

WOMEN EMPOWERMENT: AN OVERVIEW WITH SPECIAL REFERENCE TO FAMILY LAW

Pankaj Kumar Garg

Assistant Professor,
Baba Farid Law College, Faridkot

*A bird can fly in the sky by it's two feathers,
The society also runs by the same participation of both the male and female.*

-Swami Vivekananda

Abstract: Women empowerment and promoting women's rights have emerged as a part of a major global movement and is continuing to break new ground in recent years. Empowerment provides a greater access to knowledge and resources, more independence in decision making, considerable ability to plan lives, more control over the circumstances which influence lives, and freedom from customs, beliefs and practices. Thus, women empowerment is a process in which women challenge the existing norms and culture, to effectively promote their well being. But despite a great deal of progress, women and girls continue to face discrimination and violence in every part of the world. Empowering women is essential to the health and social development of families, communities and countries. The issue of religion based family laws in India has been looked at from many perspectives i.e. secularism, modernity, national unity and integration, community identity, religious freedom and the right to equality. The different religious communities like Hindus, Muslims, Christians, Jews and Parsis are governed by their respective personal law either codified or un-codified rules on issues relating to marriage, divorce, maintenance, adoption and inheritance. In India, during British rule some religion based practices which were found particularly unjust, backward and barbaric were modified and unified. In Indian society, women occupy a vital position. Domestic relations law has struggled with achieving the goals of women empowerment and has never truly found a place in the family law arena. So, through this research paper, the author has made an attempt to find out the role of various family laws particularly along with the landmark judicial pronouncements in ensuring the women empowerment in India. The author has adopted the doctrinal approach and analyzed the various available study material, journals, reports and authenticated websites in completing the present study.

Keywords: Women Empowerment, Discrimination, Customs, Secularism, Religion, Family Law, Codification, Equality.

1.0 Introduction

Women in ancient India enjoyed equal status with men in all aspects of life. Vedic period witnessed the historical development of human civilization from nomadic style to settled style. During the early Vedic period, there is evidence to show that woman was given respect and opportunities in domestic life. She was considered the creator, protector, and educator of her children. A man could not become a spiritual whole unless he was accompanied by his wife. Brahmanas and Upanishads were annexure to Vedas and reflect a transitional development in the status of woman limiting her role in the social life except in the performance of religious scarifies. Many social evils like female infanticide, sati, child marriages, purdah system, or zenana (seclusion of women), developed

during the middle ages. Rigidity of caste system denied them the right to freedom and social mobility. Under the devadasi system women were the brides of gods. But they were supposed to entertain kings, priests, and even members of the upper classes. In medieval India women like Raziya Sultana, Chand Bibi, Tara Bai and Rani Ahalya Bai enjoyed the high status in society. In British India, most of the reform movements e.g. Brahma Samaj of 1825, Prathana Samaj of 1897 and Arya Samaj of 1875 were led by male reformers who set the limit of the freedom and development of women. Abolition of Sati (widow immolation) Act, 1829 and Widow Remarriage Act, 1856 were the main outcome of these social reforms movements during British period in India. The great social reformists Vidyasagar, Vivekananda, Rabindranath Tagore, Raja Rammohun Roy all contributed to open the closed door of female education centuries ago. Women in modern India have largely been influenced by the programs of reform and upliftment mostly reflecting impact of the western democratic and liberal ideology. Although women have achieved success in various fields, have fought for their rights but the unsaid war against the patriarchal society and its rules and regulations will continue to remain an obstacle in their journey of life.

1.1 Women Empowerment: Meaning, Nature and Scope

The empowerment of person or group of people is a process of giving them power and status in a particular situation. In India it has been observed that women community is suffering from thousands of years due to social structure, superstitions and religious constraints. It becomes inevitable in the present situation to investigate into legislative provisions and its impact on women subjugation or empowerment. The legal system of our country has responded favorably towards the recognition of her rights and protections even before or after the independence. The social reforms are motivated and legal sanctions are provided for its implementation. After India became independence, it has been made obligatory to consider women as weaker section and the need was felt to make protective discrimination with special rights and protection through the law of land. Government of India has also launched several programmes and policies for bringing about women empowerment.ⁱ

1.2 International Commitments towards Women Empowerment

Every individual of the society have equal rights to live, enjoy to equality and to live peacefully in the society. Women constitute almost half of the world population and are entitled to all human rights on an equal basis with men. Each of human rights treaties and the whole of the human rights framework are essential for the realization of women's full spectrum of rights. General Assembly of the United Nations adopted the Universal Declaration of Human Rights on 10th December, 1948 and proclaimed the equal entitlements of women and men to the rights contained in it.

