

Holistic Analysis of ‘Women Empowerment’ – A Vital Quintessence from Legal, Business and Economic Perspective

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Abstract

The varied dimensions of ‘Women Empowerment’ have to be analysed from economic, political, social, cultural, psychological, philosophical and technological perspective. The empowerment of women is a holistic concept. India has been testimony to the diverse and vast cultural heritage unique to itself from time immemorial. History is replete with examples of the contribution of India for gender neutrality, equality and upliftment perspective. A man and a woman are equal and strong pillars in the edifice and bulwark of cultural fabric for society’s growth. The historic contribution of Maitreyi and Gargi are monumental in not only from the perspective of cultural and social development but also from the view of women empowerment. The jurisprudence on woman empowerment has to be seen in a holistic manner. There is a vital facet of legal dimension of the economic and social contribution of the woman in the ecosystem of growth and development of the nation. The international efforts in the sphere of women empowerment by Convention on Elimination of All Forms of Discrimination against Women (CEDAW) has been instrumental in addressing some of the pertinent issues in that domain. Tackling the issues of women empowerment via Statutory provisions and by strengthening the statutory provisions in the extant laws has to be seen synergistically with the concerted efforts at community, national and international level for empowering woman with education, health care, access to basic amenities among others. The role played by women has a cultural and social dimension also which requires an inclusive and synchronized efforts in tandem by all the stakeholders in the value chain of economy and in the societal ecosystem.

Keywords: *Woman Empowerment; Family Laws; Surrogacy Act; Gender Neutrality; Gender Equality; Alternate Dispute Resolution; Hindu Succession Act.*

Introduction

Swami Vivekananda once said that, “Education is the manifestation of perfection already in man”. India is a country of diversity and there is charismatic energy and vivacity in that diversity. India is reckoned as a ‘sub-continent’ in itself. The role of women in a family life cycle is vivid and vast as she adorns multiple hats from caring mother to affable sister, lovable daughter, so on and so forth. Family is a unit of society. The Society is shaped by the culture, economics, technology, science and social factors prevalent in a country. It is well known adage that a mother is worth a hundred school master. ‘Empowerment’ of women is a holistic concept. The instant paper is an attempt to delve into the multi-disciplinary and multi-faceted aspects of ‘Women Empowerment’ from legal, business and economic dimensions. The facets of women’s rights bestowed by statutory provisions of law have been studied and seen in a harmonious manner, in synergy with ‘Judicial Precedents’ and prevailing customs, practices and usage which shapes the thought process in society and among citizenries.

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Woman's Family Rights in Personal Laws

The varied facets of Personal Laws with respect to Hindus on 'Live in Relationships' and child borne out of relations which is not a *valid* 'marriage' as per Hindu Marriage Act³, has to be seen from the prism of '*legality*' and '*validity*' of marriage. The status of marriage and legitimacy of child borne is based on 'presumption as to legality of marriage'; in this context, it is averred that the woman is staying in the control and protection of a man in a society, raises the strong presumption that she is the '*wife*' of the man. Post 2005, the daughter equal rights as that of a son⁴, is empowering when read conjointly with Section 14 of the Hindu Succession Act⁵, which provide '*absolute*' power to a daughter to alienate her ancestral property and self-acquired property. The seminal judgment in this direction of *Gangamma v. G Nagarathnamma*⁶ and *Prachanan Das v Ramesh Chandra Mishra*⁷, has to be seen in the context where widow succeeding to her husband's property is construed as 'full ownership' and she has absolute powers to alienate the property, as has been held by Hon'ble Courts of the Law of the land to be valid. The Hon'ble Apex Court, the Supreme Court of India, has provided '*a most expansive interpretation*' of Section 14(1) of the Act⁸ by explicating the purpose of the legislation which is to bring about change in social and economic status of the women in society. This enabled the women to have 'full and absolute rights' over the widow's property post the coming into force of the Act.

