



Right To Free Legal Aid: A Mandate For Women Empowerment In India

¹Ms. Sonia Devi

²Dr. Amandeep Kaur

¹ Assistant Professor, University School Of Laws, Guru Kashi University Talwandi Sabo, Bathinda

² Assistant Professor, Guru Nanak Dev University, Regional Campus, Gurdaspur

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Abstract

The Constitution of India is based on the ideals of liberty, equality, apart from its principles of upholding the dignity of human beings. Right to free legal aid, which was earlier incorporated in Chapter IV titled as "Directive Principles of State Policy" of the Constitution of India, has now been pronounced as a fundamental right under Article 21 (right to life and personal liberty) of the Constitution by the dynamic Indian Judiciary. This privilege is available to certain special categories of people in India which undoubtedly includes women. This provision has strengthened the indigent Indian women inevitably, in their fight for justice at various facets of life. It is a fact that a large majority of women in our country are still economically dependent on men. In this background, it becomes more important to confer such right upon them. But unfortunately, most of the Indian women are ignorant about their rights including their right to free legal aid and they keep on facing the miseries of life. This paper is an attempt to evaluate the entire concept of free legal aid services to the women of our country along with the obstacles in their way to avail this right. An effort is further made to make them aware about their above stated right.

Key words: Free legal aid, Indigent women, Dignity of women.

"You can tell the condition of a nation by looking at the status of its women"

– Pt. Jawaharlal Nehru

I. INTRODUCTION

According to Indian tradition since the inception of society women has been treated with great honour and dignity, though occasionally we do

find derogatory references to women. While analyzing the Indian History and Purans, the facts reveal that the relationship between a man and a woman has always been in a state of fluctuation and there has been a sea change in the position, rights and status of women since the dawn civilization.¹ One of the views about this different role for women is that in such kind of society the nature of woman must be different from man's nature.²

Human Rights of women now occupy the center stage of the world attention. International law as well as national law takes a pro-women view whenever required, treating women as equal partners in sustainable human development. Women comprise nearly half of the world population and the same ratio is true about almost every country. It is now increasingly of humanity. So besides the international level, without caring for women, safeguarding their human rights and their active participation in the development process no country can progress.³

Empowerment⁷ may be described as a process which helps people to assert their control over the factors which affect their lives. Empowerment of women means developing them as more aware individuals, who are politically active, economically productive and independent and are

¹Wayman, A. (1970). Varnaa`srama-dharma; *Ends and Obligations of Man*, In: Joseph W. Elder (ed.) *Lectures in Indian Civilization*, Kendall/Hunt Publishing Company: Dubuque, Iowa pp. 68 ff. p.284

² Buchan, Morag: "Plato on Women." *Feminist Studies*. 1975. Volume 2. Pg. 131-138

³ Dr. jyoti Rattan, "Women and Law"(2021) , Bharat Law House Pvt.Ltd. New Delhi



able to make intelligent discussion in matters that affect them⁴.

Batliwala (1974) defines empowerment as “the process of challenging existing power relation and of gaining greater control over the source of power”. Women’s empowerment is seen as the process and the result of the process of:

- Challenging the ideology of male domination and women’s subordinations.
- Enabling women to gain equal access to and control over the resources (material, human and intellectual)⁵.

In India, the empowerment process has already begun. We are now witnessing a steady improvement in the enrolment of women in schools, colleges and even in profession institutes. Their health is better as compared to earlier decades. In this decade, women are entering into the job market in increasing numbers. They are showing their skills even in non-traditional sectors like police, defense, administration, media and research fields. Twenty-six laws have been enacted so far to protect women from various crimes. The recent law on the 'protection of women against domestic violence' satisfies the long pending demand of the women activities. In the political field, the reservation for women is a significant step forward towards their political empowerment. When thirty-three percent reservations for women in Parliament becomes a reality, women's voice will be heard in the highest forum of democracy. The day, women of India will reach zenith in their empowerment. But a lot of work has to be done as there is a category of women (who consider themselves highly educated) that proudly accepts that they don't have digital literacy even though they own a computer, they cannot even operate bank accounts or make travel arrangements for family or handle hospital admissions even during emergencies⁶.

Women empowerment is a global issue, which has gained momentum in recent decades as the development of a society or a nation depends on the

⁴ International Journal of Research in Social Science, Vol. 7, Issue no. 10, October 2017, p.g. no.88

⁵ R.R. Kumari and K.N. Yadav, “Economic Reform and Empowerment of Women: Issues, Options and Concerns”, in N.K. Thakur and R.N. Thakur (eds) Impact of Economic Reform Policies on Dalit and Weaker Sections, Deep & Deep Publications, New Delhi (2008), p. 106.

