Pure and Applied Mathematics Special Issue 1783 are imperative in the judicial setting, since women look to our Courts for justice and protection in cases of violence, abuse, or discrimination.\footnote{Ibid}

### 2. WHAT IS WOMEN EMPOWERMENT?

Women empowerment means emancipation of women from the vicious grips of social, economical, political, caste and gender-based discrimination. It means granting women the freedom to make life choices. Women empowerment does not mean ‘deifying women’ rather it means replacing patriarchy with parity. In this regard, there are various facets of women empowerment, such as given hereunder:

- **Human Rights or Individual Rights**: A woman is a being with senses, imagination and thoughts; she should be able to express them freely. Individual empowerment means to have the self-confidence to articulate and assert the power to negotiate and decide.

- **Social Women Empowerment**: A critical aspect of social empowerment of women is the promotion of gender equality. Gender equality implies a society in which women and men enjoy the same opportunities, outcomes, rights and obligations in all spheres of life.

- **Educational Women Empowerment**: It means empowering women with the knowledge, skills, and self-confidence necessary to participate fully in the development process. It means making women aware of their rights and developing a confidence to claim them.
Economic and occupational empowerment. It implies a better quality of material life through sustainable livelihoods owned and managed by women. It means reducing their financial dependence on their male counterparts by making them a significant part of the human resource.

Legal Women Empowerment. It suggests the provision of an effective legal structure which is supportive of women empowerment. It means addressing the gaps between what the law prescribes and what actually occurs.

Political Women Empowerment. It means the existence of a political system favoring the participation in and control by the women of the political decision-making process and in governance.

3. WHY WE NEED WOMEN EMPOWERMENT?

Need for empowerment arose due to centuries of domination and discrimination done by men over women; women are the suppressed lot. They are the target of varied types of violence and discriminatory practices done by men all over the world. India is no different. India is a complex country. We have, through centuries, developed various types of customs, traditions and practices. These customs and traditions, good as well as bad, have become a part of our society’s collective consciousness.

We worship female goddesses; we also give great importance to our mothers, daughters, sisters, wives and other female relatives or friends. But at the same time, Indians are also famous for treating their women badly both inside and outside their homes. Indian society consists of people belonging to almost all kinds of religious beliefs.6

In every religion women are given a special place and every religion teaches us to treat women with respect and dignity. But somehow the society has so developed that various types of ill practices, both physical and mental, against women have become a norm since ages. For instance, sati pratha, practice of dowry, pardapratha, female infanticide, wife burning, sexual violence, sexual harassment at work place, domestic violence and other

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varied kinds of discriminatory practices; all such acts consists of physical as well as mental element.\(^7\)

The reasons for such behaviour against women are many but the most important one are the male superiority complex and patriarchal system of society. Though to eliminate these ill practices and discrimination against women various constitutional and legal rights are there but in reality there are a lot to be done. Several self-help groups and NGOs are working in this direction; also women themselves are breaking the societal barriers and achieving great heights in all dimensions: political, social and economic.

But society as a whole has still not accepted women as being equal to men and crimes or abuses against women are still on the rise. For that to change, the society's age-old deep-rooted mind set needs to be changed through social conditioning and sensitization programmes. Therefore, the concept of women empowerment not only focuses on giving women strength and skills to rise above from their miserable situation but at the same time it also stresses on the need to educate men regarding women issues and inculcating a sense of respect and duty towards women as equals.\(^8\)

4. CONSTITUTION OF INDIA AND WOMEN EMPOWERMENT\(^9\)

India’s Constitution makers and our founding fathers were very determined to provide equal rights to both women and men. The Constitution of India is one of the finest equality documents in the world. It provides provisions to secure equality in general and gender equality in particular. Various articles in the Constitution safeguard women’s rights by putting them at par with men socially, politically and economically.

The Preamble, the Fundamental Rights, DPSPs and other constitutional provisions provide several general and special safeguards to secure women’s human rights

**PREAMBLE:**

The Preamble to the Constitution of India assures justice, social, economic and political; equality of status and opportunity and dignity to the individual. Thus it treats both men and women equal.

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\(^7\) ibid

\(^8\) 5 NailaKabeer *A Critical Analysis of Gender Equality in India*, Volume 13, 1st March, 2005.

**FUNDAMENTAL RIGHTS:**

The policy of women empowerment is well entrenched in the Fundamental Rights enshrined in our Constitution. For instance:

Article 14 ensures to women the right to equality.

