

Empowerment of women.

“When we empower women, we empower communities, nations and the entire human family.

—UN Secretary-General Ban Ki-Moon

Introduction:

Although its forms differ significantly across societies and cultures, the phenomenon of women’s subordination is found worldwide. Throughout the world women are economically, socially, politically, legally and culturally disadvantaged compared to their so called better halves. These disadvantages operate on various levels, international, regional, national, local, communal and familial.

Women in many countries are discriminated against by the national legal rights, including ownership and management of, access to and enjoyment of matrimonial and commercial property, inheritance, marriage, divorce and custody of children, enjoyment of fundamental civil and political rights, lack of participation in and access to law and policy-making, courts and legal remedies and access to certain types of employment and government benefits. Women in India are subject to discrimination not just on the basis of gender but on numerous other factors such as caste, community, religion etc. Women cannot enjoy the full range of rights while being repressed through violence and while sections of the

administration and the criminal justice system reflect and perpetuate discriminatory practices prevalent in society⁷.

As a vast democracy with many regional variations and a "developing" economy, India has an enormous amount to achieve and an enormous amount of commitments to fulfill to all its citizens, including women. Recognizing its international commitments towards the rights of women and urged on by a dynamic women's movement, successive governments have unveiled policies of empowerment for women which have sought to address the full range of women's human rights. As a result, there are many positive aspects of women's empowerment which have taken place in recent years in India.

Women constitute half of the country's population and it is abundantly clear that there can't be any development unless their needs and interests are fully taken into account to protect and safeguard the rights of women to give the much needed impetus to the holistic development of women and children.

Along with men Woman is equal partners in national development thus women empowerments in economically, politically, culturally, physically, mentally and socially is essential. Therefore the Government of India declared 2001 as the Year of Women's Empowerment. Access to resources and service, is the first level of empowerment, since women improve their own status, related to men by their own work and organization arising from increased access to resource and services. Mobilization is the action level of empowerment. Control is also one of the levels of empowerment.

⁷ Violence against women does not only have a physical impact but also an impact on their ability to enjoy the full range of rights including social, economic and political: the right of women to enjoy the full range of rights is indivisible.

Thus when women are get access to resources, when they get appropriate employment, they organise, are mobilized and ultimately get control of the work they are doing is called empowerment.

Empowerment: meaning and importance

According to U.N, Women's empowerment has five components,

1. women's sense of self-worth;
2. their right to have and to determine choices;
3. their right to have access to opportunities and resources;
4. their right to have the power to control their own lives, both within and outside the home; and
5. their ability to influence the direction of social change to create a more just social and economic orders, nationally and internationally.

The male-female ratio, if examined from one state to the other in India, will shed interesting light on different aspects of gender relations. Even within different communities notwithstanding adequate public policy, ratio of female to male child mortality varies from state to state and community to community.

1. Lack of economic independence for a woman has been the main reason for her continuous subjugation.
2. Number of women and the large majority who are illiterate, ignorant and poor. But the common problems faced by all are:
3. Inequality of power sharing with men and in particular in the decision making at all levels.

4. Lack of awareness of and commitment to internationally and nationally recognized women's rights, even amongst the elite.
5. Insufficient machinery at all levels to promote advancement of women.
6. Poverty, discrimination and marginalization of women from .Cradle to grave..
7. Inequality in women's access to and participation in the definitions of economic structures and policies and the productive process itself; unequal access to education, health, employment, credit facilities and other means of maximizing awareness of women's rights and the use of their capacities.
8. Violence against women. (It is ever on the rise)
9. Effects on women of continuing local, national, international armed or other kinds of conflict. (Indian women are the worst sufferers of the cross-border Terrorism)
10. Marginalization in the decision making process, with women generally remaining invisible at most levels in public structures. For example, India, considering its vastness, has less than minimum female representation both in Parliament and in legislatures.
11. Lack of on the job training to elected women members of the Panchayat, legislatures and Parliament.
12. Patriarchy interfering and eroding the work of the women Sarpanchas and panchas.
13. In spite of the strong women's movement in the country, the NGOs are too dispersed and isolated in deciding the national and local priorities in action.

14. Inactive executive and monitoring mechanisms to oversee the implementation of national/state plans and programmes. There is total lack of a Feedback mechanism amongst them.