⁶ Empowerment of Women in India, International Journal of Multidisciplinary Education Research, ISSN: 2277-7881, p.g. 104

social as well as economic wellbeing of women. Women Empowerment means to create an environment for women where they have the right to make their own decisions. Women Empowerment ensures that women have equal rights and also gives them the confidence to claim their rights. It also ensures that women live their lives freely and with a sense of self-worth and dignity. Women Empowerment gives women an opportunity for education and equal employment opportunities without any gender bias. It also means to provide a safe and comfortable working environment for women.⁷

Indian society consists of people belonging to almost all kinds of religious beliefs. In every religion women are given a special place and every religion teaches us to treat women with respect and dignity. But somehow the society has so developed that various types of ill practices, both physical and mental, against women have become a norm since ages. For instance, Sati Pratha, practice of dowry, Parda Pratha, female infanticide, wife burning, sexual violence, sexual harassment at work place, domestic violence and other varied kinds of discriminatory practices; all such acts consist of physical as well as mental element.

WHAT IS WOMEN EMPOWERMENT?

Women empowerment in simple words can be understood as giving power to women to decide for their own lives or inculcating such abilities in them so that they could be able to find their rightful place in the society.

According to the United Nations, women’s empowerment mainly has five components:

- Generating women’s sense of self-worth;
- Women’s right to have and to determine their choices;
- Women’s right to have access to equal opportunities and all kinds of resources;
- Women’s right to have the power to regulate and control their own lives, within and outside the home; and
- Women’s ability to contribute in creating a more just social and economic order.

Thus, women empowerment is nothing but recognition of women’s basic human rights and creating an environment where they are treated as equals to men⁸.

⁷ Dr. Tazyn Rahman Women Empowerment

⁸ <https://www.researchgate.net/publication/353751792>, Critical Analysis of Legislative Framework of Women



INTERNATIONAL COMMITMENTS OF INDIA AS TO WOMEN EMPOWERMENT

India is a part to various International conventions and treaties which are committed to secure equal rights of women. One of the most important among them is the **Convention on Elimination of All Forms of Discrimination against Women (CEDAW)**, ratified by India in 1993.

Other important International instruments for women empowerment are: The Mexico Plan of Action (1975), the Nairobi Forward Looking Strategies (1985), the Beijing Declaration as well as the Platform for Action (1995) and the Outcome Document adopted by the UNGA Session on Gender Equality and Development & Peace for the 21st century, titled "Further actions and initiatives to implement the Beijing Declaration and the Platform for Action". All these have been whole-heartedly endorsed by India for appropriate follow up⁹.

International Covenant on Civil and Political Rights also under Article 14 (3)(d) guarantees to everyone: "Right to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it"¹⁰.

List of Women Empowerment Schemes in India

Launched on 22nd January 2015 by the Prime Minister of India in Haryana, the Beti Bachao Beti Padhao Scheme ensures survival, protection and education of girl children. The scheme aims to address issues of the declining sex ratio over the past few years, create social awareness and enhance the efficiency of welfare services developed for girls.

Who Are the Beneficiaries of This Scheme?

The Beti Bachao Beti Padhao Scheme is applicable to the whole country. However, to ensure maximum reach, this scheme is divided into 3 groups. These are -

- Primary Group (young and married couples, pregnant mothers and parents)
- Secondary Groups (the youth of India, adolescents, in-laws, doctors, private hospitals, nursing homes, diagnostic centres)
- Tertiary Groups (general people of the country, religious leaders, voluntary organisations, frontline workers, officials, media and women SHGs Sector)

Working Women Hostel

To promote safe accommodation and environment for working women and provide daycare facilities for their children, the Government of India has introduced the 'Working Women Hostel Scheme'. Through this women empowerment scheme, the Government provides grant-in-aid for construction and new hostel buildings and extension of an existing building in rented premises.

Who Are the Beneficiaries of This Scheme?

- Working Women (single, widowed, married, divorced, separated).
- This scheme provides a particular preference for working women belonging to the disadvantaged sections of society.
- The Scheme guidelines also provide for the reservation of seats for physically challenged beneficiaries.

One Stop Centre Scheme

Next in the list of women empowerment schemes in India comes One Stop Centre Scheme. It is a centrally sponsored scheme and is funded through the Nirbhaya fund. State governments receive 100% central assistance to protect women affected by violence (gender-based such as acid attacks, rape, and sexual harassment) in public and private spaces. This scheme facilitates emergency (medical), legal aid and counselling, non-emergency services under one roof to combat all forms of violence against women.

