Women Empowerment: Still A Need Of The Hour?

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Abstract

Empowerment of women had been the talk of the town since decades to uplift the status of women in India. Post-Independence the aim of bring Gender Equality was enshrined in the Constitution of India but even after several decades we have not been able to achieve our aim. Though we have come a long way and have been able to climb few steps of the ladder but our destination is still miles away. What is required is empowering those backward classes of women who are way behind in terms of empowerment. The need is to bring about a balance in already empowered women and classes of women who are still unempowered. The schemes relating to adult education, enhancing skills, generating employment should be specifically targeted towards classes of backward women who are in dire need of the same. Empowerment of all classes of women is required for the complete women empowerment. There are various laws enacted and polices for the empowerment of women but there is still a gap that needs to be addressed.

“It is impossible to think about the welfare of the world unless the condition of women is improved. It is impossible for a bird to fly on only one wing.”

- Swami Vivekanand
I. Position of Women in India and Aboard

Despite the fact that the Ancient Indian Scripture and Commentaries described women as ‘Goddess’ or ‘Shakti’ the position of women in India had been considerably worse. For long she has been treated as a property capable of being owned by Man. Her very existence was thought to be for pleasing the Mankind. Her personality was to be controlled within limits by one or the other person at different stages of her life like initially by her father, after marriage by her husband and then by her son. Her independence was always shadowed by someone.

The Vedic period witnessed the deprivation of social and religious rights of the women class. She had no independent identity of her own; her identity was either attached to her father, husband or son. According to Manu a women should fulfill all the responsibility as a wife and if she doesn’t, she is a ‘disgrace’. Verse 164 of Chapter V of the ‘Law of Manu’ provides “By violating her duty towards her husband, a wife is disgraced in this world, (after death) she enters the womb of a jackal, and is tormented by diseases (the punishment of) her sin.”

Since the times immoral the Hindu society has been following the tradition of sending the girls to their in-law house after her marriage. This tradition is at the root generating the importance given to a son in Hindu families. It is the son who is thought to be the strengthening thread of a family on whose shoulders the whole linage can develop.

The Islamic practices have been true intervention of Human Rights of a woman whether it’s their traditions relating to ‘parda’, ‘nikah’, ‘talaq’, succession or what not. All the traditions were pro men and biased towards Muslim females. Muslim women were depraved of their very existence. They were just thought to be property which can be owned and enjoyed by a man.

The girl child is blessed with a motherly instinct in her from the very birth, this is the reason she is also trained to enhance this motherly desire committing herself totally towards her family unconditionally. A daughter is a major help for mothers in household works and child rearing.

\[1\]Law of Manu’, available at [http://www.sacred-texts.com/hin/manu/manu05.htm](http://www.sacred-texts.com/hin/manu/manu05.htm), last visited on 5th June 2022
Her education takes a back seat because what she’ll finally end up doing in her life (marriage) needs no education rather she can learn the tricks of becoming a good wife by her mother while helping her in the domestic chores. Their dark future is decided the day they are born. Uneducated Mothers in poor families who lived their own life’s struggling and juggling with the household works and childrearing cannot take stand for their girl child. It is mainly because they never realize the actual importance of education in the directionless life of a child. They just see it as an additional unfruitful expenditure in addition to the inevitable expenditure for marriage of the girl child.

One of the harshest realities of the Indian societies is that the birth of the girl child is thought to be a major burden. On one hand where the beauty of nature-motherhood is celebrated with the birth of a son; it is thought to be curse with the birth of a girl child. Birth of a girl child is thought to be a curse because of the social consequences which are inevitably going to follow such as expenditure in her marriage, dowry and lifelong obliging her in-laws. Hence parents prefer to uproot this very reason of unnecessary expenditure in the family. They end up aborting the fetus if it is diagnosed to be a girl child. Some parents under the trauma of consequences of a girl child end up killing the girl child mercilessly.²

The position of women in the Indian society was gathered by the social & cultural norms which she was required to fulfill. With the advancement of time and in the era of technology it was ironical to see that the social and cultural norms for women did not change with the changing times. The vulnerability of the women class has left them as an easy prey in the male dominated world. It was mainly because of the economic and social dependency of women over men. It was not only the case with uneducated economically backward women but also with educated and economically independent women. As soon as women stepped out of their homes, they were exposed to abuse ranging from outraging their modesty to rape, at work they were abused ranging from Sexual Harassment at Workplace to being underpaid for the same job as men. The story did not end their females were not completely safe behind the closed doors of their house they were continuously abused in silence ranging from domestic violence to matrimonial offences. Women

were harassed irrespective to their age. Girls of tender age were sexually exploited at schools, public places by known or unknown people.