Article 15(1) specifically prohibits discrimination on the basis of sex.

Article 15(3) empowers the State to take affirmative action’s in favour of women.

Article 16 provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office.

These rights being fundamental rights are justifiable in court and the Government is obliged to follow the same.

**DIRECTIVE PRINCIPLES OF STATE POLICY:**

Directive principles of State Policy also contain important provisions regarding women empowerment and it is the duty of the government to apply these principles while making laws or formulating any policy. Though these are not justifiable in the Court but these are essential for governance nonetheless. Some of them are:

Article 39 (a) provides that the State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood. Article 39 (d) mandates equal pay for equal work for both men and women.

Article 42 provides that the State to make provision for securing just and humane conditions of work and for maternity relief.

**FUNDAMENTAL DUTIES:**

Fundamental duties are enshrined in Part IV-A of the Constitution and are positive duties for the people of India to follow. It also contains a duty related to women’s rights:

Article 51 (A) (e) expects from the citizen of the country to promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women.
OTHER CONSTITUTIONAL PROVISIONS:

Through 73rd and 74th Constitutional Amendment of 1993, a very important political right has been given to women which are a landmark in the direction of women empowerment in India. With this amendment women were given 33.33 percent reservation in seats at different levels of elections in local governance i.e. at Panchayat, Block and Municipality elections. Thus it can be seen that these Constitutional provisions are very empowering for women and the State is duty bound to apply these principles in taking policy decisions as well as in enacting laws.  

5. SPECIFIC LAWS FOR WOMEN EMPOWERMENT IN INDIA

Apart from the constitution which is Grundnorm in India, there are various women specific statutes are passed by legislature. The list of some specific laws which were enacted by the Parliament in order to fulfil Constitutional obligation of women empowerment is enumerated as follows:

- The Sexual Harassment of Women at Work Place (Prevention, Protection and) Act, 2013.

Above mentioned and several other laws are there which not only provide specific legal rights to women but also gives them a sense of security and empowerment.

6. JUDICIAL ACTIVISM AND WOMEN EMPOWERMENT IN INDIA

Gender injustice is a problem that is seen all over the world. Whatever the causes may be, it is our duty of humans to protect the human rights of those who are victims. Women have been ill-treated in every society for ages and India is no exception. Indian judiciary feel convinced of the need for women's empowerment-by law and by legal means.

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*Air India Vs Nargesh Meerza,\(^\text{13}\)*

This case deals with the women’s right to equality. In this case the Supreme Court struck down the clause of retirement of air hostess on attaining 35 years of age or on marriage within first 4 year of service or on first pregnancy as being arbitrary and unreasonable and clearly violative of article 14 of Indian Constitution.

*Vishaka v. State of Rajasthan\(^\text{14}\)*

Bhanwari Devi, a social worker from Rajasthan, was brutally gang-raped by five men for preventing a child marriage. Determined to seek justice, she decided to go to court. In a shocking decision, the trial court acquitted all five accused. Vishaka, a Group for Women’s Education and Research, took up the cause of Bhanwari Devi. It joined forces with four other women's organizations, and filed a petition before the Supreme Court of

\(^{11}\text{Ibid}\)

\(^{12}\text{Ibid}\)

\(^{13}\text{(1981) 4 SCC 335}\)

\(^{14}\text{(1997) 6 SCC 241 SC}\)
India on the issue of sexual harassment at the workplace.

On August 13, 1997, the Supreme Court commissioned the Vishaka guidelines that defined sexual harassment and put the onus on the employers to provide a safe working environment for women.

**Young Lawyers Association & Ors. v State of Kerala & Ors**

The restriction of women entrance of specific age group in Sabarimala Temple was held to be unconstitutional. It was held that the practice violated the fundamental rights to equality, liberty and freedom of religion, Articles 14, 15, 19(1), 21 and 25(1).

**Shayara Bano and others v. Union of India and others,**

The Supreme Court of India set aside the practice of talaq-e-bidat, which allowed certain Muslim men to divorce their wives instantaneously and irrevocably, on the basis that it violated the Constitution of India. The case itself does not primarily focus on gender justice but has strong positive implications on advancing women’s rights and gender equality in India.

