

Women Empowerment: Progressive Steps of Indian Judiciary

Dr. Vibha Sharma*

Principal, Government Law College, Ajmer, Rajasthan, India.

*Corresponding Author: vibhasharma2404@gmail.com

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ABSTRACT

Robert Adams points to the limitations of any single definition of 'empowerment', and the danger that academic or specialist definitions might take away the word and the connected practices from the very people they are supposed to belong to.¹ Still, he offers a minimal definition of the term: 'Empowerment: the capacity of individuals, groups and/or communities to take control of their circumstances, exercise power and achieve their own goals, and the process by which, individually and collectively, they are able to help themselves and others to maximize the quality of their lives.'

Keywords: Women Empowerment, Indian Judiciary, Goals, Policymakers, Legislators.

Introduction

Empowerment, in its truest sense, is a multipronged process, in which the society as a whole play the primary role. The policymakers and legislators may include the expectations and aspirations of the highest order in their policies and legislations but it is upon us, we the people, as a society, to imbibe and act upon them which will lead to our empowerment and guide us towards the overall development of our nation. The overall development, which is an ongoing process, can be said to have started only when all the constituents of a society develop and reach a point where one has the freedom of choosing the best to realize one's full potential. When there are no limitations, inherent or otherwise, causing a hinderance to achieve this goal, only then can it be said that the society as a whole is free to empower itself.

From a different perspective, empowerment can be said to have five aspects, viz. Educational, Economic, Social, Political and Psychological. Undoubtedly, empowerment is from within, that is to say, no outsider can empower the other. It, however, remains the responsibility of the government and society² to provide the necessary tools and environment by way of education, ability to earn etc. in helping and supporting every human being to realize their full potential. It is a fact that the facilities extended, circumstances created, encouragement provided, support and faith in the decisions made by the individual can build the confidence which is a precondition for the empowerment to manifest. There are many factors which help in the process of empowerment including resources and information provided to the individual. Thus, the Governments, Law makers, the Judiciary including the society as a whole play a vital role in the ongoing process of empowerment.

Women Empowerment

It can be safely said that a remarkable constituent of Indian society is women which constitute 48.6 %³ as in 2021 and is likely to slightly improve to 48.8%⁴, of total population as per the report published by the Ministry of Statistics and Programme Implementation, Government of India.

¹ Adams, Robert. *Empowerment, participation and social work*. New York: Palgrave Macmillan, 2 2008, p.xvi

² How Indians View Gender Roles in Families and Society | Pew Research Center

³ Asset 14 (mospi.gov.in) Women and Men in India (A Statistical Compilation of Gender related Indicators in India) Accessed on 07.09.2023 and

⁴ Women and Men in India 2023, Population.pdf

It will not be out of place here to point out that our ancient scriptures and texts are full of examples which indicate that women in those times had similar rights which we generally refer to as “modern or western influence”, though taking a backseat thereafter. However, it’s the autonomy and the availability of opportunities that eventually becomes one of the elements to assess the true status of women in any given society.

The concept of Women Empowerment is of recent origin. Strictly speaking women empowerment is human empowerment, nothing less nothing more. It can be said that the understanding of importance of Human Rights was inbuilt in the Indian culture but down the line the gender roles started playing mischief resulting in the need to bring the term ‘Women Empowerment’ in focus.

Since the adoption of the Constitution of India, judiciary has been playing the role of a catalyst, albeit with some exceptions, to bring about the equal status of women without losing sight of the equity principle, which is a right of every human being. The recent past has witnessed some of such path breaking judgements of the Honourable Supreme Court of India, and discourses, which have paved the way for the society to tread on the path of women empowerment and not let it be limited to the protective discrimination or affirmative action clauses of the Indian Constitution. Law as well as the judgements impact progress of the society and thus, the judgements pronounced by the Supreme Court of India in the recent past can be said to be indicative of the path the country is taking on the subject. The efforts of judiciary, entrusted with the duty to safeguard the interests of the citizens of the State are very much visible now. This paper focuses on the changing contours of empowerment of women in India by the judgements pronounced by the Apex Court in the recent past, noticing the effects, if any, on the policies of the executive, enactments of the legislatures and the rights of women generally.

