

## CONSTITUTIONAL POSITION OF INDIAN WOMEN –A VIEW

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### Abstract

It is the nature of society to subordinate woman to man. The earlier philosophers believed and practiced this ideology. Social scientists have, in the recent past, shown a very keen interest in studying women's problems due to a wide s women in any given society serves not only as an index of its civilization, but it also influences of a very large extent socio –economic development. However, the constitutional developments lead and ensured equal rights to woman in all spheres of life. It has been witnessed in many articles and acts by the government. This article is making an attempt to trace the constitutional development.

**Keywords:** economic development, constitutional development, socio –economic development

### Introduction

Confucius, the philosopher said that subordination of woman to man was the one of the important principles of the society. Aristotle deemed the dominion the male over the female, in our organization of the family, to be natural and necessary. He believe that the head of the household is unmistakably man who rules it, women may be said to be an inferior man<sup>1</sup>. The Hindu sage, Manu, condemned women to eternal bondage. The German philosopher Nietzsche said, when you go to meet a woman, take your whip along. Under the common law, women were treated as chattels. The Greeks, in their period of highest culture imprisoned their women within their houses and denied them all rights. The Spartans often destroyed women who could not give birth to health children.

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<sup>1</sup> Adams, Parveen, et al., The Women in Question, Verso Publications, 1990

Even the most magnificent and civilized empire of Rome granted it's no legal rights. In Rome, husbands had absolute control over their wives and treated them as slaves. In the end it can be said that women everywhere suffered subordination and were assigned a purely functional role. Aristotle and Rousseau branded qualities like modesty, feminist and meekness as woman and natural for the female sex. Plato did concede them an equal status in his Republic but that is stray example. The socialist thinkers led by Karl Marx, Engel and others believed that women had been transformed from free and equal productive of the member society to subordinate waives and wards. They attributed this transformation to the growth of male-owned property with the family as an institution that appropriates and perpetuates. Even Hobbes and Locke, the advocates of equality, did not assign this equality to women<sup>2</sup>.

Social scientists have, in the recent past, shown a very keen interest in studying women's problems due to a wide spread realization of the fact that the position of women in any given society serves not only as an index of its civilization, but it also influences of a very large extent socio – economic development. Their position acquires a greater importance in a democratic welfare state like India where huge efforts are underway for its socio – economic development. Unless women are allowed to develop their full potentialities and thereby contribute their might to the developmental efforts, full advantage cannot be derived from the developmental programmes. It is needless to say that women can play their various roles properly only when they possess the necessary awareness, knowledge and skills. But all these depends upon the status that they enjoy in society. This explains the interest of social scientists studying the problems connected with the status of women.

Women all over the world suffer from certain disabilities and possess a status lower than that of men. In both the industrially advanced and less developed countries, women are burdened with cumulative inequalities as a result of socio – cultural and economic discriminatory practices, which until recently, have been taken for granted as though they were part of the immutable scheme of things established by nature<sup>3</sup>. It was only when the status of women

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<sup>2</sup> Hansen, Karen V. and Ilene J. Philipson. eds. 1990. *Women, Class and the Feminist Imagination: A Socialist-Feminist Reader*. Philadelphia: Temple University.

<sup>3</sup> Hartmann, Heidi. 1979. "Capitalism, Patriarchy and Job Segregation by Sex". In Zillah Eisenstein, ed. op. cit.: 206-247

was raised by removing their disabilities that they started playing their roles properly in various walks of life and contributing their might to the development of society. The advanced nations of the world were then convinced that the nation's well being as well as that of its women depends upon the developed poeticizing programmes and research that in fully utilized women's potentiality. It was due to this experience of other countries that our leaders and policy makers wanted to take steps to raise the Status of Indian women. But before any such steps could be taken in a meaningful way, it was necessary to find out what status the Indian women enjoyed and why to pinpoint the areas wherein the changes were needed and above all to point out the directions of such changes. Indian social scientists have studied the problems connected with the status of women from this perspective. Various writers referred to the inferior positions of Indian women before independence. Even Gandhiji admitted that Indian women were subjected to all sorts of injustice at the hands of men and society<sup>4</sup>. It is really shocking to note that our women possessed a very degrading and humiliating position in society before independence. It is necessary to examine their position in the past in order to understand the same in the present context and to take steps to improve it.

