

Working W(oo)man: Status Quo and Legal Perspective

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Abstract

You cannot empower a nation without empowering the position of women residing in that nation. The importance of economic independence of women have been time and again highlighted. The working women is facing many impediments in the field of life such as constant struggle to balance home and work, pregnancy, child birth, sexual harassment at workplace, unequal wages and unhealthy atmosphere etc. Women is often described as better half of man, but the actual condition in the world does not tally with this description. In no country have women achieved equality with men. In spite of Constitutional and other legal efforts the economic equality of women of all streams is still a distant dream. In the opinion of women themselves there are three important areas which were crucial and needed to be strengthened to enable their empowerment i.e. property, education and employment.

Keywords: Economic, impediments, equality, constitutional, legal, property, education, employment.

Introduction

The concept of "Ardhangini" (half of the body) seems to be restricted only in literatures and had never been implemented in practical life. The Indian philosophy poses girl with dual character. On one hand she's considered fertile, patient and benevolent but on the other hand she's considered aggressor and represents 'Shakti'. An extracts from The Ramcharitamanas of Tulsidas clearly elucidates the status of a girl in Hindu society, "Dhol, Guwnaar, Shudra, Pashu aur Nari, sakal tadan ka adhikari". This means drums, uncivilized illiterates, lower caste, animal and girl all are fit to be beaten. Besides this other indicators like pardah system (hiding the face), sati system (self immersion of the lady in husband's pyre) etc. are clear evidence of girl's subordinate status and the hypocrisy prevailing in the society because in theory she's always given high status, enjoys all rights almost at par with men but, in practical utility she has always been subjected to gender disparity, cruelty, harassment, violence at the hands of male counterpart. To unfold the tragedy of the girl, one feels prompted not only to scrutinize the scriptural literature but, also feels the need to scan the legal texture of the political structures existing or evolved at a given time.¹

Past at a Glance

Early Vedic Period

The archaeological findings available in the form of ceramics, terracotta and coins do not help us much to determine the position of female under this period. The position of a girl under Indian

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¹ Lalita dhar parihar, *woman and law from impoverishment to empowerment-a critique* (Eastern book company, 1st edn., 2011)

culture has to be traced with reference to the Dravido- Arayan interaction.²Charles Heimsath, in this regard, observes that this society might be matrilineal in character. As such her position was neither degrading nor bad as was the case with girl under other cultures.³The Aryans seem to have developed their own paradigm of family.⁴For example, a hymn from Rigveda ordains: "With sons and daughters at their side, they live a good span of years both decked with precious gold"⁵The above hymn is reflective of an order in social organisations revolving around equality of sexes, composite family structure constructed on basis of love and harmony in patriarchal set up. As such Vedic vision of femininity is one in harmony with cosmic order that is against any discrimination on the grounds of sex.

Post- Vedic Period

In the Post- Vedic era girl lost her soul at the hands of man who played a grand bluff leaving behind an oleograph of girl dressed in maiolica in display.⁶ The post- Vedic glossators either misconstrued or misinterpreted Vedic exhortations regarding woman in general and matrimony in particular. The Vedic exhortation⁷, "This woman was first acquired by Soma, next the Gandharwa was her guardian, to Agni, third, was she presented in her marriage, her fourth husband is born of man."⁸

This is the metamorphic language which describes the kind of importance divine will attach to the womb in order to mix admiration with wonder and enhance respect for femininity. The "Agni" referred in the Vedic exhortation aimed to witness the two halves uniting voluntarily into wedlock, was misinterpreted to convey a sacrifice of female in marriage because Atharvaveda testifies, "She carries in her lap the foolish and the wise, she bears death of wicked as well as good, she lives in friendly collaboration with bore, and offering herself sanctuary to the wild pig."⁹

The masters ought to have read in this edict the benevolent nature of a girl instead they preferred to construe marriage as eternal and inseparable union, so is the girl desired to remain contented with her plight in matrimony because nagging tantamount to violation of religious writ. The rituals of marriage invented by the sages coupled with chanting of mantras are lopsided to the extent that only female is enjoined to be truthful, steadfast in her dealings and disposal, loyalty and character, no matter the bridegroom may be the one possessing the qualities of wild pig.¹⁰

So, in the Vedic period the position of girl was glorious on account of freedom and equality. There was absence of pardah system, right to select life partners, no prohibition on the remarriage of widow, etc.¹¹ However, her position was misinterpreted during post-Vedic period as she suffered drastic hardship and restrictions.