The Removal of the Imbroglio¹

The economic aspect is an important component in bringing about the courage in any individual to make his/her choices. It can be said that from being considered as a being not fit to hold a property, women were given some control over it viz. Stridhan, inheritance, gifts etc. However, it may be noted that the property rights of a Hindu female (which constitute a large part of the Indian society) gained momentum specially after Section 6 of Hindu Succession Act, 1956 was amended in 2005. Much speculation has been put to rest in the case of Vineeta Sharma vs Rakesh Sharma in 2020² by the Hon’ble Supreme Court of India when it decided that the 2005 Amendment deemed the daughter to have the same right as of a son in the coparcenary property irrespective of the father being alive before the Amendment. The Court stated that as the right of being a coparcener is by birth for a son and so is it for a daughter post the 2005 Amendment, and even if the father was not alive on 9-9-2005, it does not obstruct a daughter’s right from claiming her share in the coparcenary property. Though the judgement leaves many questions unanswered and rather give rise to some more but it can be said to be a step forward in settling one issue that was a cause of hardships to many women.

Breaking the Shackles

The women under Muslim Law in India face a conundrum between the religious practices and the value of equality contained and ensured under the Indian Constitution, especially in case of the right to divorce in comparison with the male counterparts. Talaq-e-biddat has been one such instance where a Muslim husband could bring the marriage to an end by mere pronouncement of the word ‘Talaq’. This form of Talaq has no provision of reconciliation or time for reconsideration to work upon the workability or otherwise of a marriage, thus, giving an unbridled unilateral power to the husband to bring the marriage to an end. This form of dissolution of a Muslim marriage by the act of a party known as Talaq-e-biddat, an irreversible form of pronouncement of Talaq or divorce either by pronouncing it thrice in one go or by a definitive pronouncement, by a Muslim husband which rendered Talaq irrevocable was declared by the Supreme Court of India unconstitutional and hence illegal in Shayara Bano’s case³. Though in this case the Court did not deliberate much upon the gender equality aspect enshrined under the Constitution but by declaring Talaq-e-biddat unconstitutional it indeed paved the way for the future progressive steps that the society, legislators or judiciary may take.

Defying the Stereotypes

Recently the Indian Armed Forces started inducting women in regular services as well recruiting them in Short Service Commission, other than Medical or the like areas only. However, while male Short

¹ Vineeta Sharma vs Rakesh Sharma (2020) 9 SCC 1

² Ibid

³ Shayara Bano v/s Union of India (2017) 9 SCC 1

Service Commission officers in Defence services could opt for permanent commission at the end of 10 years of service, this option was not available to women officers. The women officers were, thus, kept out of any command appointment, and could not qualify for government pension, which starts only after 20 years of service as an officer. In the case of *Secretary, Ministry of Defence v Babita Puniya*¹, the Hon'ble Supreme Court of India, while observing the stereotype attitude of organisations towards women, held that the women officers have equal right to have permanent commission in the Army as their male counterparts. While talking about Article 14, the Court categorically observed that, "An absolute bar on women seeking criteria or command appointments would not comport with the guarantee of equality under Article 14. ... where the action of the State does differentiate between two classes of persons, it does not differentiate them in an unreasonable or irrational manner. In this sense, even at its bare minimum, the right to equality is a right to rationality." To highlight the deep-rooted attitude towards women, their role and contribution in the society, extensive reference to the court's observations is called for where in the Apex court noted that, "The submissions advanced in the note tendered to this Court are based on sex stereotypes premised on assumptions about socially ascribed roles of gender which discriminate against women. Underlying the statement that it is a "greater challenge" for women officers to meet the hazards of service "owing to their prolonged absence during pregnancy, motherhood and domestic obligations towards their children and families" is a strong stereotype which assumes that domestic obligations rest solely on women. Reliance on the "inherent physiological differences between men and women" rests in a deeply entrenched stereotypical and constitutionally flawed notion that women are the weaker sex and may not undertake tasks that are "too arduous" for them. Arguments founded on the physical strengths and weaknesses of men and women and on assumptions about women in the social context of marriage and family do not constitute a constitutionally valid basis for denying equal opportunity to women officers. To deny the grant of PCs to women officers on the ground that this would upset the "peculiar dynamics" in a unit cast an undue burden on women officers which has been claimed as a ground for excluding women." It also commented that, "These assertions which we have extracted bodily from the written submissions which have been tendered before this Court only go to emphasise the need for change in mindsets to bring about true equality in the Army. If society holds strong beliefs about gender roles – that men are socially dominant, physically powerful and the breadwinners of the family and that women are weak and physically submissive, and primarily caretakers confined to a domestic atmosphere – it is unlikely that there would be a change in mindsets...". Referring to the factual position the Court noted that, "The counter affidavit contains a detailed elaboration of the service which has been rendered by women SSC officers to the cause of the nation, working shoulder to shoulder with their male counterparts. Yet, that role is sought to be diluted by the repeated pleas made before this Court that women, by the nature of their biological composition and social milieu have a less important role to play than their male counterparts. Such a line of submission is disturbing as it ignores the solemn constitutional values which every institution in the nation is bound to uphold and facilitate." And the Court while accepting the policy decision taken by the Union Government allowing for the grant of Permanent Commission to Short Service Commission women officers in all the ten streams where women have been granted Short Service Commission in the Indian Army, it issued directions subjecting to the conditions to be complied with by the Union Government.