The status of women in a given society cannot be assessed in isolation from social framework in which they live. Their status is closely related with social structure, religion, family and kinship, cultural norms and value systems which are important determinants of their position and behaviour pattern society as individual as well as in relation to others inside and outside the family. This is truer in the context to the status of rural women in India where the process of modernization is rather very slow. The whole life and behaviour pattern of the rural women and the attitude of the society towards them is shaped and guided by traditional socio – cultural norms and values which are so deep - rooted in the minds and hearts of the people, that there seems a wide gap between the position they actually hold in the traditional society. Religion, family and kinship, cultural norms, moral values etc. delimit the sphere of women's activities in the family and society. The rural women have yet to come up the traditional norms and taboos and to enjoy a position of 'equality' to men as individual citizen in accordance with the constitution.

### **Constitutional Position of Women**

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<sup>4</sup> Altekar, Anant, Sadashiv The Position of Women in Hindu Civilization (from historic times to present day), Motilal Banarsidass, Delhi, 1962

The constitution of India radically and deliberately departs from the traditional inferior, the position of woman in the society and treats every woman equal to man as a citizen and as an individual partner of the democratic system. The preamble of the constitution refers to “we the people of India” which means males and female and resolves to ‘all’ citizens of India equality of Status and opportunity and liberty of thought and expression, besides social economic and political justice. The Constitution does not make any sex – discrimination and treats all men and women as equal in the Indian policy. With this objective, the Constitution ‘guarantees’ fundamental rights to ‘all’ citizens including both men and women in positive as well as negative way, The positive rights are equality before law, freedom of speech, movement, profession and occupation, association, protection of life and personal liberty etc. The negative rights relate to prohibition of ‘discrimination’ or ‘denial’ of equal protection’. The women regardless of the different socio-economic positions they hold in a given system, have been provided these positive and negative rights parallel to their male counterparts<sup>5</sup>.

An article 14 of the Constitution ensures equality before law. Article 15 prohibits any discrimination on grounds of sex. Article 16 ensures and guarantees equality of opportunity in matters of public employment. Article 17 abolishing untouchability and making it an offence punishable in accordance with law provides on equal status to all those males and female of the scheduled caste people who were regarded as untouchable since centuries due to socio – religious complex. Article 19 guarantees numerous freedoms to all citizens under some reasonable restrictions. Article 20 and 21 provide protection to every person both male and female in respect of conviction for offences and protection of life and personal liberty.

The Constitution not only declares the objective of equality and opportunity to both males and females of India and guarantees equal fundamental rights to them, but also tries to ensure those necessary conditions which will make the objective and the rights practical and useful. The Directive principles of state policy relating to ‘women-specific’ concern women directly have a very special bearing on their status. Similarly, articles 40, 41,43,44,35 and 47 related to many welfare activities which are concerned with women indirectly.

In order to achieve the objectives in fundamental rights a number of laws were enacted by the Government of India after independence. Not only were this some special welfare schemes

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<sup>5</sup> ibid

also were initiated for women to better their economic conditions, to increase their earning capacity, to extend the medical facilities and to help them in improving their knowledge etc.

Fundamental Rights furnish individual rights while the Directive Principles of State Policy supply social needs.

Article 39(a) directs the State to direct its policy towards securing the citizens, men and women, equally have the right to have an adequate means of livelihood.

Article 39(d) directs the State to secure equal pay for equal work for both men and women. The State in furtherance of this directive passed the Equal Remuneration Act, 1976 to give effect to the provision.