It was not only in India that women class was given inferior position as compared to men but rather it was globally that women faced inequalities. Women class has always been suppressed and has faced many atrocities. Even in Colonial America women were granted ‘chattel status’ as she was legal property of her father or her husband. “A married woman could not own property, for she was property. Her personal "belongings," her children, even her own body were legal possessions of the man she wed. In the eyes of early post-Revolutionary law, a woman, as a freely determined individual, simply did not exist.”

The main reason behind the worsen position of women in India and abroad was the lack of independence being given to her. This resulted in major gender inequalities. A need for the upliftment of the weakened class of women was felt immensely. Their upliftment was only possible by means of proper laws for their protection. Other parameters like education and awareness about their own rights was also necessary to bring about change in their self-outlook and their outlook by Men. A collective effort of the society at large could strengthen and change the inferior position of the women class.

II. Constitutional and Legal protection for Women in India

After Independence in the year 1947 and with the coming into force of the Indian constitution on 26th Jan 1950 major efforts were made to uplift the inferior women class.

The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. The Constitution not only grants equality to women, but also empowers the State to adopt measures of positive discrimination in favour of women. 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. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.

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. 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.

**III. Constitutional Privileges**

(i) “Equality before law for women”\(^4\)

(ii) “The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them”\(^5\)

(iii) “The State to make any special provision in favour of women and children”\(^6\)

(iv) “Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State”\(^7\)

(v) “The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood; and equal pay for equal work for both men and women”\(^8\)

(vi) “To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities”\(^9\)

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\(^4\) Article 14, The Constitution of India  
\(^5\) Article 15(1), The Constitution of India  
\(^6\) Article 15(3), The Constitution of India  
\(^7\) Article 16, The Constitution of India  
\(^8\) Article 39(a) & (d), The Constitution of India  
\(^9\) Article 39 A, The Constitution of India
(vii) “The State to make provision for securing just and humane conditions of work and for maternity relief”\(^{10}\)

(viii) “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”\(^{11}\)

(ix) “The State to raise the level of nutrition and the standard of living of its people”\(^{12}\)

(x) “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”\(^{13}\)

(xi) “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”\(^{14}\)

(xii) “Not less than one-third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women”\(^{15}\)

(xiii) “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”\(^{16}\)

(xiv) “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”\(^{17}\)

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\(^{10}\) Article 42, The Constitution of India

\(^{11}\) Article 46, The Constitution of India

\(^{12}\) Article 47, The Constitution of India

\(^{13}\) Article 51 (A) (e), The Constitution of India

\(^{14}\) Article 243 D (3), The Constitution of India

\(^{15}\) Article 243 D (4), The Constitution of India

\(^{16}\) Article 243 T (3), The Constitution of India

\(^{17}\) Article 243 T (4), The Constitution of India
IV. Legal Provisions

To uphold the Constitutional mandate, 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 specially to working women. Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc, the crimes, which are directed specifically against women, are characterized as 'Crime against Women'. These are broadly classified under two categories.