Objectives of the study

- To study the pre-independence status of women.
- To analyse the relevance of the economic independence of women in developing country like India.
- To review the Constitutional and other legal efforts made to empower women in India.

² Lalita dhar parihar, *woman and law from impoverishment to empowerment-a critique* 5 (Eastern book company, 1st edn.,2011)

³ Charles Heimsath, "Shakti: The female component of Indian culture" *The Illustrated weekly of India* 27 (1927)

⁴ The Rigveda. Vol.X: 85, 20-47

⁵ The Rigveda, Vol.VII: 31, 5-9

⁶ Lalita dhar parihar, *woman and law from impoverishment to empowerment-a critique* 8 (Eastern book company, 1st edn.,2011)

⁷ Ibid p.6

⁸ The Rigveda, Vol X: 85:40

⁹ Alexander Pope, "The rape of the lock" 65, (1973)

¹⁰ Atharvaveda, Vol. II: 1: 48.

¹¹ Dr.S.C.Tripathi, *Women and criminal law 1*, (Central law publications, 1st edn.,2010).

- To aware the masses that women want to empower themselves in three arenas namely property, education and employment.
- To study and understand the obstacles which are coming in the way of economic empowerment of women.
- To give suggestions for the removal of such obstacles.

Research Methodology

The present paper is based on the secondary sources of data such as books, research articles, journals, newspaper articles, bare-acts, web-portals and internet etc. Various books have been referred to get extensive detail about the status of women, obstacles coming in the way of her economic empowerment and steps for the removal thereof. Bare-Acts of various laws pertaining to rights of women have been referred. Newspaper articles have also been reviewed. Further this paper focuses on various issues such as the need for economic independence of women, obstacles faced in her economic independence and the suggestions to remove the obstacles thereof. The paper also highlights the legal endeavours made so far to enable women to achieve equality with men.

Status of women and economic independence

'Freedom depends on economic conditions even more than political. If woman is not economically free and self earning, she will have to depend on her husband or someone else, and dependents are never free'. These were the ideas of Pandit Jawaharlal Nehru, first Prime minister of India, which vividly highlight the importance of economic independence of women. These views are antagonistic to the laws of Manu written early in Christian Era which stress the need to control women because of the 'evils' of female character. The following lines reflect the age old idea of keeping women dependent:

'By a young girl, by a young woman, or even by an aged one, nothing must be done independently, even in her own house. In childhood, a female must be subjected to her father, in youth to her husband, when her lord is dead to her sons, a woman must never be independent'.¹²

Women were the first to test bondage. She was a slave before slavery existed. Her inferiority can largely be attributed to her sexual peculiarities. Man has always played the role of Lord; as a result his physical and mental development took place at a good pace befitting his occupation and field of interest. On the contrary, the overall growth of women remain stunted. Since long she has been treated as an object of lust, slavery and exchange. This prejudice is visible in the older regions of the world too. Almost all preach that women is unclean and impure, the greatest sinner of the world, one who has caused the "downfall" of man.¹³

Women is often described as better half of man. But the actual condition in the world does not tally with this description. In no country have women achieved equality with men. Of the world's 1.4 billion poor people it is estimated that nearly 70 per cent are women. Between 75 and 80 per cent of the world's 30 million refugees are women and children. Educational backwardness is a major reason of women lagging behind men. Of the world's one billion illiterate adults, two-third are women. Two-third of the 150 million children world-wide who are not in schools are girls.¹⁴

¹² S.K.Dhameja, *Women Entrepreneurs Opportunities, Performance And Problems 9-10*, (Deep & Deep Publications Pvt. Ltd., 2004).

¹³ Kaur Jaspreet, "How Free Is The Women Of Today" *The Tribune*, March 8, 2000.

¹⁴ Bhandari, Arvind "Women Deserve A Better Deal" *The Tribune*, March 8, 2000.