Who are the Beneficiaries of this Scheme?

All women affected by violence, irrespective of class, caste, region, religion, marital status or sexual orientation, can get benefits under the One Stop Centre Scheme. Any women or girls facing violence or willing to know about various women related

Empowerment in India (visited on 28.11.2022) p.g. 76

⁹ <https://presidencyuniversity.in/specific-laws-for-women-empowerment-in-india/#:~:text=International%20Com> (visited on 28.11.2022)

¹⁰ <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights> (visited on 28.11.2022)



schemes or programs also falls within the said category of beneficiaries.¹¹

Women Helpline Scheme

Women Helpline Scheme is one of the government schemes for women empowerment that intends to give 24x7 emergency responses to women affected by violence in private or public spaces. The Universalization of women helpline numbers has been done in every State and Union Territory through a single toll-free number (181) that provides immediate support to women nationwide. Further, this scheme creates awareness about women empowerment schemes and programs.

Legal Aid and Empowerment initiatives launched

The then Minister of Law & Justice and Electronics & IT, Sh. Ravi Shankar Prasad have appealed to all those involved in the delivery of justice to join hands in improving the system to ensure that assistance is available to every citizen irrespective of his socio-economic position. He said this after the launch of three key legal aid and empowerment initiatives of the Department of Justice – including ‘Pro bono legal services’, ‘Tele law service’ and ‘Nyaya Mitra scheme’.¹²

LEGAL AID: THE CONCEPT

The ‘rule of law’ and ‘equality before law’ are the two fundamental pillars of a democracy. The democracy, as a system of governance, is placed on the bedrock of equality of all citizens bequeathed with certain liberties and freedoms which can be enjoyed by the citizens only in a proper socio-economic climate, nurturing the legal provisions aimed at restoring the deprived rights, if any. The protection of law to poor, illiterate and weak is important to ensure equal justice.¹³

Legal Aid implies giving free legal services to the poor and needy who cannot afford the services of a lawyer for the conduct of a case or a legal proceeding in any court, tribunal or before an authority. Legal Aid is the method adopted to ensure that no one is deprived of professional advice and help because of lack of funds. Therefore, the main object is to provide equal justice is to be made

¹¹ <https://www.godigit.com/guides/government-schemes/women-empowerment-schemes-in-india> (Visited on 19.1.2023)

¹² Press Information Bureau Government of India Ministry of Law & Justice launched on 20-April-2017.

¹³ Sujan Singh, *Legal Aid Human Rights to Equality*, Deep & Deep publications, New Delhi, 1998, p-1.

available to the poor, down trodden and weaker section of society. In this regard Justice P.N.

Bhagwati rightly observed that:

“The legal aid means providing an arrangement in the society so that the machinery of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement of its given to them by law, the poor and illiterate should be able to approach the courts and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts. Legal aid should be available to the poor and illiterate, who don't have access to courts.”¹⁴

Therefore, legal aid is to be made available to the poor and needy by providing a system of government funding for those who cannot afford the cost of litigation.

CONSTITUTIONAL PROVISIONS ON LEGAL AID

The Constitution of India gives much emphasis on the constitutionalism and rule of law. In India the rule of law is regarded as a part of the basic structure of the Constitution and also of natural justice. The rule of natural justice says that individuals should not be penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the cases against them, a fair opportunity to answer them, and the opportunity to present their own cases.

Further, Indian Constitution makers and our founding fathers were very determined to provide equal rights to both women and men. The Constitution of India is one of the finest equality documents in the world. It provides provisions to secure equality in general and gender equality in particular. Various articles in the Constitution safeguard women's rights by putting them at par with men socially, politically and economically. The Preamble, the Fundamental Rights, DPSPs and other constitutional provisions provide several general and special safeguards to secure women's human rights. The **preamble** of the Constitution secures to its citizen, social, economic and political justice. Thus it treats both men and women equal. The policy of women empowerment is well entrenched in the Fundamental Rights enshrined in our Constitution. For instance:

Article 14 of the Constitution makes it clear that the State shall not deny to any person equality before law or the equal protection of the laws within the

¹⁴ Government of Gujrat, *Report of the legal aid Committee*, 1971, para 1.08, p-5.



territory of India. The aim of Article 14 is to ensure equal justice. The guarantee of equal justice is meaningless if the poor or illiterate or weak persons cannot enforce their rights because of their poverty or illiteracy or weakness. Article 14 ensures to women the right to equality. **Article 15(1)** specifically prohibits discrimination on the basis of sex. **Article 15(3)** empowers the State to take affirmative action's in favour of women. **Article 16** provides for equality of opportunity for all citizens in matters relating to employment or appointment to any office.