(1) The Crimes Identified Under the Indian Penal Code

(i) Rape

(ii) Kidnapping & Abduction for different purposes

(iii) Homicide for Dowry, Dowry Deaths or their attempts

(iv) Torture, both mental and physical

(v) Outraging the modesty of a women

(vi) Sexual Harassment at Workplace

(2) The Crimes identified under the Special Laws (SLL) Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts have special provisions to safeguard women and their interests like

(i) The Family Courts Act, 1954

(ii) The Special Marriage Act, 1954

(iii) The Hindu Marriage Act, 1955

(iv) The Hindu Succession Act, 1956 with amendment in 2005

(v) Immoral Traffic (Prevention) Act, 1956

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18 Sec 376, Indian Penal Code, 1860
19 Sec 363 – Sec 373, Indian Penal Code, 1860
20 Sec 302/304 B, Indian Penal Code, 1860
21 Sec 498 A, Indian Penal Code, 1860
22 Sec 354 & Sec 596, Indian Penal Code, 1860
23 Sec 354 A, Indian Penal Code, 1860
V. Some Special Initiatives for Women

(i) National Commission for Women: In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

(ii) Reservation for Women in Local Self-Government: The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

(iv) National Policy for the Empowerment of Women, 2001: The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women. National Policy for the Empowerment of Women, 2016 is under draft stage.

With this positive picture of having various laws for the protection and empowerment of the then victimised and inferior women class it was thought that these laws would be successful in uplifting this vulnerable section of the society. But it wasn’t the case as society has many shades to be unfolded every now and then.

VI. The Nirbhaya Case

The 2012 Delhi gang rape case involved a rape and fatal assault that occurred on 16 December 2012 in a neighbourhood located in the southern part of New Delhi, when a 23-year-old female physiotherapy intern was beaten and gang raped in a private bus in which she was travelling with a male friend. The victim later died due to her injuries.24 The incident generated widespread national and international coverage and was widely condemned, both in India and abroad.

The victim and her friend were beaten up when they raised their suspicions as to route of the bus to the destination. The woman was later raped by all the men while the bus was moving and her friend was beaten unconscious. Medical investigation of the woman suggested she was penetrated by a blunt object, probably a rod-like object that had caused extensive damage to the internal organs of the victim.

Within a day of the commission of the crime, arrests were made by the Delhi police in the case and all the six accused including a juvenile were arrested. There was a huge demand for speedy trial and immediate prosecution in the matter. While five of the accused were tried for the crime before the Additional Sessions Judge in the Special Fast Track Court, the sixth accused, who was a juvenile at the time of the crime, was tried before the Juvenile Justice Board.

The juvenile defendant was found guilty of rape and murder of the victim under the Juvenile Justice Act by the Juvenile Justice Board. He was sentenced to three years imprisonment in a reform facility.

The remaining four accused, after the suicide by one of them, were found guilty of rape, murder, unnatural offences and destruction of evidence by the fast-track court. They were sentenced to death penalty by the court in September 2013.

VII. Consequences

It was this unfateful night of 16th December 2012, when the tragic incident occurred on the streets of national capital of the country that shook the nation and propelled a public outcry for need of stringent actions against such heinous acts. In an attempt to serve justice, the Government of India constituted a three-member judicial committee headed by the former Chief Justice of India, Justice J.S. Verma, to submit a report on legal reforms required to tackle violence against women.25 The key objective of the Commission was to review for possible amendments to the criminal law and suggest measures for faster trials and harsher penalties for vicious offences against women.

The Commission submitted its recommendations by identifying ‘lack of good governance’ as the central cause of offences against women. The report criticised the government, the abysmal and old-fashioned police system alongside public apathy in tackling offences against women, and thereby, recommended an ardent need for amendments in legislations.

The recommendations were based on more than 70,000 suggestions received from stakeholders, social activists and public comprising of eminent jurists, legal professionals, NGOs, women’s groups and civil society through varied methods: emails, posts and fax. A 631-page report consisting of 14 chapters (excluding Introduction, Methodology and Conclusions and Recommendations) include recommendations on laws related to rape, sexual harassment, trafficking, child sexual abuse, medical examination of victims, police, electoral and educational reforms. Based on some of the recommendations of the Commission report, an anti-rape ordinance was drafted. The Criminal Law (Amendment) Bill, 2013, passed by the Parliament of India received the assent from the President and was enacted as the Criminal Law (Amendment) Act in April 2013.