Endeavours made so far

Constitutional Provisions for Women In India¹⁵

Article	Brief description
Article 14	Men and women to have equal rights and opportunities in political, economic and social spheres.
Article 15(1)	Prohibits discrimination against any citizen on the grounds of religion, race caste, sex etc.
Article 15(3)	Special provision enabling the State to make affirmative discriminations in favour of women.
Article 16	Equality of opportunities in matters of public appointments for all citizens.
Article 39(a)	State shall direct its policy towards securing all citizens men and women, equally, the right to means of livelihood.
Article 39(d)	Equal pay for equal work for both men and women.
Article 42	State to make provision for ensuring just and humane conditions of work and maternity relief.
Article 51(A)(e)	To renounce practices derogatory to the dignity of women.

Maintenance Rights of Women

The concept of maintenance under Hindu Marriage Act, 1955 may be studied at two distinct levels. Firstly, the maintenance payable in the form of pendent lite i.e. in the course of pendency of any suit and secondly, the maintenance payable after decree is passed by the court under the Act.¹⁶ The courts in India have time and again reiterated that maintenance of wife by the husband is a matter of personal obligation which arises from the moment of marriage whether or not he is possessed of any property.¹⁷ Section 24 provides interim relief of maintenance and expenses for conducting the proceedings to both the parties interlocked in a suit.¹⁸ The essence of this section being to save a husband or a wife having insufficient independent income and for avoiding any hardship on his or her part so as to conduct the proceedings smoothly. The wholesome hope of permanent maintenance and alimony is articulated in section 25.¹⁹ According to this section the court may on application of either spouse pass an order of permanent alimony and maintenance at the time of passing of decree granting the petition.

Protection of Women under I.P.C

The official survey reveals that male participation in criminal form of deviation is on increase worldwide and also attests to the fact that women are easy targets so has the crime against women witnessed disproportionate increase.²⁰ The Indian Penal Code 1860 defines and prescribes punishment for various "Crime against women" to name a few such as section 304-B deals with "Dowry death", section 375 deals with "Rape", section 498-A deals with "Cruelty" by husband or relatives of husband etc. All these sections attempt to address and tackle the issue of crime against women, but the ground reality is that in spite of Indian Penal Code addressing the issue there has been 25.2 percent increase from the year 1989-1993 in the crime against women.

National Commission for Women

The National Commission²¹ is certainly an institution that can monitor the effective functioning of the institutions charged with the dispensation of justice to women. Apart from this the commission can also monitor the effective enforcement of legislation aiming at ensuring equality among women. It is

¹⁵ Tinku Paul Bhatnagar, *Women, Employment and Empowerment* 68 (New Century Publications, 1st edn., 2011)

¹⁶ Lalita dhar parihaar, *woman and law from impoverishment to empowerment-a critique* 100 (Eastern book company, 1st edn., 2011)

¹⁷ Narbada Bai v. Mahadeo, ILR (1880) 5 Bom. 99, Lachmi v. Mohanlal AIR 1934 Lah. 444 (1)

¹⁸ Hindu Marriage Act, 1955, Sec. 24

¹⁹ Hindu Marriage Act, 1955. Sec. 25

²⁰ "Crime in India" (1998), National Crime Records Bureau, Ministry of Home affairs, New Delhi, India.

²¹ National commission for women was constituted in 1990. The Act came into force on 31st January 1992

a national apex statutory body to review the constitutional and legal safeguards for women, recommend remedial legislative measures and advise government on policy matters affecting women.

Other Legislative Initiatives

Post-independence various women specific legislations have been enacted to deal with various social, economic, political issues pertaining to women in India. Such as, "Hindu Marriage Act,1995", "Hindu Adoption and Maintenance Act, 1961", "Maternity Benefit Act,1961" and the more recent one "Pre conception pre natal diagnostic technique Act, 1994", "Protection of women from domestic violence Act,2005", or "the women's reservation bill (108th amendment) bill, 2008" etc. All these legislations were enacted to remove obstacles which were coming in not only in the growth of a girl but also allowing her to live with dignity and grace and not merely an animal existence, so these initiatives need to be applauded but, these legislations have still not able to emancipate a girl from all the shackles placed on her since time immemorial.

What Women Wants? A Reality Check

Many sociologist and political thinkers have written on women's empowerment but what do women themselves want? This question has to be thought through the concerned categories of women and in the present case that of rural women. What is that the rural women may find empowering in their negotiation with their daily devalued and powerless life?