Women Reservation Bill, 2010

Reservation strikes the very core of the essence and spirit of Article 14, 15(5) and 16(4) of the Constitution of India⁹. The judgment of *Indra Sawhney v Union of India*¹⁰, has been a seminal one which 'capped' the upper limit of reservation to 50 percent in toto. Adding this to another dimension of women reservation which is being contested on the grounds of efficiency of service, inadequacy of representation, meritocracy, ramification on accelerated promotions in jobs and employment. The Women Reservation Bill has been challenged and debated on multitude of factors including that of being opposed by apprehension expressed of women being utilized as 'rubber stamp' in the hands of their husbands in a male dominated patriarchal society which encourages male chauvinism as opined by some school of thought. Any amendment or contemplated enactment has to pass the touchstone of provisions enshrined in Constitution of India. It is pertinent to note that '*Positive Discrimination*', '*Affirmative Actions*' and '*Competing Equality*' has been opposed by some on the grounds that it could potentially weaken the social fabric of strengthen by creating a situation of reservation-oriented legislation and administration in the country. *Indra Sawhney case*¹¹ limited the reservation to 'social and educational backwardness' but never recommended for women reservation. Some of the solutions posited by legal fraternity are increasing the number of seats in the Parliament especially earmarked for the women candidates, giving tickets to women candidates by political parties during election for increasing their representation, strengthening the existing framework for statutory provisions of women reservation in local governing bodies including the Panchayats by clause (4) of Article 243D of the Indian Constitution in Panchayat and by clause (3) of Article 243T of Constitution in Municipalities setup by 73rd and 74th Constitutional

³ Hindu Marriage Act, 1955

⁴ Section 6 of the Hindu Succession (Amendment) Act, 2005 enables a daughter to be a Coparcener since her birth.

⁵ Hindu Succession Act, 1956

⁶ *Gangamma v. G Nagarathnamma*, AIR 2009 SC 2561

⁷ *Prachanan Das v Ramesh Chandra Mishra*, AIR 2008 Ori 34

⁸ Interpretation of Section 14(1) of Hindu Succession Act, 1956

⁹ The Constitution of India, 1950

¹⁰ *Indra Sawhney & Others v Union of India* 1992 SCC (L & S) supp. 1

¹¹ *Id.*

Amendment Acts, 1992, providing more teeth to the National Commission for Women, empowering women with education and health care infrastructure, sensitizing populace of the country with awareness driven programmes among others. The vital metrics of sex ratio, gender gap, school dropout ratios, Human Development Index and Literacy level are key indicators which has to be analyzed in entirety for holistic analysis of the women and their status, progress and development in the society.

Economic Dimension of Women Empowerment

The household income is not considered as a part of the Gross Domestic Product (GDP) of the country. India is a country which is a sub-continent in itself and is home to varied economic activities which may not be accounted in the system of economic value adds. It is pertinent to note that the domestic sector is the most vital pillar for sustaining the consumption in the economy, The GDP of the country has 4 major components, that is Consumption, Investment, Government expenditure and Exports minus Imports. The GDP is an indicator the growth and development of the country as a whole. The barometer of economic progress should not be relied totally on the GDP, rather multitude of parameters effecting a wide cross-section of sectors including the unorganized informal sector is a significant one to study. Women involved in activities of the household sector has been subject to number of impediments including that of lack of robust, nimble and supple accounting system which results in improper estimation of GDP of the country.

The notion in the patriarchal society that women role is restricted to that of a mother who is supposed to be care giver and should devote her energy for the upkeep, maintenance and to look after household work, has been a point of debate as to whether the activities performed in the household sector is fueling the small and medium scale business and particularly the informal sector, which is one of the crucial employment generating sector, is one of the debate raging since independence. Providing recognition to the household income would add to the credibility and the empowerment of the women. The performance of any sector has to be quantifiable and has to be measured on the scales of growth and monetary value addition at each and every stage of the value chain of development and progress. The challenges posed by the economic sector would be to make women employable with requisite qualifications and talent in years to come. With the increase in phenomena of urbanization, the movement of people from agricultural sector to secondary and tertiary sector including the services sector should facilitate the progress of women who are drivers, change makers, catalysts, enablers and are vital component in the ecosystem of industrial and services sector growth.