VIII. The Criminal Law (Amendment) Act 2013

The Criminal law (Amendment) Act 2013 (hereinafter referred to as the Act) amended the Indian Penal Code (IPC), 1860, the Code of Criminal Procedure (CrPC), 1973, the Indian Evidence Act (IEA), 1872 and the Protection of Children from Sexual Offences Act, (POCSO), 2012. The Act provides for penal provisions for those police officers who fail to register First Information Report (FIR) in cases of offences against women. The Act also addresses penalties for other forms of crime like stalking, touching, sexually coloured remarks, voyeurism, human trafficking and acid attacks, awarding a minimum 10-year jail term to the perpetrators and reasonable fine to meet the medical expenses of the victim.

The amendments made:

- **Indian Penal Code 1860:**
  - “Section 166 A for punishing public servants who refuse to record a FIR in cases of specified crimes against women including rape
  - Section 166 B punishing those in charge of a public or private hospital for refusal to provide free medical treatment for victims of rape
- Section 354A inserted to provide for definition and punishment for Sexual Harassment against women at Workplace. Sexual harassment is bullying or coercion of a sexual nature, or the unwelcome or inappropriate promise of rewards in exchange for sexual favours.

- Section 354B provides for Assault or Use of Criminal Force to woman with intent to disrobe punishable with imprisonment between three and seven years.

- Section 354C inserted to provide for the offence of Voyeurism where any man who watches, or captures the image of a woman engaging in a private act in circumstances where she would usually have the expectation of not being observed either by the perpetrator or by any other person at the behest of the perpetrator or disseminates such image shall be punished in case of first conviction, imprisonment is not to be less than one year, but may extend to three years, and shall also be liable to fine, and on a second or subsequent conviction, punishment with imprisonment of either description for a term which shall not be less than three years, but which may extend to seven years, and shall also be liable to fine.

- Section 354 D provides for the offence of Stalking, where a man stalks a woman, he may be punished with imprisonment of up to three years for the first time, and five years for the subsequent convictions.

- Section 375 amended to include forcible penetration by the man of his penis, any part of his body or any object into the vagina, mouth, urethra or anus of a woman or making her do so with him or any other person; manipulation of any part of the body of a woman so as to cause penetration into the vagina, urethra or anus of a woman or making her do so with him or any other person; and applying his mouth to the vagina, anus or urethra of a woman or making her to do so with him or any other person.

- Explanation to Section 375 defined ‘Consent’ as “unequivocal voluntary agreement” signifying willingness by the woman by “words, gestures or any form of verbal or non-verbal communications” to participate in the sexual act. This definition clarifies that women’s silence or absence of ‘no’ cannot be construed as a “yes”.

- The age of consent raised from 16 to 18 years.
- Section 376 (2) was expanded to included rape committed by a member of the armed forces deployed in an area by the Central or a State Government in such area. It was also expanded to consider rape of a woman below the age of 16 years as aggravated and hence provides enhanced punishment for the same.

- Section 376A provides for death penalty as a punishment for rape that caused vegetative state or death.

- Section 376B provides for increased punishment for sexual intercourse by a husband upon his wife during separation without her consent for seven years, with a minimum punishment of two years.

- Section 376C provides for the abuse of a position of authority or fiduciary relationship by certain persons to induce or seduce any woman in his custody or charge to have sexual intercourse with him.

- Section 376D provides for the offence of gang rape with a higher punishment. The section states that, where a woman is raped by one or more persons constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to life which shall mean imprisonment for the remainder of that person’s natural life, and with fine.

- Section 376E for repeated offenders and laid down stricter punishment for persons convicted under this section. Death penalty was also introduced in this section as the punishment along with life imprisonment without parole.

- The judicial discretion available to impose a reduced sentence (lesser than the required minimum) stands deleted.
- **Code of Criminal Procedure 1973:**

  - Section 154(1) deals with the recording of FIR was amended to include that in certain offences against women (including rape), the FIR has to be recorded by a woman police officer or any woman officer. It also added that in case of a woman who is temporarily or permanently mentally or physically disabled and alleges commission or attempt of an offence under section 354, 354A, 354B, 354C, 376, 376A, 376B, 376C, 376D, 376E or 509 of the Indian Penal Code, 1860, such information shall be recorded by a police officer, at her residence or at a place of her choice, in the presence of an interpreter or a special educator. Along with this, such information shall be video-graphed and her statement before the Magistrate under section 164 CrPC shall be recorded as soon as possible by the police officer.