Article 39(e) specifically directs the State not to abuse the health and strength of workers, men and women.

Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and humane conditions of work and for maternity relief.

The State has implemented this directive by incorporating health provisions in the Factories Act, Maternity Benefit Act, Beedi and Cigar Workers (Conditions of Employment) Act, etc.

Article 44 directs the State to secure for citizens a Uniform Civil Code applicable throughout the territory of India. Its particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce a

Uniform Civil Code in India, the judiciary has recognised the necessity of uniformity in the application of civil laws relating to marriage, succession, adoption, divorce, maintenance, etc. but as it is only a directive it cannot be enforced in a court of law.

Article: 243 T Reservation of seats. (74th Amendment - w.e.f. 1-6-1993) 243T. Reservation of seats provides Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality, women Workers.

### **The Equal Remuneration Act, 1976:-**

It was only in 1976, that the equal Remuneration Act, 1976 a landmark enactment was introduced, which provides for payment of equal to both wages to both men and

women worked for the same work, or work of similar nature. The Act also prohibits discrimination against women in the matter of recruitment. Yet, studies reveal that wage differentials still exist, and continue to persist.

### **The Employees State Insurance Act, 1948 And The Maternity Benefit Act, 1961:-**

Maternity benefits are provided under the Employees state Insurance Act, 1948 and the Maternity Benefit Act, 1961. A women employee is entitled to maternity benefits for a period of 12 weeks if she worked in the establishment for 160 days in the 12 months immediately preceding her excepted delivery. Various studies have revealed that only a very small percentage of women workers avail of benefit. Further, the Act only protects the payment of maternity benefits. It nowhere prohibits the dismissal of pregnant women. The service rules of some establishments provide for termination of service of women workers on pregnancy.

The supreme court had struck down a provision whereby an Air Hostess would have deemed to have retired on pregnancy, as being unconstitutional in the case of *Air India V. Nargesh Meerza*.(1981 (4) SCC 335)<sup>5.3</sup>

### **The Dowry Prohibition Act, 1961:-**

The Dowry Prohibition Act, 1961 was passed to prevent the evil practice of giving and taking of dowry.

### **The Suppression Of Immoral Traffic Act, 1956:-**

The suppression of immoral traffic act, 1956 more popularly known as “SITA” was enacted to prohibit exploitation of women with a view of earning money. Subsequently, this Act was renamed as the **Immoral Traffic (Prevention) Act, 1956** wherein sexual exploitation and abuse of the female for commercial gain was made punishable.

### **The Pre-Natal Diagnostic (Prevention) Act, 1994**

Another landmark enactment is the Pre-Natal Diagnostic (Prevention) Act, 1994 which prohibits the use of pre-natal techniques for the purposes of sex determination. Despite the said enactment having been passed, the tests still continues to take place. The only difference being that they have become more surreptitious. This has come to light from

the recent news reports in Patiala, in Punjab, where female fetuses in large numbers were found drowned in a well adjoining a nursing home.

### **Protection Of Women From Sexual Harassment At Work Place**

The right to bodily integrity is encompassed in the right guaranteed by article 21 of the constitution of India, which guarantees the right to life and liberty.

The Supreme Court defines the term “sexual harassment” as an “Unwelcome sexually determined behavior (Whether directly or by implication) as:

- ❖ Physical contact and advances;
- ❖ Demand or request for sexual favours;
- ❖ Sexually coloured remarks;
- ❖ Showing pornography
- ❖ Any other unwelcome physical, verbal or non-verbal conduct or sexual nature.”

### **The Beedi and Cigar workers (conditions of Employment) Act, 1966**

Beedi and cigar making is an area where a large number of women and children are employed. They are then subjected to exploitation in terms of wages and working hours. Long hours of work and fewer wage compelled the Government to enact the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 which provided benefits to women workers.

Under Section 25 of the Act it has been laid down that no woman or young person shall be required to work on any industrial premises except between 6 a.m. and 7 p.m. This has been provided to ensure the welfare and safety of women workers.