Empowerment of women in India:

Status of Woman in ancient India.

The ancient concept of women being inferior to men continued even after independence. Women were enjoined to be of service to their husbands. There are very few texts specifically dealing with the role of women. According to MANU, a woman is never fit for Independence, because her father protects her in childhood, her husband in youth, and her sons in old age.

The constituents of patriarchy corresponding to ideology and institutional practices were as follows (Kosambi, 1991)

1. The most important goal of life of woman is to act as vehicle for procreation of sons. The seed (male) has primacy over soil (female)
2. The religious sacraments lead to spiritual excellence but woman is entitled to only one of them i.e. marriage.
3. Women could be owners of property but they could not dispose of it, not even their Stridhan (bridal wealth).
4. Woman was also excluded from public life as she was alleged to have uncontrolled sexuality.
5. Man is the insider in kinship relations whereas woman is the outsider having loyalty only to her husband.

The current gender discrimination and sexual assault finds its roots in these patriarchal values.

Movement of Empowerment of women in India:

During the British Raj, many reformers such as Ram Mohan Roy, Ishwar Chandra Vidyasagar, Jyotiba Phule and his wife Savitribai Phule, and many other struggled for the upliftment of women. Raja Rammohan Roy's efforts led to the abolition of the Sati practice under Governor-General William Cavendish-Bentinck in 1829. Ishwar Chandra Vidyasagar's crusade for the improvement in condition of widows led to the Widow Remarriage Act of 1856. Many women reformers such as Pandita Ramabai also helped the cause of women upliftment.

Constitutional Provisions for upliftment of women:

India's Constitution sets out fundamental rights made available to all its citizens which it explicitly states are to be realised without discrimination. The Constitution upholds the right to equality before the law (Article 14) and prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Various laws reinforce safeguards against discrimination and provide for positive discrimination for certain groups identified as vulnerable within society. These include scheduled castes and scheduled tribes and women. There have been several government initiatives to empower women economically and politically. Political representation of women has increased at the local level. The 73rd Constitutional Amendment Act, 1992 (Panchayati Raj), included a provision for statutory minimum reservation of 33% seats for women in Panchayati Raj Institutions⁸. This

⁸ This Amendment came into force on 24 April 1993.

has allowed a number of women to participate in community decision-making processes, including those from marginalised communities given that there are also reservations for scheduled caste, scheduled tribe and backward caste categories⁹. The National Commission for Women was established in January 1992 under the 1990 National Commission for Women Act. The National Human Rights Commission was established in 1993 under the Protection of Human Rights Act, 1993.

International commitments of India:

Following the Fourth UN World Conference on Women in Beijing in 1995, the Government of India promised several measures to ensure the advancement of women's rights in India, in line with the general recommendation 19¹⁰ of the Committee on the Elimination of Discrimination Against Women (CEDAW). 2001 was declared the Women's Empowerment Year.

The 'fundamental rights' serving as the *basic structure* of the Constitution of India imbibed the principles in the Universal Declaration on Human Rights¹¹. However not much has been achieved and hence there is need to give effect to international obligations which came into existence as the Convention on the Elimination of All Kinds of Discrimination against Women (CEDAW)¹². Thus guided by the principle "...a State which has contracted valid international obligations is bound to make in its legislations such modification as may be necessary to ensure the

⁹ Political reservation for women at the central level has however proved more problematic and successive parliamentary sessions have failed to reach a consensus on the Constitutional (85th Amendment) Bill 1999 which would provide 33% reservation for women in the national parliament and state legislatures.

¹⁰ General recommendation 19 relates to gender-based violence and recommends amongst other things that states should take all legal and other measures that are necessary to provide effective protection of women against gender-based violence including effective legal measures (including penal sanctions), preventive measures (including public information and education programs) and protective measures (including refuges).

¹¹ UDHR adopted on December 10 1948.

¹² As of 2 Nov 2006, 185 countries - over ninety percent of the members of the United Nations - are party to the Convention

fulfillment of the obligations undertaken.”¹³ India signed the convention on 30 July 1980¹⁴ and obliged by enacting various laws at par with the international convention i.e. CEDAW.

Amendment in the existing laws after acceding of CEDAW

The recent 86th Constitutional Amendment¹⁵ makes free and compulsory education a fundamental right for all children in the age group of 6 to 14 years.