These rights being fundamental rights are justifiable in court and the Government is obliged to follow the same¹⁵.

Directive principles of State Policy also contains important provisions regarding women empowerment and it is the duty of the government to apply these principles while making laws or formulating any policy. Though these are not justifiable in the Court but these are essential for governance nonetheless. Some of them are:

Article 39 (a) provides that the State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood.

Article 39 (d) mandates equal pay for equal work for both men and women.

Article 42 provides that the State to make provision for securing just and humane conditions of work and for maternity relief.

So far as right to free legal aid is concerned, **Articles 38 and 39**, of the Constitution of India lay down clear mandate in this regard. According to Article 38 (1) the State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic or political, shall inform all the institutions of the national life.

Article 39-A¹⁶ directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Through numerous decisions, the Apex Court has pronounced right to free legal aid or free legal service is an essential fundamental right guaranteed by the Constitution. It forms the basis of reasonable,

¹⁵Article 14,15 and 16 of The Indian Constitution

¹⁶ Inserted by the Constitution 42nd Amendment Act, 1976, w.e.f.3-1-1977.

fair and just liberty under **Article 21** of the Constitution of India, which says, "No person shall be deprived of his life or personal liberty except according to procedure established by law". A few of those decisions are as under:-

In *State of Maharashtra v. Manubhai Pragaji Vashi*¹⁷, The Supreme Court has made it quite clear that it is now well established that the failure to provide free legal aid to an accused at the cost of the State unless refused by the accused, would vitiate the trial. In *M.H Hoskot v. State of Maharashtra*¹⁸, **Justice Krishna Iyer** observed that providing free legal aid is the State's duty and not Government's charity. In *Hussainara Khatoon vs. State of Bihar*¹⁹, speedy trial has been accepted as a segment of legal aid.

JUDICIAL INITIATIVE TOWARDS EMPOWERMENT OF WOMEN

Though plethora of legislations exists, due to ineffective enforcement, women are exploited by the male dominated society. Male dominated society has found ways to circumvent the provisions of the Act and act as a blockade against women empowerment. Due to the failure of the legislations to protect women, judiciary has come forward to protect women. In protecting the women, the Indian Judiciary has removed all the procedural shackles and has completely revolutionised constitutional litigations. The judiciary has encouraged widest possible coverage of the legislations by liberal interpreting the terms. The judiciary has shifted from doctrine approach to the pragmatic approach, which was conducive to all interests in the society. The Courts have shown greater enthusiasm in granting the constitutional provisions for all women²⁰

Section 304 of the **Criminal Procedure Code** provides that where in a trial before the Court of Session, the accused is not represented by a pleader and where it appears to the Court that the accused has not sufficient means to engage a pleader; the Court shall assign a pleader for his defence at the expense of the State. Section 304 makes it clear that the State is under an obligation to provide legal assistance to a person charged with offence triable before the Court of Session. It enables the State Government to direct that these provisions shall

¹⁷AIR 1995 SCC (5)730.

¹⁸AIR 1978 SC 1548.

¹⁹AIR1979 SC 1369.

²⁰Indian Journal of Applied Research Volume: 5 | Issue: 12 | Special Issue Dec 2015 | ISSN - 2249-555X, p.g.141



apply in relation to any class of trials before other courts in the State²¹.

Order 33 of the **Civil Procedure Code** provides in respect of the suit by indigent person. On the application to sue as indigent person is being granted the plaintiff shall not be circumstances of the case so requires, assign a pleader to him. This benefit has now been extended to the dependants also²².

Above all a separate legislation, **The Legal Services Authority Act, 1987** has been enacted to constitute the Legal Service Authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organise Lok Adalats to secure that the operation of the legal system promotes justice.

The Legal Services Authorities Act establishes statutory legal services authorities at the National, State and District level. It makes provisions in relation to Lok Adalat. The main object of the Lok Adalat is to provide quick justice at less expense.