Even after the enactment of various legislations and implementation of welfare programmes, the condition of women, particularly of rural women, did not show any improvement. There were several factors responsible for the relative backwardness of Indian women in general and rural women in particular. Some of these factors were illiteracy, traditional values and norms, dominant position of the males, superstitions, religious practices, and social evils like child marriage, dowry etc., and above all economic dependence of women on men. In spite of constitutional and legal provision, Indian women, particularly in rural areas, continued to suffer from these constraints.

## Changing Role of women

The history of this early period is also the systematic undermining of women's autonomy as agricultural producers in many parts of the globe. The process by which the shift from autonomy to dependence took place was complex. With the advent of the plough cultivation and the emergence of private property, there was a shift of autonomy. "The diverse social structure and supporting ideologies created by men confine as well as define by restricting them (women) to roles and activities described as 'feminine.' "The contributions of women however have not been acknowledged quantitatively or qualitatively. Women's work as producers is grossly neglected by economic statistics and analysis of labour and capital

Women are growing in number and are spending and increasing proportion of their time for remunerative jobs; their lives continue to be significantly different from those of men and much of their time is spent in the non-economic sector. The 'double burden' of responsibility for home and market work has made it difficult for women to achieve substantial equality in the public sphere. "Neither the role of 'housewife' nor that of 'working woman' is without significant problems for women." Men's work in the public sphere has usually enjoyed higher status than women's domestic work within the family circle. "But even when women have succeeded in entering the world beyond household to a greater or lesser extent, men have not shown much inclination to share in household work." It is true that child-bearing absorbs an increasingly smaller proportion of a woman's adult life and can, for the most part, be timed at will. "It is the unequal distribution of labour in at home, rather than women's lesser ability to perform other types of work that is the main obstacle of equality."<sup>6</sup>

However there have been some significant changes in women's work scenario in the last two decades, especially during 1980s, both in the developed and developing countries. Women's workforce participation has considerably increased in most countries of the world. At the same time, male participation rate has either stagnated or declined; the change in labour market conditions is so perceptible that of 'marginalization'. The process of global feminization' is said to have been occurring. While this process of feminization has diversified the work opportunities of women, it also brought several adverse consequences

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<sup>6</sup> Bhalla, G.S (2008): "Globalisation and Employment Trends in India"; The Indian Journal of Labour Economic;, Vol. 51, No.1, Jan- Mar, p. 2



for women workers in terms of earning and working conditions. It is important to understand the process of change concerning women's work and its implications in a correct perspective for an appropriate policy intervention as well as for giving input to the ongoing voluntary action and movement for the betterment of the work scenario of women.

### **Factors Which Facilitated the Change in Women's Role**

- ❖ There are some social and economic factors, which brought about changes in women's role and elevated them to the status of a 'worker.
- ❖ A series of technologically advanced innovations provided cheaper appliances to perform the manual work of women in the home. "Market goods have become more substitutable replacing home made products, making women capable enough to option for employment outside the household."
- ❖ The changes in the concept of family also facilitated the emergence of women labourers. Number of children decreased; there is a reduction in infant mortality, which means that fewer births are needed to achieve a family of desired size.
- ❖ Mortality of women is also lower now.
- ❖ The decline in fertility appears to have strengthened their commitment to labour force activity.
- ❖ With the completion of child bearing at a younger age, a woman can engage in economic activities.
- ❖ Expanding job opportunities offered by urbanization and industrialization also paved the way for more sphere of activities for women outside the home.

### **Factors which prompt Women to work**

- ❖ It may be stated that the families income are low so that women are compelled to work in order to add their own share to the family purse.
- ❖ Low wages of their husbands also drive women to seek employment.
- ❖ High rate of literacy among women and the desire for financial independence are also other important factors which prompt women to take up employment.