The Government has so far not enacted a separate Act, i.e., the Anti Discrimination Act. However, many of the existing laws do ensure prohibition of discrimination. The private sector too is implementing these laws. The Minimum Wages Act, 1926, ensures minimum rates of wages to the unskilled and semi skilled workers and other categories of employees employed in scheduled employment including the construction workers, workers engaged in laying of electricity lines, cables and water supply and sewerage pipelines, etc. The Equal Remuneration Act, 1976, ensures equal wages for equal work including women. Besides, the various labour laws, like the Factories Act, 1948, the Plantation Labour Act, 1951, the Contract Labour (Regulation and Abolition) Act, 1970,

¹³ Advisory opinion of International Permanent Court of Justice, in *Exchange of Greek and Turkish Populations case*, P.C.I.J.Rep., ser. B, No. 10,p.6(1925)

¹⁴ Certain Declarations and reservations made upon signature and confirmed upon ratification:

Declarations:

"i) With regard to articles 5 (a) and 16 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.

"ii) With regard to article 16 (2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy."

but had certain reservations. India

Reservation: "With regard to article 29 of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1 of this article."

¹⁵ Article 21 A. By the year 2010, Sarva Shiksha Abhyan, a scheme formulated to achieve Universal Primary Education, will provide elementary education to all children in the 6-14 years age group. To encourage girl children to go beyond primary schooling, many States have made education completely free for girls up to higher secondary stage.

Maternity Benefit Act, 1964, Beedi and Cigar Workers (Condition of Employment) Act, 1966 providing special measures for women workers are also applicable to the private sector. The Industrial Employment (Standing Orders) Act, 1946, which is applicable to the private sector provides that sexual harassment at work place constitutes a misconduct for which the worker is liable for disciplinary action. The Employees State Insurance Act, 1948 providing for health and welfare of employees drawing wages less than certain fixed ceiling limits and Employees Provident Funds Act, 1952 extends to the private sector also.

The Marriage Law (Amendment) Act, 2001 amended the Hindu Marriage Act, Special Marriage Act, Parsi Marriage and Divorce Act, and the Code of Criminal Procedure, providing for the speedy disposal of applications for maintenance. The ceiling that was provided in the Code of Criminal Procedure of Rs. 500/- for claiming maintenance by a woman has been deleted and a wide discretion has been given to the Magistrate to award appropriate maintenance. In the Indian Divorce Act, discriminatory provision that required women seeking divorce to prove adultery coupled with cruelty/desertion, (whereas a man could seek divorce on one ground only) was amended. This amendment provided uniform provisions to men and women with regard to divorce. This amendment has also deleted the archaic provision of the necessity of obtaining confirmation decree from the High Court on the decree granted by the Family Court, which was applicable only for Christians. The Indian Succession Act was amended in the year 2002 which enabled Christian widows to get a share in the property. The Marriage Act (Amendment) 2003 amended the Hindu Marriage Act and Special Marriage Act thus enabling women to file cases in the district where they reside, thereby giving a go by to the general law of jurisdiction based on place where the cause of action arose.

Concerned about the declining sex ratio and sex selective abortions, the Medical Termination of Pregnancy Act, 1971 (MTP) and the Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PNDT) were amended in the years 2002 and 2003 respectively. The Medical Termination of Pregnancy Act (MTP) has been amended specifying the place and persons authorized to perform abortion and provides for penal actions against those unauthorized persons performing abortion. The PNDT Act prohibits misuse of pre-natal diagnostic techniques for determination of sex of fetus leading to female foeticide. It provides for regulation of clinics conducting ultra sound investigation, enforcement of machinery and stringent punishment for undertaking sex selective tests and abortions. A new law on domestic violence, The Protection of Women from Domestic Violence Act, 2005 has been enacted.

The existing provision in the Indian Penal Code was found inadequate to address all forms of sexual abuse and harassment that range from teasing, gestures, and molestation to violent sexual abuse. The Supreme Court in *Vishaka's case*¹⁶ has defined sexual harassment, which is in accordance with the definition in General Recommendation 19 of the Convention, and has laid down certain guidelines as preventive measures against sexual harassment at work place and has directed employers to put in mechanisms at the work place. Pursuant to the above judgment, Government has taken many steps to ensure compliance with the law laid down by the Supreme Court.

