

Volume 10, Issue 1, (Special Issue)
March, 2018

ISSN No.:2348-4667

Anthropological *Bulletin*

a peer reviewed international journal

Special Issue:
Women and Children's Perspectives

Guest Editor:
Daud Salim Faruque

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Department of Anthropology
University of Lucknow, Lucknow, India

Women Empowerment: An Analysis within Constitutional Dimension

Shoeb Ali*

ABSTRACT

Women Empowerment is the process to cultivate self confidence in women so as to empower them in all aspects of life, material or spiritual physical or mental. It also seeks to cultivate the right attitude in the male dominated family, society and other aspects of life. The need of women empowerment arose because of the gender discrimination and male domination in the Indian society since ancient time. Women are being suppressed by their family members and society for many reasons. They have been targeted for many types of violence and discriminatory practices by the male members in the family and society in India and other countries as well. Aristotle commented "it is on the progress or decline of women that the progress or decline of the nation depends". Our Constitution is the basic document of a country having a special legal holiness which sets the framework and the principal functions of the organs of the Government of a State. It also declares the principles governing the operation of these organs. The Constitution of India contains various provisions, which provide for equal rights and opportunities for both men and women. The 73rd and 74th Constitutional Amendment has given a new dimension to the process of women empowerment, with women panchayat members emerging in many settings as change leaders. The present view outlook the framework of Constitution and its aims at creating legal norms, social philosophy and economic values which are to be affected by striking synthesis, harmony and fundamental adjustment in order to achieve women empowerment and gender justice.

Keywords:- Adjustment, Constitution, Discrimination, Domination, Gender Justice

Introduction:

Women empowerment in India is heavily dependent on many different variables that include geographical location (urban/rural), educational status, social status (caste and class), and age. Policies on women's empowerment exist at the national, state, and local (Panchayat) levels in many sectors, including health, education, economic opportunities, gender-based violence, and political participation. However, there are significant gaps between policy advancements and actual practice at the community level.

The most critical component of women empowerment is found to be education. It leads to improved economic growth, low fertility rate, health and sanitation and an awareness of factors that disempowered women. Work participation rate and political participation also grows in women education. The expansion of the market economy and industrialization and globalization brought increased inequalities, resulting in loss of livelihoods, erosion of natural resources and with it decreased women's access to water, fuel, fodder and traditional survival resources. It also brought new forms of exploitation-

* Director, Handover Lexlegacy Law Firm. contactus@lexlegacy.com

displacement, tourism, sex trade and retrenchment to mention a few. Women are being pushed into less productive sectors. Increased pressure on rural resources accelerated migration to urban areas in search of livelihood. People from backward regions, tribal communities, disadvantaged castes and the displaced communities were being pushed against the wall. Women in such countries shouldered the brunt and this phenomenon was labeled feminization of poverty. The need of women empowerment arose because of the gender discrimination and male domination in the Indian society since ancient time. Women are being suppressed by their family members and society for many reasons. They have been targeted for many types of violence and discriminatory practices by the male members in the family and society in India and other countries as well. Wrong and old practices for the women in the society from ancient time have taken the form of well-developed customs and traditions. There is a tradition of worshipping many female goddesses in India including giving honour to the women forms in the society like mother, sister, daughter, wife and other female relatives or friends. But, it does not mean that only respecting or honouring women can fulfill the need of development in the country. It needs the empowerment of the rest half population of the country in every walk of life.

Concept and meaning of women empowerment:

Women Empowerment is the process to cultivate self confidence in women so as to empower them in all aspects of life, material or spiritual physical or mental. It also seeks to cultivate the right attitude in the male dominated family, society and other aspects of life. Empowerment is the process of enabling or authorizing individual to think, take action and control work in an autonomous way. It is the process by which one can gain control over one's destiny and the circumstances of one's life. Empowerment includes control over resources (physical, human, intellectual and financial) and over ideology (beliefs, values and attitudes). It is not merely a feel of greater extrinsic control, but also grows intrinsic capacity, greater self-confidence and an internal transformation of one's consciousness that enables one to overcome external barriers to accessing resources or changing traditional ideology. Women empowerment is very essential for the development of society. Empowerment means individuals acquiring the power to think and act freely, exercises choice and full fill their potential as full and equal members of society. It is a multi-level construct referring to individuals, organizations and community. It is an international, ongoing process cantered in the local community, involving mutual respect, critical reflection, caring and group participation, through which people lacking an equal share of valued resources gain greater access to the control over these resources. Women are very important in the life of individual family society nation and world .In fact the very existence of all these cannot be imagined without them. The entire progress of family society nation or world depends on them. This was the reason that Aristotle commented "it is on the progress or decline of women that the progress or decline of the nation depends". Another renowned exponent Goldsmith stated her importance in these words "it is a woman who turns a thorny shrub into a flowery plant. It is she who turns the house of even of the poorest man into a sweet home; a paradise". There is no exaggeration insane that a skilled and educated woman betters two families. Prior to marriage, she does a great yeomen service to her parental house and after marriage, she refines and improves the house of her in-laws. Thus, women empowerment is necessary in all the conditions for betterment of working of a society.

