

# Asian Resonance

## Status of Women in India : A Constitutional Analysis



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### Abstract

In today's changed global context, women constitute an important segment of any kind of society, be it primitive or modern, agricultural or industrial. The evidence is everywhere clear that the voice of women is being increasingly heard in the streets, courts and Parliaments. Yet issues concerning women are not given priority in society. Since ancient times women are facing problems. Their oppression is persistent and universal but its solutions are complicated. Many prophets of women's emancipation have come and gone but discrimination against women and violation of human values persists.

Of all the aspects of relationship between women and politics, it is women's political participation that has received the most sustained attention from the political scientists. But the problem is that, the forms of participation studied have been largely confined to politics, narrowly and conventionally defined. Though the constitutional recognition of equal status for women and progressive legal enactments have undoubtedly endowed Indian women with juridical equality but the right to equal status and opportunities in education, law and political participation have actually remained dead letters for the vast majority of women in India. Most of the Indian women are unaware either of their rights or their responsibilities under the law of the land. Increase of population, modernization, economic planning and the operation of the democratic political processes have not in real terms reduced their insecurity, poverty and malnutrition. It has been observed that in a few isolated cases women have collectively been able to stand against oppression. Keeping this notion in mind, an attempt has been made in this piece of paper to examine the real position of women from ancient period to the present age, to analyze their related issues & problems, and to highlight the constitutional provisions so far provided to uplift their status in society.

**Keywords:** Emancipation, Discrimination, Modernization, Malnutrition, Status

### Introduction

The twenty first century has been a worldwide revolution in the extension of all kinds of rights- political, social, economic, educational etc. to women. But less than a century ago there was no major country in the world where women were guaranteed the right to participate in politics on an equal basis with men. Today, only a handful of states, mostly in West Asia, legally bar women's participation in political life. But in many countries an enormous disparity exists even today between women's formal political equality and their meaningful exercise of political power. The near universal recognition of women's political rights and the strength of their voting numbers are nowhere reflected in their direct role in government. In many countries, women's participation in the most basic of political activities such as voting, attending meetings or discussing politics falls far short of that of men.<sup>1</sup>

The status of women was almost same throughout the world until the dawn of the Industrial Revolution in England. In Greek states, while woman was a subject of admiration for her grace and motherly qualities, she was completely subordinated to man. It was the great Greek philosopher Plato who said that there should be complete equality between the sexes. The position of women was no better in the Roman empire too. In the feudal societies, however, one finds a special status accorded to women in society. The civilization of China, India, Rome and the various renaissances of Western Europe could boast of small group of highly cultivated women. From the middle of the 19<sup>th</sup> century there has been a significant progress towards equality in the areas of education, suffrage, property rights and the right to enter the professions and public life. In

# Asian Resonance

short, industrialization accelerated the growth of two social movements – one for democracy and equality and the other for socialism and natural justice. Throughout the 18<sup>th</sup> and 19<sup>th</sup> centuries, waves of these ideologies reverberated in society.

International Conferences before World War-I did not attempt to deal with the full legal position of women, but conventions between 1902 and 1910 dealt with problems affecting women. In 1935, the League of Nations authorized a report on aspects of the status of women, but World War- II interrupted further work. When the United Nations was established in 1945, only about half of the 51 members had extended franchise to women and the Commission at first concentrated on the political rights which was considered as the most fundamental. The U. N. Convention on the political rights of women adopted by the General Assembly in 1952, provides that “women shall be entitled to vote in all elections on equal terms with men, without any discrimination”.

The United Nations declared 1975 as the ‘International Women’s Year’, and 1980 as the ‘Year for Development of Women’. During this period, the nations of the world were expected to focus their attention and resources on the problems of women with the objective of integrating women in social, economic and political activities. The United Nations ‘Women’s Development Decade’(1976-85) might have not achieved wonders, but certainly created consciousness all over the world regarding the need for raising status of women in society and thereby enhancing their role in the process of development.<sup>2</sup>

## **The World Conference of human rights urges:**

- (1) The full and equal enjoyment of women of all human rights, and that this be a priority for governments and the United Nations.
- (2) The equal status of women and elimination of discrimination.
- (3) Elimination of all forms of sexual harassment, exploitation and trafficking of women and elimination of gender bias.
- (4) Disseminating necessary information to enable women to make more effective use of existing implementation procedures.
- (5) Enjoyment by women of all the highest standard of physical and mental health throughout their life span and the right to accessible and adequate health care.
- (6) Equal access to education at all levels.
- (7) Access of women to decision-making posts.