The UN general assembly adopted the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) in 1979. The states parties shall condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake: (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.ⁱⁱ

The states parties to the convention shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure,

on a basis of equality of men and women: (a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; (c) The same rights and responsibilities during marriage and at its dissolution; (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children, in all cases the interest of children shall be paramount; (e) The same right to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights; (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation, in all cases the interest of the children shall be paramount; (g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation; (h) The same right for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.ⁱⁱⁱ

The fourth conference on women, held in Beijing in 1995, asserted women's rights as human's rights and committed to specific actions to ensure respects for those rights. The commission on status of women is the principal global inter-governmental body exclusively dedicated to the promotion of gender equality and the empowerment of women.

2.0 Constitutional Provisions Empowering Women

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 socio-economic, education and political disadvantages faced by them.^{iv} The reason is that women's physical structure and the performance of maternal functions place her at a disadvantage in the struggle for subsistence and her physical well-being becomes an object of public interest and care in order to preserve strength and vigor of the race.^v The Indian constitution does not contain any provision specifically made to favour women intrinsically. In part-iii of the constitution relating to fundamental rights articles 14, 15(3) and 21 protect and safeguard women and are more gender neutral provisions. The directive principles as contained in part-iv of the constitution also paved way for the state governments to legislate the women's welfare specific laws while formulating its state policies.

2.1 Women Empowerment under Family Law

As we know, around the world civil and criminal codes are rife with provisions that undermine women's human rights, their safety, and the economic health of families, communities, and entire nations. The impact of multicultural family law arrangements is evident in the practical legal experience as the state is compelled to adopt accommodation policies with reference to personal status affairs of its citizens.^{vi} The family domain is among others a space in which women's rights are violated. Women assume various roles and responsibilities as wives, mothers and daughters. In this context, women hold multiple identities as single woman, adolescent, pregnant and young mothers, women in polygamous or monogamous marriages, elderly women and widows. The author has made an attempt through this paper to find out the role of various family laws along with judicial interpretations in empowering the women which is as follows:

The Special Marriage Act, 1954 was enacted to provide a special form of marriage for the people of India and all Indian nationals in foreign countries, irrespective of the religion or faith followed

by either party. The practice of child marriage which was a social evil is strictly prohibited by the Child Marriage Restraint Act, 1929. The Hindu Marriage Act, 1955 recognizes the equal rights of men and women in the matters of marriage and divorce.

To deal with the problem of prostitution and to promote the welfare of fallen women the Suppression of Immoral Traffic in Women and Girls Act, 1956 was enacted. The main objectives of this Act are to reduce the scope of prostitution and to reform prostitution under this Act. Every state is expected to set up protective home and to appoint women police and women social workers. In protective homes these fallen women will be given vocational training to earn for their maintenance in proper way.

Muslim personal law, for instance, underwent a significant process of reform and unification in the 1930s, with the enactment of the Muslim Personal law (Shariat) Application Act in 1937 and the Dissolution of Muslim Marriage Act (DMMA) in 1939 through the legislature of British India. While the former law imposed uniformity on the Muslim community by declaring that all Muslim personal matters would be governed by the Shariat, the latter provided Muslim women with a judicial right to divorce.

The Hindu Women's Right to Property Act, 1937 was enacted to provide equal share to the wife in joint Hindu family property. The Hindu Succession Act, 1956 provided for the first time an equal right of inheritance to the daughter in the father's self-acquired property. The Hindu coparcenary did not include a female member of the family. In *Gurupad v. Hirabai*,^{vii} the Supreme Court observed that ignoring a woman's right to get a share at the time of notional partition essentially means that 'One unwittingly permits one's imagination to boggle under the oppression of the reality that there was in fact no partition between the plaintiff's husband and his sons. The legislature has now passed a further amendment in the Hindu Succession Act by which daughters have an equal right in coparcenary property as that of son.^{viii} Any major female Hindu of sound mind now has a capacity to take son or daughter in adoption.^{ix} The father or mother of the child shall have the equal right to give son or daughter in adoption.^x The court can not presume the consent of wife simply because she was present at the time of adoption Dowry and presents received at the time of marriage are the exclusive property of the married woman named stidhan.^{xi} The Dowry Prohibition Act, 1961 abolish giving and taking dowry at the time of marriage and have proved very helpful in eradicating this evil practice though not completely which causes gender inequality in the society.