Constitutional Perspective:

Gender equality has always escaped the constitutional provisions of equality before the law or the equal protection of law. This is because equality is always supposed to be between equals and since the judges did not concede that men and women were equal. Gender equality did not seem to them to be a legally forbidden inequality. Basically, as

pointed out by Dicey (Dicey, A.V. introduction to the study of the law of the Constitution, Mac Millan, London. 9th edition 1952), the Constitutional theories of Rule of Law and the fundamental rights stemmed from the struggle for individual liberty and were intended to curb the power of the State. For a long time gender issues were not in the limelight. In India, the Constitution makers while drafting the Constitution were sensitive to the problems faced by women and made specific provisions relating to them. In various articles, not only mandates equality of the sexes but also authorizes benign discrimination in favour of women and children to make up for the backwardness which has been their age-old destiny.

Preamble:

The Preamble contains the essence of the Constitution and reflects the ideals and aims of the people. The Preamble opens "We, the People of India, give to ourselves the Constitution". The source of the Constitution is thus traced to the people, i.e. men and women of India, irrespective of caste, community, religion or sex. The makers of the Constitution were not satisfied with mere territorial unity and integrity. If the unity is to be lasting, it should be based on social, economic and political justice. Such justice should be equal for all. The Preamble contains the goal of equality of status and opportunity to all citizens. This particular goal has been incorporated to give equal rights to women and men in terms of status as well as opportunity. Even though the fact that women participated equally in the freedom struggle and, under the Constitution and law, have equal political rights as men, enabling them to take part effectively in the administration of the country has had little effect as they are negligibly represented in politics. There were only seven women members in the Constituent Assembly and the number later decreased further. Their representation in the Lok Sabha is far below the expected numbers. This has led to the demand for reservation of 33% seats for women in the Lok Sabha and Vidhan Sabha. Political empowerment of women has been brought by the 73rd and 74th Amendments which reserve seats for women in Gram Panchayats and Municipal bodies. Illiteracy, lack of political awareness, physical violence and economic dependence are few reasons which restrain women from taking part in the political processes of the country.

At hand there have been series of legislation conferring equal rights for women and men. These legislations have been guided by the provisions of the fundamental rights and Directive Principles of State Policy. Here again there is a total lack of awareness regarding economic rights amongst women. Laws to improve their condition in matters relating to wages, maternity benefits, equal remuneration and property/succession have been enacted to provide the necessary protection in these areas.

For providing social justice to women, the most important step has been codification of some of the personal laws in our country which pose the biggest challenge in this context. In the area of criminal justice, the gender neutrality of law worked to the disadvantage of a woman accused because in some of the cases it imposed a heavy burden on the prosecutor, for e.g. in cases of rape and dowry. Certain areas like domestic violence and sexual harassment of women at the workplace were untouched. These examples of gender insensitivity were tackled by the judiciary and incorporated into binding decisional laws to provide social justice in void spheres.

Although a Uniform Civil Code is still a dream in spite of various directions of the Court, the enactment of certain legislations like the Pre-Natal Diagnostic Techniques (Prevention of Misuse) Act and the Medical Termination of Pregnancy Act prevent the violation of justice and humanity right from the womb. In spite of these laws, their non-implementation, gender insensitivity and lack of legal literacy prevent the dream of the Constitution makers from becoming a reality. They prevent the fulfillment of the

objective of securing to each individual dignity, irrespective of sex, community or place of birth.

Fundamental Rights:-

Part III of the Constitution consisting of Articles 12-35 is the heart of the Constitution. Human Rights which are the entitlement of every man, woman and child because they are human beings have been made enforceable as constitutional or fundamental rights in India. The framers of the Constitution were conscious of the unequal treatment and discrimination meted out to the fairer sex from time immemorial and therefore included certain general as well as specific provisions for the upliftment of the status of women.

