

UNDERSTANDING GENDER EQUALITY AND WOMEN'S EMPOWERMENT WITH THE HELP OF INDIAN CONSTITUTIONAL PROVISIONS AND OTHER ENACTED LAWS

BHARATHI.S

Abstract: Gender equality implies a society in which women and men enjoy the same opportunities, outcomes, rights and obligations in all spheres of life. Equality between men and women exists when both sexes are able to share equally in the distribution of power and influence; have equal opportunities for financial independence through work or through setting up businesses; enjoy equal access to education and the opportunity to develop personal ambitions. A critical aspect of promoting gender equality is the empowerment of women, with a focus on identifying and redressing power imbalances and giving women more autonomy to manage their own lives. Women's empowerment is vital to sustainable development and the realization of human rights for all. There are many enactments passed by the legislation to empower the women on the same footing of men and this article aims at bringing out certain laws which has helped the women in empowering herself with the help of these laws.

Introduction: Gender equality has always been a topic of vast discussions starting from the time of pre-independence like sati, female infanticide, bride burning to now, 33% seat allocation in assembly. Our constitution has empowered women not only by christening it as a fundamental right; it also facilitates the state to help women move on the road of development and advancement. There have been lots of laws and international conventions in favor of this idea the key feature being the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.

For empowerment of women in India, certain existing laws have been amended and modified according to need of time. After independence in India several new laws have been enacted by creating penal sanction against certain types of behavior that infringes, deprives or derogates the dignity of women. Apart from the legislations enacted by the Central and State Governments, the apex court of the country and several High Courts of the States have protected women by their judicial decisions giving special preference from men.

Indian Constitution is prominently a social document. It is goal oriented. This document puts women completely at par with & fulfils the cherished goal of equality in matters of civil, political and economic rights. The political rights of franchise have also been given to Indian women under the provisions of the constitution. The various constitutional privileges can be stated as follows: the principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. Through Fundamental Rights the Constitution of India guarantees the equality to women and by Directive Principles of State Policy, directs the States to take all measures to uphold and safeguard the rights of women guaranteed by Fundamental Rights. Within the framework of a democratic polity, our laws, development policies, plans and programmes have aimed at women's advancement in different spheres. India has also ratified various international conventions and human rights instruments committing to secure

equal rights of women.

Constitutional Provisions: 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. Government cannot segregate people on the basis of colour, creed, race and others. Fundamental Rights among others ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c), and 42 of the constitution are of specific importance in this regard.

The following are certain **Constitutional Privileges** enjoyed by women even though the Constitution itself enshrines that 'there shall not be any discrimination on the ground of sex', women is given special privileges calling itself as protective discrimination-

1. Equality before law for women (article 14)
2. The State not to discriminate against any citizen on grounds only of religion, race, caste, **sex**, place of birth or any of them (article 15 (i))
3. The State to make any special provision in favour of **Women** and Children (article 15 3))
4. Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State (article 16)
5. The State to direct its policy towards securing for men and **Women** equally the right to an adequate means of livelihood (art 39(a)),
6. The State shall make the measures to pay equal for the equal work (article 39(d))
7. The State to make provision for securing just and humane conditions of work and for maternity relief (article 42)
8. The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation (article 46)
9. The State to raise the level of nutrition and the

standard of living of its people (article 47)

10. 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** (article 51(A)(e))
11. Not less than one-third (including the number of seats reserved for **women** belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for **women** and such seats to be allotted by rotation to different constituencies in a Panchayat (article 243 (D) (3))
12. Not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for **Women** (article 243(D)(4))
13. Not less than one-third (including the number of seats reserved for **Women** belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality. (article 243 T (3))
14. Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and **Women** in such manner as the legislature of a State may by law provide (article 243(T)(4).

To uphold the Constitutional mandate as per the directions provided under 'Directive Principles of State Policy', the State has enacted various legislative measures intended to ensure equal rights, to counter social discrimination and various forms of violence and atrocities and to provide support services especially to working women and the following are some of the Legislative acts.

Labour Welfare Legislation And Women:

The Factories Act, 1948: This Act does not allow women from clearing or lubricating or adjusting any part of a prime mover or transmission machinery when it is in motion because there is a risk of injury. The Act also prohibits employment of women in any part of a factory for pressing cotton in which a cotton opener is at work provided that if the feed-end the cotton opener is in a room separate from the delivery end. And also every factory should provide in it where 50 or more women workers are employed a suitable room for the use of children under the age of 6 years of such women and such rooms shall provide adequate accommodation with lighting and ventilation and also clean sanitary conditions. These crèches should be under the charge of women trained in the care of children and infants; women are also exempted from night duties in any industrial premises.