Indeed the development of human rights movement, right from the Universal Declaration of Human Rights in 1948 and its subsequent progress of three generations of rights shows that rights are defined as ‘belonging to all human beings’ irrespective of gender. In spite of perceptible improvement in general socio-economic situation of women, the situation continues to be grim. Available statistics reveals the continued neglect of female child’s health and nutrition needs, her early marriage, high fertility, poverty and inadequate access to health care. Thus the most significant achievement has been to raise women’s issues to the level of public discourse.<sup>3</sup>

## **Position of Women in India**

India is known for her specific culture. There is no direct reference to the notion of rights in India. However, it lies embedded in its culture. The notion of Purusharthas: Dharma (rules and regulations), Artha (material prosperity), Kama (sexual pleasure) and Moksha (eternal bliss) reflects four values of life for human development. It seeks to achieve both empirical and spiritual development of individuals. The Vedic sages also emphasize on the development and happiness of entire humanity: “Sarve Bhavantu Sukhina” or “Let all be happy.” However, one can not overlook the plethora of social evils like intolerant casteism, Sati (Burning widow while living), female infanticide, child marriage, religious orthodoxy, communalism etc. which viciated the society and blatantly violated human rights.<sup>4</sup>

However, it is necessary to understand the socio-political movement in India because these movements have had a great impact on the women’s life in India. At the dawn of Indian history, the Vedic women possessed high status, an equal partner with men.<sup>5</sup> This soon became legendary and the women were sinking deeper in economic dependence, religious taboos and social subservience and were treated as second class mortals.

A steady deterioration of the status of women further reached a new low after the disruption of the Mughal empire and the consequent political and social confusion in the 18<sup>th</sup> century. So, when the British Period started, the position of the women was, in a sense worst, in the history of India. Child marriage was almost universal among the high caste Hindus, and had ever spread to some sections of the Muslims. The practice of ‘Sati’ was existing and literacy among women was regarded as a source of moral danger.

With the above existing situation one of the remarkable features of modern India has been the unprecedented awakening of Indian women during the 19<sup>th</sup> and early 20<sup>th</sup> centuries. A number of movements both religious and social were launched in the middle of the 19<sup>th</sup> century, reforming Hinduism and the Indian society.<sup>6</sup>

The most well-remembered social reformer of the 19<sup>th</sup> century was Raja Ram Mohan Roy. He established the ‘Brahmo Samaj’ which worked earnestly for the welfare of women. Freedom and equality of women and widow remarriage were the focus of the Samaj. The cruel system of ‘Sati’ was abolished by the efforts of Ram Mohan Roy. The spiritual succession of Ram Mohan Roy was Keshav Chandra Sen, who popularized Brahmo Samaj and fought for women’s education and even established a school for girls. It was his courage and perseverance that brought Civil Marriage Act. III of 1872 which included abolition of child marriage, permission for widow remarriage and inter- caste marriage.

A parallel religious reform movement in the form of Parthana Samaj was started by Justice Mahadeo Govind Ranade in Poona. Swami Dayananda Saraswati founded the Arya Samaj, whose main objective was “to give equal opportunities to all

# Asian Resonance

persons, men and women; to acquire knowledge and to qualify themselves for whatever position in life they would like to fill".

Another eminent person who stands out is Ishwar Chandra Vidyasagar. His notable reforms are education for women and widow remarriage. Later on, in the 19<sup>th</sup> century, came the eminent liberal, Gopal Krishna Gokhale. His Bill for universal compulsory primary education brought in a fresh breeze of reform for Indian women.

The factor which contributed towards developing women's movement was the spontaneous and massive participation of women in the struggle for National Freedom. The movement as developed by Mahatma Gandhi encouraged women to participate actively in it. This participation helped in the removal of social shackles and activated women to press for political equality and in 1917 Indian National Congress elected a woman President Annie Besant for the first time.

The Government of India Act, 1919 did not enfranchise women, but it did empower provincial legislatures to remove the sex barriers at their discretion. Madras was the first Province to grant limited franchise to women in 1921, followed by other Provinces. In the first election in 1926, the Act enfranchised less than one per cent of the total female population. The vote was a symbol of equality and women wanted it.