- Article 14 mentions that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- Article 15 prohibits discrimination against any citizen on the ground of sex (1) The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth or any of them. (3) Nothing in this article shall prevent the State from making any special provision for women and children. Accordingly Article 15(1) prohibits gender discrimination and Article 15(3) lifts that rigour and permits the State to positively discriminate in favour of women to make special provisions to ameliorate their social condition and provide political, economic and social justice. The State in the field of Criminal Law, Service Law, Labour Law, etc. has resorted to Article 15(3) and the Courts, too, have upheld the validity of these protective discriminatory provisions on the basis of constitutional mandate.
- Article 16 provides for equality of opportunity in matter of public employment. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the state. The Constitution, therefore, provides equal opportunities for women implicitly as they are applicable to all persons irrespective of sex. At the same time it is true that women are working in jobs which were hitherto exclusively masculine domains. But there are still instances which exhibit lack of confidence in their capability and efficiency. There remains a long and lingering suspicion regarding their capacities to meet the challenges of the job assigned. In a landmark case of -:

C.B. Muthumma v. Union of India (1979) 4 SCC, a writ petition was filed by Ms Muthumma, a senior member of the Indian Foreign Service, complaining that she had been denied promotion to Grade I illegally and unconstitutionally. She pointed out that several rules of the civil service were discriminatory against women. At the very threshold she was advised by the Chairman of the UPSC against joining the Foreign Service. At the time of joining she was required to give an undertaking that if she married she would resign from service. Under Rule 18 of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, it was provided that no married woman shall be entitled as of right to be appointed to the service. Under Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, a woman member of the service was required to obtain permission of the Government in writing before her marriage was solemnized. At any time after the marriage she could be required to resign if the Government was confirmed that her family and domestic commitments were likely to come in the way of the due and efficient discharge of her duties as a member of the service. On numerous occasions the petitioner had to face the consequences of being a woman and thus suffered discrimination, though the Constitution specifically under Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth and Article 14 provides the principle of equality before law.

The Supreme Court through V.R. Krishna Iyer and P.N. Singhal, JJ. Held that: "This writ petition by Ms Muthamma, a senior member of the Indian Foreign Service, bespeaks a story which makes one wonder whether Articles 14 and 16 belong to myth or reality. The credibility of the Constitutional mandates shall not be shaken by governmental action or inaction but it is the effect of the grievance of Ms Muthamma that sex prejudice against Indian womanhood pervades the service rules even a third of a century after Freedom

In another recent judicial pronouncement, *Budhadev Karmaskar Vs State Of West Bengal (LC-2011-SC-CRL-Feb 14)* the Apex Court in its division bench headed by Markandey Katju, J and Gyan Sudha Mishra, J stated: 'we strongly feel that the Central and the State Governments through Social Welfare Boards should prepare schemes for rehabilitation all over the country for physically and sexually abused women commonly known as prostitutes as we are of the view that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed.'

Directive principles of state policy:

Directive Principles of State Policy are not enforceable in any court of law they are essential in the governance of the country and provide for the welfare of the people, including women. These provisions are contained in Part IV of the Constitution. Fundamental Rights furnish to individual rights while the Directive Principles of State Policy supply to social needs.

- Article 39 points out certain principles of policy to be followed by the state. The State shall, in particular, direct its policy towards securing - (a) That the citizen, men and women equally, have the right to an adequate means of livelihood; (d) That there is equal pay for equal work for both men and women; (e) 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 or strength. The State in furtherance of this directive passed the Equal Remuneration Act, 1976 to give effect to the provision. Article 39(e) specifically directs the State not to abuse the health and strength of workers, men and women.
- Article 42 describes provision for just and humane conditions of work and maternity relief- The State shall make provision for securing just and humane conditions of work and for maternity relief. Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity relief. The State has implemented this directive by incorporating health provisions in the Factories Act, Maternity Benefit Act, Beedi and Cigar Workers (Conditions of Employment) Act, etc.