The Employees State Insurance Act, 1948: This Act provides for the periodical payment to insured women in case of confinement or miscarriage or sickness arising out of pregnancy, confinement, premature birth of child or miscarriage. According to section 50 of this Act an insured woman shall be qualified to claim maternity

benefit for confinement, if the confinement occurred during the corresponding contribution period, weekly contributions in respect of her were payable for not less than thirteen weeks.

The Plantation Labour Act, 1951: The Act provides for crèches where fifty or more women are employed for the use of children below six years. The same facilities are there that are provided under section 48 of the factories Act, 1948. Night work for women should be prohibited. The Act also provides sickness and maternity benefits.

The Mines Act, 1952: No women shall be employed in any part of a mine which is below ground and above ground except between the hours of 6 A.M. to 7 P.M. And every women employed above ground shall be allowed an interval of not less than 11 hours between the termination of employment on any one day and the commencement of the next period of employment.

The Maternity Benefit Act, 1961: Maternity benefit schemes are primarily meant to provide security of wages and employment to women workers immediately before and after confinement. This Act was enacted to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits.

This Act is intended to achieve the object of doing social and economic justice to women workers, which would enable the worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and out-put. The maternity benefit Act, 1961 was further amended by the maternity benefit (Amendment) Act, 1988 which provides that women workers who have put in not less than 80 days of work can claim the following benefits from the employer-

1. Maternity benefit at the rate of the average daily wage for the period of her actual absence, that is to say, the period immediately preceding the day of her delivery and any period immediately following that day.
2. In case of miscarriage, a woman shall be entitled to leave with wages at the rate 'of maternity benefit, for a period of six weeks immediately following the day of her miscarriage.
3. In case of illness arising out of pregnancy delivery, premature birth of a child or miscarriage, in addition to the period of absence specified in (i) and (ii) above, as the case may be, to leave with wages at the rate of maternity benefit for a maximum period of one month.

The aforesaid benefits are available to women workers irrespective of the number of births. For nursing mothers the Act provides two nursing breaks of prescribed duration, in addition to the rest interval for nursing the child until he attains the age of 15 months. In order to safeguard the interest of pregnant workers, the Act provides that a woman worker shall not be dismissed, discharged during the period of maternity leave. Apart from the benefits provided under the

Maternity benefit Act, some State Acts provide additional benefits such as free medical aid, bonus, provision of crèches, additional rest intervals, etc. however, the Act has an extremely limited application and rarely applied in the agricultural sector.

The Equal Remuneration Act, 1976: The equal Remuneration Act, 1976 was enacted to provide equal remuneration to male and female employees for the same work, or work of the similar nature. It prevents discrimination on the ground of sex against women in the matter of employment of women and for matters connected therewith except where the employment of women in such works is prohibited or restricted by or under any law for the time being in force. Indeed this Act is a milestone in establishing economic equalities and social justice between men and women. Now the time has come when equal pay for equal work for both man and women should be fully implemented without discrimination on the basis of sex in order to provide fair and just treatment to women workers.

Personal Laws And Women: After Independence, it was the codified Hindu Law which brought out radical reforms to improve the condition of Hindu women. Though Hindu women occupied a high position during Vedic times, later she was subject to so many social disabilities. She was always considered to be mere object of pleasure keeping hearth and home. She had to be subservient. She was never considered an equal partner in life. Now we would consider about some pertinent Acts which were enacted for uplifting the condition of women on the humanitarian ground.

Hindu Widows Remarriage Act, 1856: One of the earliest Acts passed for the upliftment of Hindu women is the Hindu Widows' Remarriage Act, 1856.

The Hindu Marriage Act, 1955: Prior to 1955 polygamous marriages were recognised as valid. Section 5 (i) of the Hindu Marriage Act, 1955 while laying down the condition for a valid marriage states: "Section 5 - Conditions for a Hindu Marriage: A Marriage may be solemnized between any two Hindus if the following conditions are fulfilled namely. (i) Neither party has a spouse living at the time of marriage."