**Mohammad Ahmed Khan Vs Shah Bano Begum,**

Popularly known as the Shah Bano case, a penurious Muslim woman claimed for maintenance from her husband under section 125 of the code of the criminal procedure after she was given triple talaq from him. The Supreme Court held that the Muslim women have a right to get maintenance from her husband under section 125. After the decision, nationwide discussions, meetings and agitations were held. Then Rajiv Gandhi led government overturned the Shah Bano case decision by way of Muslim women (Right to protection on divorce) act, 1986, which curtailed the right of a Muslim women for maintenance under section 125 of the code of criminal procedure.

**Mary Roy Vs State of Kerala**

Women from the Syrian Christian community in Kerala were prevented from inheriting property due to patriarchal traditions. This decree was challenged by Mary Roy, a woman's right activist and educator. After the demise of her father, she filed a case against her elder brother when she was denied equal share in the family's inheritance.

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15 Writ Petition (c) no. 373 OF 2006
16 Writ Petition (C) No. 118 of 2016
17 1985 SCR (3) 844
18 1986 SCR (1) 371
Though the plea was rejected by the lower court, the Kerala High Court overruled the previous judgment.

In 1986, the Supreme Court delivered a landmark judgment that granted Syrian Christian women the right to seek an equal share in their father's property.

*Laxmi v. Union of India*¹⁹

In 2006, Laxmi, an acid attack victim, filed a petition seeking measures to regulate the sale of acid and provide adequate compensation to the victim. Taking cognizance of the number of cases relating to acid attacks against women on the rise, the Supreme Court imposed stringent regulations on the sale of acid in 2013. The ruling banned over the counter sale of acid. Dealers can sell the acid only if the buyer provides a valid identity proof and states the need for the purchase. It is mandatory for the dealer to submit the details of the sale within three days to the police. It also made it illegal to sell acid to a person below 18 years.

*Centre for enquiry into Health and Allied themes (CEHAT) Vs Union of India*²⁰

With the advent of pre-natal diagnostic techniques that could determine the sex of a fetus, the growing trend of aborting female fetuses was observed. In a bid to curtail female feticide, the government of India issued the PNDT Act in 1996. The provisions of the PNDT Act, however, were not being effectively implemented by the state and central government. The Centre for Enquiry into Health and Allied themes filed a petition which led to the Supreme court directing the Central and State governments to enact the provisions of the act immediately, and banned all advertisements relating to pre-natal sex determination techniques.

*ShamimaFarooqui v. Shahid Khan*²¹

Supreme Court held that women cannot be treated as beggars and their grace cannot be lowered in rightful claim to maintenance after divorce if the husband has since then retired from his service.

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¹⁹ WP (Crl.) No. 129 of 2006  
²⁰ Writ Petition (civil) 301 of 2000  
²¹ Criminal appeal no.564-565 of 2015
7. CONCLUSION

"The judge infuses life and blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society."

- Justice P.N. Bhagwati.

Empowering women socially, economically, educationally politically and legally is going to be a Herculean task. It is not going to be easy to change the culture of disregard for women which are so deep-rooted in Indian society. But it does not mean that it is implausible.

The Hon’ble Supreme Court of India and the High court’s interpret Constitutional provision in favour of women and girl children. Whenever there is an anti-women legislation, rule or order of the Government or any other agency then the Courts comes into picture to rescue the rights of women and girl children. It is the helper of the last resort and fortunately, it is also working for the welfare of the women and girl children. It is time to understand that there is a common challenge and urgency of a common response to this growing menace in society. The need of the hour is to give an expression of shared responsibility to the shared sense of crisis and an acute and growing concern over the violence and criminality affecting women.

No amount of participation in any polls would help the matters if the crime in society, particularly against women and girl children, is not eliminated. Judiciary is not transgressing upon or usurping the powers of the other two organs that are the legislature and the executive but it is the demand of the time. Being the guardian of the fundamental law of the land it tries to interpret the laws according to the principles enshrined in the Constitution. The emergence of this role of judiciary is the outcome of the depraved system, in a democracy where other two organs ended in a fiasco; the judiciary remained the last hope of the people. By using its discretionary power it tries to provide justice to women in socio-economic context.

Undoubtedly, the road map for women empowerment is there but still we have miles to go on this path of empowerment. We hope that in coming year’s ahead women empowerment will prove its worth. Women are an integral part of a society. They play an important role in determining the destiny of a nation. It has been rightly said. Therefore, due recognition becomes all the more important. Every person should come forward to ensure equal status for women in all spheres of life.