Stated here is gathered from extensive field work conducted in 2011 in several areas of rural Haryana, involving several round of interviews with women of varying ages, social class, caste and profession, as also focus group discussions held in different villages with women. On the basis of these interactions three important areas emerged, which in the opinion of women themselves were crucial and needed to be strengthened to enable their empowerment.²²

1. Property

Among the options underscored by the women, property scored very high in their vision of empowering themselves. Possessing means of production not only entails possessing a source of income but also source of authority/power/status and mobility- leading access to other facilities like education and health. Having a right to land or other productive assets gives women a bargaining power that they wouldn't normally have. The case studies also show thing what women do after acquiring money (through inheritance or through earning etc.) is to acquire some productive resources as means of generating income.

THE FLIP SIDE: Although for last 60 years women have had the right to inherit land and other property, yet they continue to encounter tremendous barriers to arrogate what should be rightfully theirs. It is undeniable that there is a difference between the legal recognition of the claim and its social recognition and between recognition and enforcement. There is also difference between ownership and effective control.

2. Education

Education, in the opinion of women, was the second most coveted tool towards empowerment, which was directly linked with their ability to seek and get employment . Suman from village Meham, for example, who had studied only up to Class IV firmly believed that had she been educated at least up till Class X, she could have landed herself an "honourable job".

There were several women who regretted not studying and losing the opportunity to earn izzatwali money, instead of having to engage in menial jobs. One woman from village Sunaria, speaking from

²² Prem Chowdhry, "How Women Want To Empower Themselves" *The Tribune*, March 8, 2016

personal experience and making a clear connection between education and employment, said: "I wanted to bring up my children well and not allow them to become alcoholics". She maintained that she had to struggle hard as she needed money and money could only come through a job and "for a job, education is necessary." Despite this recognition by women, their literacy rates lag behind that of males. Rural female literacy rate in Haryana (2011 census) is 65.9 per cent, having risen from 45.7 per cent in 2001 and 40.5 in 1991 as compared to rural males, which is 84.1 in 2011; having risen from 78.5 in 2001 and 69.1 in 1991. The female literacy rate, despite a steady increase over the last several decades, remains far from the desired standards. Also among the educated women, roughly 27 per cent out of 65.9 per cent are working in Haryana reportedly due to the paucity of jobs.

3. Employment

Employment, therefore, emerged as one of the key factors of importance for women. Their employment, they opined, meant "an increasing self-dependence," as also changing "the way they are looked at". They got respect in society as "a person who earns." Once a woman's role in the household shifts from that of a "recipient" to one of a "provider" and an economic asset, her decision-making function also stands to be recognised and consolidated – empowering her in a major way. Voicing this, women stated that as earners they get to be consulted in certain matters of the family. This may well be in a limited capacity, as the final decision lies in the hands of the man. One woman observed: "Your earnings or your owning property gives you self-confidence". Yet another one stated, "If I don't take any money from my husband, I can also confront him". Significantly, as earners they also acquire some right to spend that money. Studies have shown that women's earnings have a positive correlation with children's health, nutrition levels and education and that they contribute a much larger share of their earnings to basic family maintenance than men.

Obstacles in the Economic Empowerment of Women

1. Gender Roles In Society Are Fixed²³:

The gender roles in society are fixed and are the basis of women's disadvantaged position in the labour market. Indra Nooyi, Chairman and CEO of PepsiCo, famously opined that 'women can't have it all' in a conversation with David G. Bradley a few years ago. She spoke about her personal and professional tussle as women employee, wife and mother. Being a woman and a full time employee, be it at any stage of professional life, is a compromise without surrogating the truth.²⁴

2. Reproductive Role of Women:

One of the major obstacles in the economic empowerment of women is associated with starting a family which almost ends woman's career growth. A number of women accept lower paid positions or jobs for which they are, in fact, overqualified just because the work hours are more convenient and they can fit in their family obligations around those. Even in countries like U.K and Scotland women are over represented in lower- paid professions. According to data available almost 57 per cent women are in such employment in these countries, as against 37 per cent of men, and they are underrepresented in the workplace generally, especially in senior positions. The figures for India are more depressing.