The Hindu Succession Act, 1956: Turning to law of succession prior to 1956, a Hindu woman had no right to succeed to the property except what was called a widow's estate which conferred nothing more than a right of enjoyment during her life time. Now the law has empowered the women by conferring property rights and other entitlements to them through various statutes. The 1956 Act gave absolute share to the widow as well as to the daughters in the self-acquired property of the husband and the father respectively.

The Law of Adoption and Maintenance Act, 1956: The Act Provides for the maintenance of wife, widows, minor children and the poor parents. It pays special attention to women, besides, under this Act, the Hindu women have got the right to adopt a child. A woman, who is unmarried, is widowed or her husband has renounced worldly life or adopted another religion or

has been declared insane by a court of law, may adopt a child.

The Muslim Woman (protection of Rights on Divorce) Act, 1986: This is a very controversial enactment which was passed after the decision of Mohd. Khan v. Shah Bano Begum, which includes a provision for maintenance on divorce for Muslim women. This short enactment entitled Muslim women to reasonable and fair provision and maintenance by her husband to be made within the period of iddat, her right to Mehr and all other properties given to her by her relatives at the time of her marriage remain intact. It also provides that if a Muslim woman is not able to provide for her own maintenance after the period of Iddat, the magistrate is empowered to order payment of maintenance by her relatives who are entitled to inherit her property on her death according to Muslim law. In other words, the divorced Muslim woman is not entitled to obtain an order from the Magistrate against her relatives if she has no property that may devolve upon them after her death. Besides, this legislation gives an option to the parties to be governed either by this Act or provisions of Criminal Procedure Code, 1973.

The Hindu Minority and Guardianship Act, 1956: This important piece of legislation was enacted to give protection to the children. This Act gives a right to woman to be a natural guardian of the child in some conditions. Under this Act, the father and after him the mother is the natural guardian of a minor boy and a minor unmarried daughter, but the custody of the child below 5 is to remain with the mother. However, this rule is not absolute. The prime and paramount consideration is welfare of the minor and under this Act the court may make order as they deem just and proper consistently with the wishes of children, there have been cases where mother was appointed guardian of eleven year old.

Social Reform Legislation And Women: Empowerment of women is also an important step to provide social and economic justice to them. After independence the Indian Government took a bold step, by enacting several social welfare legislations to improve the condition of women. These legislations provided penal sanction of both types as imprisonment and fine. Generally these Acts relate to child marriage, dowry, dowry death, cruelty with women and rape offences etc.

The Child Marriage Restraint Act. 1929: The important sections of this Act is 3 and 4 which prescribe punishment for male for contracting child marriage but the Act exempts women from such punishment. Section 3 of the Act says as follows: Punishment for male adult below 21 years of age marrying a child:- Whoever, being a male above 18 years of age and below 21, contracts a child marriage shall be punishable with simple imprisonment which may extend to thirty days, or with fine which may extend to one thousand rupees, or with both."

The Dowry Prohibition Act, 1961: Among all social evils that we have, dowry system is the most serious evil. To prohibit this evil Parliament enacted the Dowry

Prohibition Act, 1961. To curb the dowry menace more effectively, the Dowry Prohibition Act, 1961 was amended in 1984 and 1986~for making its provisions more stringent and effective. By the Dowry Prohibition (Amendment) Act, 1986 a new offence of "Dowry Death" was included in Indian Penal Code and the necessary consequential amendment have been made in Criminal Procedure Code and Indian Evidence Act. The offences relating to dowry are now cognizable, nonbailable and not compoundable. The burden of proof of innocence rests on the accused. However, despite stringent provisions the evil is not restricted and it is increasing day by day.

The Immoral Traffic (Prevention) Act, 1986: The Suppression of Immoral Traffic Act, 1956 was passed by the Parliament in the 6th year of the Republic of India in pursuance of the International Convention signed at New York on 9th May, 1950. This was replaced by the present Act in 1986. This Act provides for punishment to any person who keeps or manages or acts or assists in the keeping or management of a brothel. The punishment is conviction with rigorous imprisonment for a term of not less than one year and not more than three years and also with fine which may extend to two thousand rupees. The Act also provides punishment to any person over the age of 18 years who lives wholly or in part on the earnings of prostitution of a child or a minor. The Act prohibits prostitution under section 7 of the Act in or in the vicinity of public places and makes the same punishable.

The Medical Termination of Pregnancy Act, 1985: This Act is also an important piece of legislation towards the liberation of women. It secured to her the right to decide about abortion.