Business and Management Dimension

The success story of India in the post liberalized, privatized and globalized era and in the information driven world, women has been moving shoulders to shoulders with men in all spheres of work. The leadership and transformational ability of Indian Entrepreneurs and Business personalities have shaped the progress of business in India in recent times. The telling stories of Ms. Indira Nooyi, former Chairperson and CEO of PepsiCo, Ms Arundhati Bhattacharya, former Chairperson of India's biggest banking conglomerate, the State Bank of India, Ms. Kiran Mazumdar-Shaw, founder cum executive chairperson of Biocon Ltd., Ms Chandra Kochhar, former CEO of ICICI Bank have been the guiding light for the business fraternity. The transformational leadership exemplified by these personalities have inculcated the practice of institutionalization of 'gender neutral' thinking in the value-based business ecosystem. The growing clamor for leadership in business arena bringing 'best practices' across the board in Multinational companies have been recognized and harnessed in varied fields of management and techno-legal domain. Government initiatives in the direction of 'Startup India, Stand Up India', 'Digital India', 'Make in India', 'Atal Tinkering

Labs' have to be seen in this perspective, where women entrepreneurs are a vital pillar and building bloc in the nation's progress and development.

Ramification of Surrogacy Act, 2021

The Act¹² has been a blessing for all couples who have not experience the joy of parenthood, where 'Assisted Reproductive Technology' has shaped the landscape of 'Surrogacy' in India. Looking from the prism of judicial domain, the empowerment of woman who were 'childless' have now been empowered with marriage of technology, social progressive thinking and legal support which is a 'Win-Win scenario' from the human rights and fundamental rights of woman from the perspective of Fundamental Right of Article 21¹³ as enshrined in Constitution of India¹⁴. The aforesaid Act¹⁵ has provisions *inter alia* for insurance of surrogate mother^{16 & 17}, strictly prohibits 'commercialization of surrogacy'¹⁸, no woman can be a 'surrogate mother' more than once¹⁹ and no woman can be surrogate mother by giving her own gametes²⁰. There are also provisions which acts as checks and balance for right to safeguard the child borne out of the surrogacy procedure who are 'Divyangs'. The provisions of medical fitness certificate from a registered medical practitioner and right of custody of child by a District Court of Magistrate of first class and the quintessential role of 'Medical Board' in prior permission has been 'codified' and being made a part of the statute. This provides an enabling environment where the rights of married couple with respect to the child borne through surrogacy has been a successful endeavor where the stereotypes of the society have been broken. Freeing one-self from the shackles of the entrenched premonitions, preconceptions and the 'Halo effect' is a welcome step for the society and the psychological, cultural and societal well-being, particularly from the perspective of women empowerment.

Criss cross and Cross-fertilization with Intellectual Property Laws

The growing statistics of patent filing across the globe, particularly by women patent holders are another dimension where technology and science have been enables and driver of change for empowerment of women. Society shapes the law, rather than the other way around. This can be supplicated by the very fact that 'Innovation' precedes 'Regulation' in most instances. The traditional knowledge and its protection is another vehicle through which the traditional rights of women in a community are secured. India being members of multiple forums in international parlance and enthusiastic supporter/participant in deliberations of TRIPs Council, Convention on Biological Diversity, Inter-governmental Committee on Folklore, Nagoya Protocol and Traditional Knowledge and Genetic Resources has always been at the forefront of upholding the cultural, societal, technological prowess and values of its communities and citizenry.

The institutional initiative of Council of Scientific and Industrial Research (CSIR) for maintaining the Traditional Knowledge Digital Library (TKDL), which is a telling success

¹² The Surrogacy (Regulation) Act, 2021

¹³ Right to Life and Personal Liberty ensuring for life with dignity.