It is apt to bring out that for the recruitment of officers in the Indian Army, there are three modes viz. through National Defence Academy (NDA), Indian Military Academy (IMA) and Officers Training Academy (OTA). NDA and IMA are the modes of direct entry through UPSC, whereas, through OTA, women are commissioned along with men, both through UPSC as well as Non-UPSC mode of entry. Short Service Commission is granted and are subsequently are considered for grant of Permanent Commission. In the case of *Kush Kalra v Union of India*² the Hon'ble Supreme Court, by way of an interim order, paved the way for women candidates to take part in the National Defence Academy (NDA) examination, while observing that a more considered affidavit on policy decision based on gender equality more specifically keeping in mind the observations made by it in *Babita Puniya's* case. While noting that the process of admitting girls in Sainik Schools had already started and it would be further expanded, the Apex Court commented on non-inclusion of girls in Rashtriya Indian Military College (RIMC) that, "It is stated that it is a 99 years old institution which will complete 100 years next year. The question is whether it completes its 100 years with gender neutrality or not!"

Shifting Norms

¹ *Secretary, Ministry of Defence vs Babita Puniya*, (2020) 7 SCC 469

² Writ Petition(s) (Civil) No. 1416 of 2020, 18-08-2021

The above judicial pronouncements have started ringing some bells in the legislative and executive corridors. The enactment of The Triple Talaq (Muslim Women Protection of Rights on Marriage) Act, 2019 criminalized the practice of instant triple talaq and gave protection to married Muslim Woman from the arbitrary divorce by the act of the husband. The executive has started looking beyond the dark coloured glasses by bringing, to some extent, the element of equality in their policies¹. A number of steps have been taken by the government and the three services (Indian Air Force, Indian Army and Indian Navy) to encourage women to join Armed Forces not only as a staff but also in all combat roles².

Conclusion

The increase in the workforce, especially after industrial revolution, where women are now pursuing their careers and are, in some areas, taking up the leadership roles as well, point towards the socio-cultural changes happening within the Indian society. The traditional gender roles are also changing and evolving where the acceptance of women in non-traditional roles and increase in shared household responsibilities are visible. There is no denying the fact that the society have covered appreciable distance on the path of women empowerment but there is a lot that remains to be done. The deep-rooted patriarchal attitude still dominates the Indian society. Despite being elected women take a back seat and their husband's or the male(s) take charge of the office or political affairs, especially in rural India. Considering the percentage of women population, proportionately, the representation in various fields viz. Political, Private or Public sectors, Leadership roles etc. is way behind. The windows of opportunities are indeed expanding but the autonomy is still a far cry. Beneficial legislations, path breaking judgements do not change the mental make up of the society, with the result implementation lags behind and the ground realities do not match the expected results. In as much as the problem is basically societal attitude, it is primarily question of education at different levels, awareness amongst the masses and empowerment in the truest sense that the ground realities will change for the better.



¹ Press Release: Press Information Bureau

² Ibid