Fundamental duties:

Parts IV-A which consist of only one Article 51-A was added to the constitution by the 42nd Amendment, 1976. This Article for the first time specifies a code of eleven fundamental duties for citizens. Article 51-A (e) is related to women. It states that; "It shall be the duty of every citizen of India to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religion, linguistic, regional or sectional diversities; to renounce practices derogatory to the dignity of women"

Constitutional Amendments:

- Article: 243 D Reservation of seats. (73rd Amendment - w.e.f. 1-6-1993) (1) Seats shall be reserved for— (a) the Scheduled Castes; and (b) the Scheduled Tribes, In every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that

Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat. (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. (3) 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 shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat. (4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State: Provided further that not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level shall be reserved for women: Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level. (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334. (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.

- Article: 243 T Reservation of seats. (74th Amendment - w.e.f. 1-6-1993) 243T. Reservation of seats. – (1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the municipal area or of the Scheduled Tribes in the Municipal area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Municipality. (2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes. (3) 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 shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality. (4) The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide. 52 (5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in article 334. (6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward class of citizens.

Women's Safety, Protection and Empowerment:

Despite some recent positive momentum, the pace of progress in realizing women's safety, protection and empowerment has not been adequate. This is reflected in the National Crime Records Bureau data, which highlighted that 3,09,546 incidents of crime against women (both under Indian Penal Code and other laws) were reported during the year 2013, as against the 2,44,270 cases reported during 2012, showing an increase of 26.7% (despite the fact that not all crimes against women are reported). The policy commitment to ensuring the safety, security and dignity of women NAVDISHA- National Thematic Workshop on Best

Practices for Women and Child Development 20-21 January 2015 Panipat, Haryana organised by Ministry of Women and Child Development Government of India and Government of Haryana Ministry of Women and Child Development and girls in public and private spaces was reaffirmed – including through the Twelfth Plan provisions, the Criminal Law (Amendment) Act, 2013 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act 2013. Ensuring women's social, economic and political empowerment, fulfillment of their rights, promoting their participation and leadership requires comprehensive gender-responsive measures at different levels, including through legal, policy and institutional frameworks. The 73rd Constitutional Amendment has given a new dimension to the process of women's empowerment, with women panchayat members emerging in many settings as change leaders. Now progressively, many states are earmarking 50% reservation for women in panchayati raj institutions. A major thrust for economic empowerment has been through the formation of thrift and credit based self-help groups (SHGs) formed by women – with states such as Andhra Pradesh demonstrating effective ways of making this a mass movement. Increased support for women SHGs in the National Rural Livelihood Mission and in MGNREGA with women having a share of 115.54 (53%) crore person days in 2013-14 have been positive developments. Successful linkages between SHGs and Micro-Finance institutions such as RMK, NABARD, and SIDBI besides private microfinance institutions have helped in generating additional income, jobs and in creating small enterprises for women. In the recent. In the latest decision, the Bihar Government said, the 35 per cent reservation extended to women on posts of police constable would now be extended to cover other state government vacancies, too. The cabinet also gave the go-ahead to rules paving way for the Right to Public Grievances Redressal Bill, which is likely to be implemented in May, a target set by the Chief Minister.

Specific Laws for Women Empowerment in India:

Here is the list of some specific laws which were enacted by the Parliament in order to fulfill Constitutional obligation of women empowerment:

- The Equal Remuneration Act, 1976.
- The Dowry Prohibition Act, 1961.
- The Immoral Traffic (Prevention) Act, 1956.
- The Maternity Benefit Act, 1961.
- The Medical termination of Pregnancy Act, 1971.
- The Commission of Sati (Prevention) Act, 1987.
- The Prohibition of Child Marriage Act, 2006.
- The Pre-Conception & Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.
- 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.

Conclusion:

The promotion of equality between women and men has been a consistent feature of Indian Constitution. Measures that specifically target women have been emphasized for quite a few years. Many positive results have been achieved. However, when judging the achievements in a broad perspective, it becomes clear that most of them have remained isolated and development has not been affected at all to a desirable degree. Progress has been slow and strenuous, thus stressing the fact that gender issues are intimately related to, and even determined by, the formal distribution of power in society. Women in India, through their own unrelenting efforts and with the help of Constitutional and other legal provisions and also with the aid of Government's various welfare schemes, are trying to find their own

place under the sun. And it is a heartening sign that their participation in employment-government as well as private, in socio-political activities of the nation and also their presence at the highest decision making bodies is improving day by day.

However, we are still far behind in achieving the equality and justice which the Preamble of our Constitution talks about. When the potential of both women and men is utilized in development, there is less need for special compensatory support for women. To ensure effective and sustainable results it is necessary that both women and men participate in, and benefit from, development co-operation.

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