¹⁴ Constitution of India, 1950

¹⁵ The Surrogacy (Regulation) Act, 2021

¹⁶ Stated in definitive clause of Section 2(1)(g) of the The Surrogacy (Regulation) Act, 2021

¹⁷ Trivedi, D., Majumder, N., Pandya, M., Bhatt, A., & Chaudhari, S. P. (2022). Evaluating the global research productivity on domestic violence: a bibliometric visualisation analysis. Collection and Curation. <https://doi.org/10.1108/cc-12-2021-0040>

¹⁸ Specified in Chapter III of the The Surrogacy (Regulation) Act, 2021 as "*Regulation of Surrogacy and Surrogacy Procedure*" in Section 4(ii)(c)

¹⁹ Specified in Chapter III of the The Surrogacy (Regulation) Act, 2021 as "*Regulation of Surrogacy and Surrogacy Procedure*" in Section 4(iii)(b)(IV)

²⁰ Specified in Chapter III of the The Surrogacy (Regulation) Act, 2021 as "*Regulation of Surrogacy and Surrogacy Procedure*" in Section 4(iii)(b)(III)

story with collaborative efforts of multiple stakeholders including that of Ministry of Science and Technology, the Department of Ayurveda, Yoga and Naturopathy, Unani, Siddha and Homeopathy (AYUSH) and Ministry of Health and Family Welfare has to be seen in tandem. A harmonious construction of the rights of the woman from the prism of technology, science, cultural and information awareness would be an enabler for engines of growth in the years to come. The need of the hour is to sensitize the populace through awareness programs the immense talent and knowledge base, the individuals and the community could offer to the society as a whole. World Intellectual Property Organization (WIPO) has categorically mentioned that a wide base of traditional knowledge and biodiversity remains to be explored and harnessed in developing countries²¹ in which women community have a huge role to play.

Alternate Dispute Resolution in Family Dispute matters

The seminal judgment in *Salem Advocate Bar Association, Tamil Nadu v Union of India*²², made it mandatory and an obligation on the part of the Hon'ble judge to refer court matters to mediation, conciliation and arbitration. This has been seen to be a boon for many family disputes including matrimonial disputes where the 'mediator' plays the quintessential role as 'facilitator' and a catalyst to resolve the disputes between parties ensuring that 'confidentiality' is being maintained. This is a prolific step for women to get justice by talking and mediating in an environment which is congenial to both the parties. In family matters, there are emotional component which is very high and the applicability of 'mediation' requires a congenial environment which ensures speedy and cost-effective solution. One of the parameters to fathom success in any society is to determine how quickly and efficiently the disputes between parties are settled. In the case of *Afcons Infrastructure Ltd. and Anr. v Cherian Varkey Construction Co. Pvt Ltd. and Ors.*²³, the Hon'ble Supreme Court of India laid down detailed guidelines as which cases cannot be the subject matter for Alternate Dispute Resolution (ADR). Any dispute resolution mechanism has to be a negotiation considering the points and the arguments of both the sides while arriving at a conclusive result after the hectic parleys which goes on. The role of women in society and family setup is a quintessential one, a common adage goes if you have to educate a society, start from the basic building block of educating mothers in the family. The successive generation would be educated and trained consequently.

Conclusion

The quintessential subject of 'Women Empowerment' as seen from catena of judgments surfacing before the Hon'ble Courts of Law and from the prism of judicial precedent, it is evident that society, culture, technology, economics, science and psychology plays a vital role in this endeavor. Societal awareness and information dissemination about the rights and duties of the women can be a vital fulcrum for sensitizing the populace and the citizenry of the country. The bedrock of any legal judgment has to be strengthened with training and awareness programmes so that women are not only aware of their rights but also how to avail those rights. The legal framework is a tool and a vital vehicle to reach the desired destination of 'Women Empowerment' as envisioned by the framers of the Constitution of India. To conclude, Nobel Laureate Kabiguru Rabindranath Tagore while reminiscing the spiritual and self-enlightening power of women once said, "*For we women are not only the deities of the household fire, but the flame of the soul itself...*", which sums up the essence of 'Woman Empowerment'.

²¹ WIPO, Technology Based on Traditional Knowledge and Genetic Resources, WIPO Magazine (Geneva, April 2007), pg.10

²² Salem Advocate Bar Association, Tamil Nadu v Union of India, AIR 2005 6 SCC 344

²³ Afcons Infrastructure Ltd. and Anr. v Cherian Varkey Construction Co. Pvt Ltd. and Ors. SCC OnLine 8 SCC 24.