Though there was a statutory procedure providing free legal aid by appointing the advocate for defending criminal case and by exempting court fees in civil cases, it was not really making any significant impact on the ability of the underprivileged people to get the Judicial Redressal for their grievances. Hence under tremendous constitutional persuasion from the Supreme Court the Legal Services Authorities Act, 1987 was passed by the parliament of India. The Act prescribes the criteria for giving legal services to the eligible persons. It makes a person eligible for assistance under the act if he is –

- (a) A member of a Scheduled Caste or Scheduled Tribe;
- (b) A victim of trafficking in human beings or beggar as referred to in Article 23 of the Constitution;
- (c) A woman or a child;
- (d) A mentally ill or otherwise disabled person;
- (e) A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- (f) An industrial workman; or
- (g) In custody, including custody in a protective home or in a juvenile home

²¹Section 304 of the Criminal Procedure Code, 1987

²²Order 33 of the Civil Procedure Code, 1908

(h) of in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987; or

(i) A person whose annual income less than rupees fifty thousand or such other higher amount as may be prescribed by the State Government. This limit on income can be increased by the state governments. Limitation as to the income does not apply in the case of persons belonging to the scheduled castes, scheduled tribes, women, children, handicapped, etc.²³

SPECIFIC LAWS FOR WOMEN EMPOWERMENT IN INDIA

Here is the list of some specific laws which were enacted by the Parliament in order to fulfil Constitutional obligation of women empowerment:

- The Equal Remuneration Act, 1976.
- The Dowry Prohibition Act, 1961.
- The Immoral Traffic (Prevention) Act, 1956.
- The Maternity Benefit Act, 1961.
- The Medical termination of Pregnancy Act, 1971.
- The Commission of Sati (Prevention) Act, 1987.
- The Prohibition of Child Marriage Act, 2006.
- The Pre-Conception & Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

The Sexual Harassment of Women at Work Place (Prevention, Protection and) Act, 2013.

Above mentioned and several other laws are there which not only provide specific legal rights to women but also gives them a sense of security and empowerment²⁴.

Current Trend

In a recent case, the Delhi HC Steps in to ensure Immediate Legal Aid and Compensation to minor raped in school.²⁵ Besides providing legal aid, the DSLSA dispenses compensation under the Delhi Victim Compensation Scheme, 2015. The bench

²³ Section 12 of the Legal Services Authorities Act, 1987.

²⁴ Ritu Mehla, International Journal of Research in Engineering, IT and Social Sciences, ISSN 2250-0588, Impact Factor: 6.452, Volume 07 Issue 08, August 2017, Page-36

²⁵ LIVE LAW NEWS NETWORK SEPTEMBER 12, 2017.



said it is also the mandate of the legal services authorities under Article 39A of the Constitution of India and Section 12 of the National Legal Services Authority Act, 1987, to ensure legal aid to needy persons.

II. CONCLUSION AND SUGGESTIONS

The most critical component of women's empowerment is found to be education. It leads to improved economic growth, low fertility rate, health and sanitation and an awareness of factors that disempowered women. Work participation rate and political participation also grows in women's education. The expansion of the market economy and industrialization and globalization brought increased inequalities, resulting in loss of livelihoods, erosion of natural resources and with it decreased women's access to water, fuel, fodder and traditional survival resources. It also brought new forms of exploitation-displacement, tourism, sex trade and retrenchment to mention a few. Women in such countries shouldered the brunt and this phenomenon was labelled feminization of poverty. In conclusion, it can be said that women in India, through their own unrelenting efforts and with the help of Constitutional and other legal provisions and also with the aid of Government's various welfare schemes, are trying to find their own place under the sun. And it is a heartening sign that their participation in employment- government as well as private, in socio-political activities of the nation and also their presence at the highest decision making bodies is improving day by day.

Judiciary and local authorities need to be more vigilant in protecting the rights of women. The existing legislation affecting relating to women will be reviewed to enhance their effectiveness and additional legislation measures or amendment to be taken up based on the emerging needs. Give encouragement to women to develop the quality of entrepreneurship, so that gives attainable strength to women and remove gender inequality.

The need of us is to educate and sensitize male members of the society regarding women issues and try to inculcate a feeling of togetherness and equality among them so that they would stop their discriminatory practices towards the fairer sex.

For this to happen apart from Government, the efforts are needed from various NGOs and from enlightened citizens of the country. And first of all efforts should begin from our homes where we must empower female members of our family by providing them equal opportunities of education, health, nutrition and decision making without any discrimination.

Because India can become a powerful nation only if it truly empowers its women.

OUTCOMES

Various constraints in achieving the desired level of empowerment are also identified. Important among them are poverty, social norms and family structure, lack of awareness about legal and constitutional provision etc. Generally speaking the women of India are relatively disempowered and they enjoy somewhat lower status than that of men. In spite of so many efforts undertaken by government and NGOs the picture at present is not satisfactory. Mere access to education and employment can only help in the process of empowerment. These are the tools or the enabling factors through which the process gets speeded up. However, achievement towards this goal depends more on attitude. Unless the attitude towards the acceptance of unequal gender role by the society and even the women themselves changed women cannot grab the opportunity provided to them through constitutional provision, law etc. Till then we cannot say that women are empowered in India in its real sense.