In 1927, the All India Women's Conference was established whose emphasis was on education. But later in the wake of the new Constitution to be framed for India, the Conference also included in its function, to discuss and contribute to all questions and matters that affect the welfare of the people of India with particular reference to women and children.<sup>7</sup>

In 1931, the women's organizations submitted a combined memorandum before the franchise sub-committee of the Round Table Conference that was to be held in London which emphasized on: (a) Equal rights and obligations for all citizens without any bar on account of sex; (b) No disability to attach to any citizen by reason of his or her religion, caste, creed or sex, with regard to public employment, office or power of honour and in the exercise of any trade; (c) Women to fight elections; and (d) No reservation of seats for women as such nor special nominations.<sup>8</sup>

The Women's Conference agitated in 1934 for the appointment of a Commission on the legal disabilities of Indian women, particularly those of Hindu women with respect to inheritance and after divorce. The Government of India Act of 1935 extended the franchise and after 12 years of struggle by the women's associations, the Hindu Law Reforms Committee was appointed in 1946.

Thus, the social reformers of the 19<sup>th</sup> and early 20<sup>th</sup> centuries prepared a fertile ground on which Gandhiji could sow the seeds of inspiration for women's participation in the political movement. This participation in the freedom struggle in a true sense,

was a beginning of breaking the chains of a home-bound and constructed life for Indian womanhood.

With the attainment of Indian Independence on August 15, 1947 and the framing of its Constitution, many of the demands of the women's movement were incorporated. This special attention given to the problems of women and the recognition of political equality was a radical departure from the norms prevailing in traditional India. The Indian Constitution is described as a manifesto of social revolution. But even after 63 years of its enforcement, freedom and social justice have not reached all women in the country. There is clear evidence of growing violence regarding women's rape, wife battering, family violence, dowry deaths and prostitution. This is the stark reality for millions of women. The declining value of women is surfacing in almost every aspect of life even today.<sup>9</sup>

## **Constitutional Provisions for Women's Political Status:-**

Indian Constitution prescribes certain special provisions in favour of women's empowerment. These provisions became highlighted only in 73<sup>rd</sup> & 74<sup>th</sup> Amendment Act, 1992 when the Constitution provided thirty three percent reservation of seats to women in Panchayati Raj Institutions & Municipalities to make them equal with that of their men counterparts in the political field. Those Provisions are :

- (i) Not less than one third of the seats meant for direct election of members at each tier of Panchayats & Municipalities are to be reserved for the women;
- (ii) Not less than one third of the total number of seats reserved under clause (i) shall be reserved for women belonging to the Scheduled Castes or as the case may be the Scheduled Tribes;
- (iii) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and 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;
- (iv) Not less than one-third of the seats of Chairpersons at any level reserved for women.

Article 14 guarantees equality before law and equal protection of law to all men and women within the territory of India.

Article 15 prohibits any kind of discrimination "against any citizen on grounds only of .....sex".

1. Article 15(3) empowers the state to make "any special provision for women and children".
2. Article 16 (1) guarantees "equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state".
3. Article 16 (2) forbids discrimination "in respect of any employment of office under the state" on the grounds only of "religion, race, caste, sex, descent, place of birth, residence or any one of them".

The Directive Principles of State Policy enunciated in Part-IV of the Constitution, embody the major policy goals of the welfare state. Some Articles

# Asian Resonance

there deal with women indirectly while a few others concern women directly and have a special bearing on their status.

The Articles that concern women indirectly include: Article 38 directs the state to secure a just social, political and economic order, geared to promote the welfare of the people; Article 39 (b), (c) and (d) relate to the distribution of ownership and control of material resources of the community for the common good and protection of children and youth against exploitation; Article 40 concerns the organization of village panchayats to promote self government; Article 41 appertains the right to work, education and public assistance in cases of unemployment, old age, sickness, disablement and other types of undeserved wants; Article 43 contains provision of work, a living wage, condition of work ensuring a decent standard of life and cultural opportunities and the promotion of cottage industries ; Article 45 ensures free and compulsory education for all children up to the age 14; and Article 47 relates to raising the level of nutrition and the standard of living of the people and improvement of public health.

The Articles of Directive Principles which deal with women directly and have a special bearing on their status include: Article 39(a) right to an adequate means of livelihood for men and women equally; Article 39 (d) equal pay for equal work both for men and women; Article 39 (4) protection of the health and strength of workers-men, women and children from abuse and entry into avocations unsuited to their age and strength, and Article 42 states for just and human conditions of work and maternity relief.