Four years ago 28-year old Sunita Sharma (name changed) a white collar employee in Mumbai suburb had to quit her well paying job in corporate headquartered in skyscraper. Why? "The attitude of my company since the news of my pregnancy made a surreptitious change in my profile and training programmes that I was being assigned. An unnatural sense of competition then sweeps in, where you are trying to outdo, younger and junior colleagues. There is a sense of uncertainty and ultimately the

²³ Divya Mathur, *Women Development and Society* 154, (Mark Publishers, 1st edn.,2010)

²⁴ Swati Rai, "Beyond a pregnant pause" *The Tribune Jobs & Career*, March 9, 2016.

company has to make the decision of substituting expecting and new mums to help secure a good continuity at the cost of experience" she rues.²⁵

3. Domestic Responsibilities²⁶:

Domestic help is becoming scarcer and more expensive and educational opportunities, especially for daughters, are increasing and so children have less time to help their mothers in the home. Consequently the burden of domestic responsibilities falls ever more heavily on the particular woman in the family. It is estimated that married women in Malaysia who do housework and are in paid employment outside the home spend, on an average, 112 hours per week working. Thus women's handicap in the labour market because of domestic responsibilities may be growing rather than diminishing in many Third World Cities.

4. Sexual Harassment:

It may be an even greater problem in Third World than in developing countries. In traditional societies, a woman who moves out of her accepted family role in order to take a job may be seen as a 'loose' woman. Men who are not used to meeting a woman in work situation may fall back on gender-based social expectation and treat their workplace female colleagues as sexually available. Men in supervisory positions may demand sexual favours in return for job security and this may contribute to high turnover rates for women workers.

5. Paucity of Jobs:

There is great paucity of jobs in the country and the very large numbers of unemployed male population make this problem even more worse as they think that they have priority in getting employment, instead of females. In fact, so far the focus of job creation has been only for men. The emphasis needs to shift to accommodate women to provide equal chances in the field of employment and education, as stated by the Constitution of India in its Directive Principles of State policy.

Suggestions for Economic Empowerment of Women

The policy²⁷ was formulated which quoted certain suggestions for the economic empowerment of women, which are:

1. Poverty Eradication:

Since women comprise the majority of the population below the poverty line and very often in situation of extreme poverty, given the harsh realities of intra-household and social discrimination, macroeconomic policies and poverty eradication programmes would specifically address the needs and problems of such women.

2. Micro Credit:

In order to enhance women's access to credit for consumption and production, establishment of new and strengthening of existing micro-credit mechanisms and micro-finance institution would be undertaken so that the outreach of credit is enhanced.

3. Women Friendly and Sensitive Workspaces:

Most of the companies are going out of their way to make work spaces, women friendly- with facilities such as:

²⁵ supra note 24.

²⁶ Ibid at 155.

²⁷ National Policy For Empowerment of Women, 2001

- Work from home option
- Flexi work hours
- Cab pick and drop
- Crèche-assistance: Factories Act 1948 makes it mandatory to have crèche in factories employing more than 30 women. Corporate too are getting sensitive towards the need of women. Microsoft has enhanced maternity leave policy to 6 months
- Maternity leave: the latest to add the buzz are the reports that the ministry of labour has proposed to increase the maternity leave for employees by amending the Maternity Benefits Act 1961 for women employees in the private sector from what it is now (12 weeks) to the new (26 weeks).
- Challenging roles: unhampered career growth and providing a level playing field to women post child birth is what a majority of new age moms are looking for now. A number of women returning after maternity break want to take up challenging roles in their organisations and management should recognise this.
- Impartial performance appraisal: women should be given impartial performance appraisal based on their performance and potential. Employment opportunities should be made available to everyone on the basis of merit rather than gender preference.

Concluding Remarks

- Lot remains to be done with respect to preserving dignity and respect of women in the society, which cannot happen only with legislation but change in the mindset of men is also urgently required.²⁸
- There is a duty and responsibility cast upon each one of us and especially upon women herself, for the economic empowerment of women. It's been often said that, "women is women's worst enemy", now the time has come that they should come up as best pals. That is because if every woman as mother refuses to practice female infanticide, if every woman as mother-in-law refuses to take dowry, to practice domestic-violence or any other such crime, if every woman becomes sensitive and passionate towards the other one, then no one can stop her from working with dignity and grace.

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²⁸ Sangita Dhal, "Mapping Women's Economic Empowerment: Imperative for Inclusive growth and gender justice" 20 No.4 WL 25 (2014)