The Commission of Sati (prevention) Act, 1987: After the incident of the commission of Sati in Rajasthan this Act was enacted on demand of women's organisations and from persons inside and outside the Parliament for more effective prevention of the Commission of Sati and its glorification.

The Family Courts Act, 1984: In some recent statutes, participation of women has been ensured by providing them preferential appointments to decision making bodies. The family Courts Act, 1984 which provides family courts for adjudication and settlement of family disputes provides that while appointing judges for the court preference shall be given to woman.

The Prevention of Atrocities Act, 1989: This Act also makes some provisions for safeguarding the women of weaker sections who belong to S.C. and S.T. classes. Under section 3 clause (i) it has been provided that:

(i) Assaulting or using force to any women belonging to a scheduled class with intent to dishonour or outrage her modesty.

(ii) Being in a position to dominate the will of a woman belonging to a schedule caste and using that position to exploit her sexually which she would not have otherwise agreed to, such above offences shall be punishable with imprisonment for a term of not less than 6 months and

up to a maximum of five years and with fine.

The Consumer Protection Act, 1986: The Consumer Protection Act, 1986 also provides that a lady social worker is to be one of the three members of the District Forum and one woman of ability and integrity with special knowledge of industry, law, economics etc. has to be on the State Commission as well as the National Commission.

The National Commission for Women Act, 1990: For the purpose of setting up of an agency to fulfil the surveillance functions as well as to facilitate redressal of grievances of women the National Commission for women Act, 1990 was enacted. The main function of the Commission is to look into the matters relating to the Constitutional and legal safeguards provided for women and review the existing laws and suggest amendments, if necessary. The Commission also have executive cum judicial functions to look into the complaints and take suo motu notice of the cases relating to women's rights.

The Civil Rights Act of 1964 is a landmark piece of civil rights legislation in the United States that outlawed major forms of discrimination against racial, ethnic, national and religious minorities, and women. It ended unequal application of voter registration requirements and racial segregation in schools, at the workplace and by facilities that served the general public known as "public accommodations"

National Policy For The Empowerment Of Women (2001) - Within the framework of a democratic polity, our laws, development policies, Plans and programmes have aimed at women's advancement in different spheres. From the Fifth Five Year Plan (1974-78) onwards has been a marked shift in the approach to women's issues from welfare to development. In recent years, the empowerment of women has been recognized as the central issue in determining the status of women. The National Commission for Women was set up by an Act of Parliament in 1990 to safeguard the rights and legal entitlements of women. The 73rd and 74th Amendments (1993) to the Constitution of India have provided for reservation of seats in the local bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision making at the local levels.

India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993. The Mexico Plan of Action (1975), the Nairobi Forward Looking Strategies (1985), the Beijing Declaration as well as the Platform for Action (1995) and the Outcome Document adopted by the UNGA Session on Gender Equality and Development & Peace for the 21st century, titled "Further actions and initiatives to implement the Beijing Declaration and the Platform for Action" have been unreservedly endorsed by India for appropriate follow up. The Policy also takes note of the

commitments of the Ninth Five Year Plan and the other Sectoral Policies relating to empowerment of Women. The women's movement and a wide-spread network of non-Government Organisations which have strong grass-roots presence and deep insight into women's concerns have contributed in inspiring initiatives for the empowerment of women. It is important to note the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("Sexual Harassment Act") was made effective in India on April 23, 2013. And the provisions of this Act are to be implemented in all working places.

Conclusion: India is a country which is always known to empower women to the maximum extent. Even our seas and oceans have been named after women. We come from a country which respects women more than god himself. But the present day scenario where rapes and murders and abductions are on increase tells us a different story. True there are lots of laws protecting the rights of women but they are not as effective as of now

just because of the simple fact that there is no such awareness amongst people and the law is not intimidating enough to scare the wrong doers. Women are the wealth of the nation and it becomes our sacred duty to protect them against all harm.

Thus, today our country is in need of gender legislation of women laying down her rights irrespective of religion and region. The legislative measures are in favour of women, but their success depends on effective implementation. The proper implementation, Co-ordination of the three branches is absolutely essential. The Lack of implementation due to absence of commitment to the policy of the constitution has led to either non-implementation or to watering down by the judiciary and the executive of the beneficial effects. However, there still exists a wide gap between the goals enunciated in the Constitution, legislation, policies, plans, programmes, and related mechanisms on the one hand and the situational reality of the status of women in India, on the other.

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Assistant Professor, School of Law,
Alliance University, Bangalore.
bharathi.s@alliance.edu.in