The wife can live separately from the husband and still claim maintenance if the husband is guilty of cruelty, bigamy, desertion etc.^{xii} A spouse is liable to be maintained during the pendency of the proceedings before the court if he/she does not have sufficient independent source of income.^{xiii} The dependent spouse can claim maintenance and permanent alimony from the other spouse.^{xiv} It is natural duty of a man irrespective of his religion to maintain his wife, children and parents.^{xv} The Muslim women's right to get maintenance on divorce by her husband within the period of iddat is protected under law.^{xvi} In *Danial latif v. Union of India*^{xvii}, the Supreme Court upholds the validity of Muslim Women (Protection of Rights on Divorce) Act, 1986. The legislation gives an option to the parties to be governed either by the Act or provisions of Criminal Procedure Code, 1973.^{xviii} A central theme for the women's movement all over the world has been violence against women both in their homes and outside. Domestic violence manifests as verbal, physical or psychological abuse, often in forms that are more subtle than the violence elsewhere

in society. Under criminal law, there are few provisions available which can be used to address the issue of domestic violence.^{xix} The Protection of Women from Domestic Violence Act, 2005 was passed to prevent women who were ostracized by their own people in their own homes. The Act provides protection to the wife or the female live-in partner from domestic violence at the hands of the husband or the male live-in partner or other relatives.

3.1 Role of the National Commission for Women

The main intention for the establishment of NCW was to ensure the equal livelihood for women by making amendments in constitution and laws that favour them. The commission was formed to prevent any kind of violence and exploitation against them. The national Commission for women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 to:

- (i) Review the constitutional and legal safeguards for women;
- (ii) Recommend remedial legislative measures;
- (iii) Facilitate redressal of grievances and
- (v) Advise the government on all policy matters affecting women.

The commission also has the powers that are vested upon with a civil court. The main recommendation of the commission is to facilitate redressal mechanisms and also to take legislative measures to curb the disparity. The commission has the suo moto power to take up the matters relating to the violation of women's rights and any kind of discrimination against them.

4.0 Conclusion

Society is in a continuous process of evolution. The march towards elimination of gender bias has to go on, so as to make it meaningful for the vast majority of women in this country.¹ As the importance of women's rights in public and private sphere continues to grow, it is imperative that the law too continues to evolve, accommodating their aspirations and desires. At the same time, it is also true that legislation 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. The role of the judiciary is not merely to interpret the law but also to lay new norms of law. It is expected from the courts to mould the law to suit the changing social and economic scenario to make the ideal enshrined in the constitution meaningful and reality. The society demands active judicial roles which formerly were considered exceptional but now a routine.^{xx} In protecting women, the judiciary has come forward and removed all procedural shackles to revolutionize the constitutional litigations.

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, society and ultimately a good nation.
- A.P.J. Abdul Kalam

¹ Indu Malhotra, 'Empowerment of Women', Nyayadeep, NALSAR, vol.vii, issue1, (Jan., 2006), p 115.

5.0 Reference

-
- ⁱ National Programme for the Empowerment of Women, 2001.
- ⁱⁱ Article 2, CEDAW.
- ⁱⁱⁱ Article 16, CEDAW.
- ^{iv} Dr. Saba Yunus, Dr. Seema Varma, 'Legal Provisions for Women Empowerment in India', *IJHMS*, Vol.3, Issue 5 (2015).
- ^v *Muller v. Organ*, 52 L.Ed. 551.
- ^{vi} Aylet Shachar, Legal Ethics, Yale Law School, 'Group Identity and Women's Rights in Family Law: The Peril of Multicultural Accommodation', *The Journal of Political Philosophy*, Vol.6, Number 3, 1998, pp.285-305 available at https://www.law.utoronto.ca/documents/shachar/GroupIdentity_JPP.pdf
- ^{vii} AIR 1978 SC 1239.
- ^{viii} S.6, The Hindu Succession (Amendment) Act, 2005.
- ^{ix} S.8, The Personal Laws (Amendment) Act, 2010.
- ^x S.9, The Personal Laws (Amendment) Act, 2010.
- ^{xi} *Partibha Rani v. Suraj Kumar*, AIR 1985 SC 628.
- ^{xii} S. 18(2), The Hindu Adoption and Maintenance Act, 1955.
- ^{xiii} S.24, The Hindu Marriage Act, 1955.
- ^{xiv} S.25, The Hindu Marriage Act, 1955.
- ^{xv} S.125, The Criminal Procedure Code, 1973.
- ^{xvi} S.4, The Muslim Women (Protection of Rights on Divorce) Act, 1986.
- ^{xvii} 2001(7) SCC 740.
- ^{xviii} *Mohd. Ahmad Khan v. Shah Bano Begum*, AIR 1985 SC 985.
- ^{xix} S.498A, The Indian Penal Code (Amendment) Act, 1983. This section with its specificity to dowry ignores the other factors of violence and hence the need was felt to bring specific legislation to counter the patriarchal practice of domestic violence and ensure the justice to women in every walk of their life.
- ^{xx} *C.Ravichandran Iyer v. A.M. Bhattacharjee*, 1995(5) SCC 457.