Demanding and taking dowry is treated as a crime and the Dowry Prohibition Act has been amended in the years 1984 and 1986 and the Criminal Law also has been amended correspondingly. There has been a slight decrease in the incidence of harassment for dowry and dowry deaths in the year 2002-2003.

¹⁶ AIR 1997 SC 3011

The practice of dowry continues despite the law, as it continues to enjoy social sanction. Unemployment and greed for materialistic gains and overemphasis on marriage for women are making them more vulnerable to dowry harassment.

There are specific legislations to prohibit and prevent practices like the *Devadasi* (dedication of women to a deity) and *Sati* (immolation of a woman on the death pyre of her deceased husband). The Devadasi practice is peculiar to only the States of Karnataka, Tamil Nadu, Andhra Pradesh, Maharashtra, Orissa and Goa. This practice, based on religious belief is often misused and is one of the causes of inducting women into prostitution. These States have enacted separate laws prohibiting dedication of women/girls as Devadasi and penalize such dedications. The Karnataka Devadasi (Prohibition of Dedication) Act, 1982, for example, prohibits dedication of women/girls as Devadasi and holds such acts unlawful. This enactment further encourages the Devadasi woman's entry into mainstream and declares that a marriage covenant entered into by a Devadasi shall not be invalid and no issues of such marriages shall be illegitimate by reasons of such woman being a Devadasi. The Commission of Sati Prevention Act, 1987 was enacted to prevent commission of Sati by anyone and penalizes any person who abets the commission of Sati, either directly or indirectly and glorifies Sati. The DWCD has proposed amendments to this Bill to make it more stringent.

The Marriage Laws (Amendment) Act, 2001 has amended the Indian Divorce Act, 1869, the Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1954 and the Hindu Marriage Act, 1955 which stipulates that the application for alimony pendente lite (pending litigation) or maintenance and education of minor children shall be disposed of within 60 days from the date of service of notice on the respondent. The Code of Civil Procedure (Amendment)

Acts, 1999 and 2002 also provide for speedy justice for all, including women, in civil cases.

One of the important special measures adopted by the State was the 73rd and 74th Amendments to the Constitution, which provides for reservation of seats and the posts of chairpersons for women in institutions of local governance. To ensure effective participation of tribal women in the process of planning and decision-making, these amendments have been extended to the Scheduled areas through the Panchayats (Extension to the Scheduled Areas) Act, 1996. Government has taken affirmative action to increase women's participation in local self-governing institutions and decision-making bodies by enacting the 73rd and 74th Constitutional Amendments, 1993. These legislations provide for reservation of not only 1/3rd of all seats at all levels of local Government, but also reserved 1/3rd of all posts of chairpersons in these bodies for women, both in rural and urban areas. Further, there is reservation of not less than one-third of the total number of seats reserved for SCs and STs for SC and ST women. Over a million women have entered public office across the country due to this initiative.

Machinery for redressal

The High Court established in every State and the Supreme Court functions as guardians of public rights to check state excesses or violations of fundamental rights. The Supreme Court and the High Courts have been empowered to issue appropriate directions/orders/writs including mandamus, habeas corpus, prohibition, quo warranto and certiorari against arbitrary or unlawful administrative action. The law declared by the Supreme Court is the law of the land and its decisions are binding on all courts and authorities. The decisions rendered by the Supreme Court are enforceable and all authorities, civil and

judicial are enjoined to act in aid of the Supreme Court by virtue of Article 144 of the Constitution.

Some laws have been amended to provide speedier justice to women. Special Courts have been set up to deal with offences against women and Fast Track Courts have been established to ensure speedy trial of undertrials. Specialised courts, viz., Family Courts, about 84 in number, have been established in 18 States and Union Territories, since the year 1984, to deal with the issues pertaining to family matters, like marriage, divorce, child custody, guardianship, maintenance, etc. However, in most of the courts, a large number of cases pertain to the claim of maintenance from the husband. The functioning and efficacy of these courts had engaged the attention of the Parliamentary Committee on Empowerment of Women. The Government is considering the suggestions made by the Committee. The Government has taken note to ensure appointment of more number of women judges to the Family Courts as stipulated in the Family Court Act, 1984.

Article 51 of the Constitution imposes an obligation on the State to foster respect for international law and treaty. However, the treaty provisions cannot be invoked without the same being incorporated through enabling legislation.