Article 51A(e) of the constitution of India imposes fundamental duty upon every citizen of India to renounce the practices derogatory to the dignity of women.

Finally, Article 325 and 326 introduce Universal Adult Franchise without any distinction of sex.

Thus the special attention is given to the needs and problems of women, to enable them to enjoy and exercise their constitutional equality of status.<sup>10</sup>

## Role of Judiciary :-

The judiciary all over the world has been playing a greater role in protecting the rights of women. The Indian judiciary led by the Supreme Court has exhibited a welcome judicial activism in recognizing, popularizing and enforcing these rights. Where no direct provision is prescribed, the judiciary is contributing a lot by recognizing the workmen's right. The Supreme Court in State of *Maharashtra vs. Madhukar Narain*<sup>11</sup> without referring to Article 21, held that even a woman of easy virtue is entitled to privacy and that no one can invade her privacy as and when he likes. In State of *Punjab vs. Gurmit Singh*<sup>12</sup> the court has consistently maintained that the offence of rape is violation of the right to privacy of the victim.

The Supreme Court in a number of cases held that right to economic empowerment of women is

a human right. In *C. Masilmami Mudaliar vs. Idol of Sri Swamina Thaswami Thirukoil*<sup>13</sup> the Supreme Court has recognized, highlighted and conferred the right to economic empowerment of women as a fundamental right under the Constitution of India.<sup>14</sup>

The Supreme Court in case of *Visaka vs. State of Rajasthan*<sup>15</sup> laid down a number of guidelines to remedy the legislative vacuum. The broad guidelines laid down in *Visaka's* case have set a new trend in the protection of the human rights to dignity of working women in the country like India.

The Supreme Court in *Delhi Domestic Working Women's Forum vs. Union of India*,<sup>16</sup> suggested the formulation of the scheme for awarding compensation to rape victims. In this manner in *Chairman, Railway Board vs. Chandrima Dass*,<sup>17</sup> the Supreme Court awarded compensation of ten lakhs to an alien woman under Article 21 of the Constitution who has been a victim of rape.

At last, it is very important to mention here that for the constitutional protection of women in India, the judiciary may make it abundantly clear that the courts have played the role of catalyst in ensuring their position in an effective manner. Thus, it is crystal clear that the Constitution of India provides Directive Principles of State Policy which are fundamental in the governance of the State. These provisions provide special favour to women and direct the State to treat male and female equally.

## Formation of National Commission for Women:-

The National Commission for Women was set up as a statutory body in January 1992 under the National Commission for Women Act, 1990 to review the constitutional and legal safeguards for the women. It consists of a Chairperson, five members and a member Secretary being nominated by the Central Government. The Commission investigates and examines all the matters relating to the safeguards provided for the women under the Constitution and other laws and recommends for the effective implementation of those safeguards for improving the conditions of the women by the Union or by any state. It also reviews, from time to time, the existing provisions of the Constitution and other laws affecting the women and recommends amendments there of so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations.<sup>18</sup>

## Concluding Observation:-

In spite of perceptible improvement in general socio- economic conditions of women, due to efforts made after independence, the situation continues to be grim. Despite all the constitutional provisions, legislations and court rulings it is found that much benefits are not accrued to the women. Because they are not yet behaving as active citizens. Their political culture is still parochial. Though the Constitution has granted women equal rights, but in practice these rights are not sufficient because their voice is hardly given any weightage in society. The state has not still been able to stop sex barriers completely. Available statistics reveals the continued neglect of female children's health and nutrition

# Asian Resonance

needs, their early marriage, high fertility, poverty and inadequate access to health care. In the field of education the massive dimension of the problem of female illiteracy daunts the society which limits the achievements of women in the field of employment, training, utilization of health facilities and exercise of their legal rights. Besides the Constitutional provisions and special enactments, in the country like India, women are subject to all kinds of discrimination and humiliation. It is now the right time to give proper consideration to these issues and the laws relating to them so as to implement these provisions for the proper upliftment of women in the country.

Thus, one may conclude by saying that women in India have to go a long way to attain the complete gender justice in social, political, economic, educational and cultural field. The need of the hour is: not welfare, but development; not charity, but entitlement; not assistance, but empowerment; not structural adjustment, but structural change; not even social security but social & gender justice, if the women are to survive and flourish in the given situation.<sup>19</sup>

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