### **Occupational Difference between Men and Women**

- ❖ The difference in the occupational distribution of women and men leads to the concentration of women in particular fields of employment and job categories.
- ❖ Generally, men dominate the supervisory and managerial positions and women engage in non-supervisory, middle and lower grades.

### **Reasons for the Differences in Occupation between Men and Women**

- ❖ The differences in role identification which begin in infancy result in women following a track where home management is the primary activity and work as secondary.
- ❖ Those women who follow dual careers are likely to seek occupations and work situations which will be complementary with home responsibilities.

### **Factors Responsible for the Lower incomes of Women Workers**

There are some factors responsible for the lower incomes of women.

- ❖ In many employment sectors, a division is seen separating work into jobs for men and women to which the individual worker must adjust. This separation in job arrangement reflects discrimination and lower pay for women.
- ❖ The length and continuity of time spent in the labour force are important influence on earnings. Generally men accumulate more skills and experience through formal and on-the-job training due to their greater involvement in profession.
- ❖ The problem of unequal opportunity for women in the labour market is related to the social view that a woman's first responsibility is to her home. This social attitude finds its full expression in the division of role and responsibilities in the family- a division that is far from equal between husband and wife. The fact that a wife and mother is working seems to have a little effect upon her expected performance at home as cook, chauffeur, laundry helper, cleaner, nurse, child attendant, teacher and an amateur psychologist. Women who take or continue their work after marriage and the birth of children, assume a second work load, bearing the major weight of the double burden of job and family. They are also exposed to two sets of conflicting demands-the paying job requires attendance at fixed hours during the week, while home and family exert diverse pressures at all hours of the day.
- ❖ As a result a woman continues to have a different economic status in her occupations. She remains exploited, oppressed and takes advantage from the management and trade union.
- ❖ Another reason for lower payments even for the same tasks are due to the assumption (usually shared by both employers and workers) that women are less productive than men.
- ❖ There is a great deal of absenteeism among women workers, rendering their work unsteady and irregular due to their household involvement.

### **Women's work and Wages**

- ❖ Labour legislation, as far as the workers are concerned is inadequate. It does not fully safeguard their interests wherever they are employed.
- ❖ The essential principle of labour legislation should not only prevent employers from taking advantage of workers' helplessness and weaker position but should also to compel them to adopt measures which ensure the rights of the workers especially women to overcome handicaps peculiar to them.
- ❖ But too many demands and restrictions on the employers are bound to affect the employment of women adversely by making it difficult from the point of view of the management.
- ❖ Women are usually employed in lighter occupations compared to men who are employed in heavier occupations. Even when they work in similar occupations, distinctions are made sometimes. There is no reason why women are not are paid equal wages for equal work.

### **Problems of Women Workers**

Certain problems are common to women workers. A study of the problems of women workers will indicate the need of welfare measures to be adopted along with proper lines of approach.

- ❖ Woman is physically weaker than man. In addition, she has to bear the child which requires her to take rest before and after delivery. Where there is no coverage of maternity benefits, it may sometimes become as occasional disability.
- ❖ Then she has the burden of the growing child; its care takes much of her time. She has also to function as a housewife with all household responsibilities.
- ❖ The family is a grave concern for the women in our country than her western sister. Her social and economic status is very low.
- ❖ There are several additional gender-specific dimensions which affect women's work situation. The gender based inequalities in the family in the provision of basic necessities also create health problems for women.
- ❖ Further they are exposed to health hazards arising from the nature of their work. There exist several types of exploitation by employers and money lenders also.

## Conclusion

Women all over the world suffer from certain disabilities and possess a status lower than that of men. In both the industrially advanced and less developed countries, women are burdened with cumulative inequalities as a result of socio – cultural and economic discriminatory practices, which until recently, have been taken for granted as though they were part of the immutable scheme of things established by nature. The socio-economic transformation lead to the development women in general and empowered in particular context. This article is briefly traces the evolution and empowerment women. In summing up it is said that “ women begins and men ends” which is going to be reality in 21 st century .

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