  - Section 164(5A) inserted to make it mandatory for recording of statement of the victim/survivor by the Judicial Magistrate, as soon as the commission of the offence is brought to the notice of the police.

  - Explanation to Section 197(1) now provides that it would not be necessary to seek prior sanction from the Appropriate Government for prosecution of a public servant for any of the offences of sexual abuse. This is for the obvious reason that the section 197 is intended to protect public servants from malicious prosecution for acts done in the discharge of duties. It cannot be argued by any stretch of imagination that sexual abuse happened as a part of public duties, hence the said amendment was made to enable expeditious prosecution of public servants for rape and other forms of sexual abuse.

  - Section 375C inserted to make it mandatory for all public and private hospitals to immediately provide free first aid or medical treatment to victims of acid attack and rape, and to immediately inform the police of such incident.
**Indian Evidence Act 1872:**

- Section 53A inserted which deals with ‘evidence of character or previous sexual experience’. As per this section, in a prosecution for an offence of rape, where the question of consent is in issue, evidence of the character of the victim or of such person’s previous sexual experience with any person shall not be relevant on the question of such consent or quality of consent.

- Section 114A substituted by a new one stating that in a prosecution for rape under clauses (a) to (n) of section 376(2) IPC, where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and such woman states in her evidence before the court that she did not consent, the court shall presume that she did not consent.

- Proviso to section 146 substituted to state that, in a prosecution for rape, it shall not be permissible to adduce evidence or to put questions in the cross examination of the victim as to the general immoral character or previous sexual experience of such person with any person for proving such consent or quality of consent.

**The Protection of Children from Sexual Offences Act 2012:**

- Section 42 of the POCSO Act makes the offence under newly amended sections of IPC punishable under it as well. While Section 42A provides POCSO Act not to be in derogation with any other law.

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IX. **Does the Story End here?**

Off course the current status that the Indian Women have is way better than what it was few decades before, but the work is still not complete. We have not even reached close to the aim of Gender Equality that is enshrined in the Constitution of India. Women in India are still facing a lot of atrocities on daily basis and are hugely underrepresented. The current situation of women protection and empowerment is not balanced as there is a substantial improvement in the
empowerment of educated women but for uneducated backward women empowerment or even awareness about their rights is too far a goal to be achieved. Educated women who are employed, earning money, balancing their family life and work life are still aware of their rights and can help themselves in the time of distress or when facing discrimination, if not completely but they still can raise an alarm and look out for people to help them in establishing their Rights. But for uneducated rural backward women class raising an alarm against exploitation is even not possible. They are not aware of their Rights or even if they are aware their dependency on men forces them to bear whatever it takes to be in the social pipeline structure they belong to.

Post Independence empowerment of women did happen for urban women but did not reach rural women sufficiently. It is very vital for the development of the country that all the classes of women are equally empowered. Here education, enhancing earning capacity and government schemes reaching out to rural women can bring the required change. The Rural women class can be empowered by providing them opportunity of adult education, capacity building, livelihood options and enhancing their social, economic and financial skills. Despite so many government schemes and legal awareness programmes we are still not able to bring gender equality and rural women are thrashed on daily basis for pity issues. Their empowerment is required for the collective empowerment of the society.
X. Conclusion

It is very important that we understand the difference between need of women empowerment decades before and the changed need of class focused women empowerment that is required today. Well empowered women do not need any more empowerment cause such an empowerment is turning into too much power to handle and is resulting into victimization others such as in cases of abuse of Sec 498A of the Indian Penal Code or False Allegations of Rape and sexual offences. What is needed is class focused women empowerment that is empowering those women who are in dire need of the same. In achieving class focused women empowerment, it is required that the policies and programmes should be focused on the problems faced by that class. Illiteracy and economic backwardness are the two main pain points of the rural women class and both these problems are inter-related. Also due to these problems further problems are generated such as lack of education leads to lack of awareness of Rights. Therefore, it is vital to uproot and eliminate illiteracy and to generate employment for backward women class.