Various Schemes for empowerment of women

Implementation of the standard of the CEDAW Convention at the domestic/private sphere is still a challenge to be addressed. The Government is strengthening the existing legislation and developing institutional machinery. The Government has initiated the Sarva Shiksha Abhiyan (SSA), a national programme for universal primary education. There are several schemes of the government such

as ‘Swayamsidha’¹⁷, the Support to Training and Empowerment Programme (STEP)¹⁸. The Rashtriya Mahila Kosh (RMK)¹⁹, the Swarnajayanti Gram Swarozgar Yojana (SGSY)²⁰ The Sampurna Grameen Rozgar Yojana (SGRY)²¹ Under the Urban Self-employment Programme (USEP) of Swarna Jayanti Shahari Rozgar Yojana (SJSRY) assistance is provided to the urban poor, especially women, living below the urban poverty line. Mahatma Gandhi National Rural Employment Guarantee Scheme (MNREGA) etc.

Initiatives by the Judiciary

The judiciary through its proactive role has applied the principles of the treaty in many judgments.

The judiciary in a number of decisions has struck down the discriminatory provisions of law and rules, such as, in *C.B.Muthamma v. Union of India*²² wherein the service rules requiring a female employee to obtain permission of the Government in writing before her marriage and denying her right to be appointed on the ground that the candidate is a married woman was held to be discriminatory against women. In *Air India v. Nargeesh Meerza*²³ the service condition that terminated the services of an Airhostess on becoming pregnant was struck down as

¹⁷ launched in the year 2001, is an integrated program for the empowerment of women through the net work of self help groups of women by ensuring their direct access to and control over resources

¹⁸ This programme provides updated skills and knowledge to poor and asset-less women in traditional sector, such as dairying, animal husbandry, sericulture, handlooms, social forestry, etc.

¹⁹ since its registration in 1993, has established its credentials as the premier micro-credit agency with its focus on women and their economic empowerment through the provisions of credit to poor and asset- less women in the informal sector.

²⁰ Aims at bringing beneficiary families above the poverty line by providing them with income-generating assets through a mix of bank credit and Government subsidy.

²¹ Endeavour to create 30 per cent of the employment opportunities for women. The National Maternity Benefit Scheme aims at assisting the expectant mother by providing Rs. 500 each for the first two live births. This has recently been revamped as the **Janani Suraksha Yojana**. The Rural Sanitation Programme ensures construction of village sanitary complexes exclusively for women, where individual latrines are not feasible.

²² AIR 1979 SC 1868

²³ AIR 1981 SC 1829

being discriminatory. In *Vasantha v. Union of India*²⁴ Section 66 of the Factories Act which prohibited night shift work for women was held to be discriminatory.

In *Madhu Kishwar v. Union of India*²⁵ and in *C.Masilamani Mudliar and others v. The idol of Swaminathaswami Thirukoil and others*²⁶ property rights for women were upheld. In *M/s Mackinnon Mackenzie and Co Ltd v. Audrey D'Cost*²⁷ provided for equal wages. *Delhi Domestic Working Women's Forum v. Union of India*²⁸ and *BodhiSattwa Gautam v. Subhra Chakroborthy*²⁹ and *Chairman Railway Board v. Chandrima Das*³⁰ provided for compensation in rape cases.

*Municipal Corporation of Delhi v. female workers (Muster Roll case)*³¹ ensured maternity benefit for contract workers. And in *Gita Hariharan*³² case regarding guardianship rights interpreted the provisions in favour of women dealing with the rights of woman to be a guardian for the minor child, the principles of the Convention have been applied to hold the provisions of the Hindu Guardianship and Minority Act, 1956, as being discriminatory. The *Daniel Latiff's*³³ case enabled Muslim woman to seek maintenance from divorced husband.

²⁴ 2001 (ii) LLJ 843

²⁵ AIR 1996 SC page 1864

²⁶ AIR 1996 SC 1697

²⁷ AIR 1987 SC 1281

²⁸ (1995) 1 SCC 14

²⁹ AIR 1996 SC 922

³⁰ AIR 2000 Sc 988

³¹ AIR 2000 SC 1274

³² AIR 1999 SC 1149

³³ 2001 (7) SCC 740