

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 3 | Issue 5

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Challenges Faced by Poor Women

ADITYA SINGH¹

ABSTRACT

The poverty is a state in which human being is not able to maintain basic resources required to maintain minimum level of lifestyle, the term lifestyle covers primary issues to human existence such as food, clothing, shelter, as well as byproducts/secondary issues which directly come from the primary issues such as: physical existence of a human being and mental health. On further bifurcation we understand that physical existence covers physical health, level of nutrition, level of hygiene, level of living conditions and mental health covers emotional, physiological, educational needs. India is a patriarchal society and hence the gender element makes it extremely difficult and harsh for such women who are crippled in this vicious circle of poverty to easily make a fulfilling life. Keeping this in mind the aim of this paper is to evaluate the real fundamental problems of poor women, we shall also discuss whether law has benefited and improved the lives of the poor women living in poverty. the life of a poor women is full of compromise and it extends even to the point where it negatively affects their physical as well as mental health more negatively in cycle of poverty, despite many legislations are present but the process of litigation is expensive and when the question of making ends meet dominates all other problems such women often suffer in silence. Poverty starts discrimination in discrimination when a poor women is just a girl child and in between somehow that girl child transforms into a women with sight full of hopelessness, we shall discuss these aspects with respect to law and also discuss the impact of implementation of law with respect to women.

I. INTRODUCTION

Indian independence gave birth to freedom and an unavoidable change, now the land of free, the biggest task is to change the dynamics of the society in matters of equality among gender, caste, creed and bring all stakeholders at par, hence the Indian constitution adopted by the legislature carrying this as one of the founding principles. The Preamble of the Indian constitution starts with we, the people of India and further goes on to talk about setting up a DEMOCRATIC, REPUBLIC, SOCIALIST, state and secure all its citizens JUSTICE, LIBERTY, EQUALITY and FRATERNITY. All these words are written in capital letters

¹ Author is a student at Amity Law School, Amity University, Noida, India.

which implies more importance for them.

The fundamental rights as enshrined under the part three and the directives principles of state policy as written under part talk about ways to achieve the morals written in the preamble

Everyone including women shall have access to primary education, health, voice and opportunity to get employed, basically sustain food clothing and shelter for all. This is still a challenge as India is a male dominated society in all aspects, usually the head of the household is male, earner in a household is male, owner of property/assets is male. The situation of middle class and higher middle class women has improved over the years, as they became aware of their rights and duties, they have been at instances able to make their voices heard and take strong steps to protect their fundamental rights as enshrined under chapter 3 of the constitution. But when this situation is evaluated in context of the poor women we see that situation has changed but the rate of such change is very very slow. The constitution in a sense has failed to give them a sense of security, the one biggest factor can be little to no knowledge of their rights and duties, either the executive failed to identify them or they failed to reap the benefits of development, even if they failed to reap the benefits of development then executive implementation has been either faulty or compromised in certain places.

“Poverty is lack of shelter. Poverty is being sick and not being able to see a doctor. Poverty is not having access to school and not knowing how to read. Poverty is not having a job, it is fear for the future, living one day at a time. Poverty is losing a child to illness brought about by unclean water. Poverty is powerlessness, lack of representation and freedom.”² When understood in poor women’s context it shows us that they are the worst hit (even in comparison to poor men). Poor women do not have any form of food security and are often undernourished, “right to life and liberty encompasses right to food as well”³.

In general Indian women are “anemic”⁴ and it won't be wrong to say that pregnant poor women have low levels of body weight and are often anemic which affects their health as well as their child’s health negatively. The fundamental rights under “Article 14”⁵ talks about right of equality, “Article 15”⁶ prohibits discrimination, “Article 16”⁷ deals with equal opportunity, “Article 21”⁸ talks about right of life and personal liberty, “Article 21A”⁹ right of education for

² World bank's definition of poverty

³PUCL vs Union of India; in supreme court, petition 196 of 2001

⁴ 51% of Indian women aged 15-49 are anemic as per global nutrition report of 2017

⁵ INDIA CONST. art. 14

⁶ INDIA CONST. art. 15.

⁷ INDIA CONST. art. 16.

⁸ INDIA CONST. art. 21.

⁹ INDIA CONST. art. 21A

6-14 years old, where as “Article 23”¹⁰ prohibits trafficking and “Article 24”¹¹ does not allow employment of children in hazardous industries, factories and mines talks about responsibility of the state to safeguard these guaranteed constitutional rights.

Directive principles under state policy through, “Article 39”¹² asks for social order to promote welfare of the people, “Article 40”¹³ asks state to promote right to work and education, “Article 42”¹⁴ prescribes just and humane work conditions and maternity benefits, “Article 45”¹⁵ talks about compulsory elementary education upto 6years of age, “Article 46”¹⁶ asks the state to secure economic as well as educational interests of schedule castes, schedule tribes and the weaker citizens and “Article 47”¹⁷ talks about improving level of nutrition. These articles give direction for formulating policies to ensure social justice of its citizens. These directive principles are enforceable in court of law without legislative action

For the purpose of this paper, we shall refer to these articles in the context of poor girls and poor women. More importantly it becomes important to reproduce these articles in entirety as all the policies, laws that have ever been made derive power from here. If the schemes and laws fail in providing relief then it is a clear violation of these articles, though the directive principles are not unenforceable but the moment law is made regarding it by the legislative they gain status of enforceability. India has the second largest population in the world and percentage of women experiencing the same can be small but substantially significant¹⁸,

The condition of poor women specifically has been under constant agony, the question remains how to empower the quarter of the population and more importantly how to accelerate the rate of empowerment specially for women.

In this paper we shall discuss the problems of the poor women in the first part, in part two we shall talk about the legislative schemes and executive action, in part three we shall talk about the remedies and conclusion.

II. PART 1

Even today women of poor households get up in the morning and head to forests to collect firewood and do secondary household tasks,. when a woman is poor owning any form of

¹⁰ INDIA CONST. art. 23

¹¹ INDIA CONST. art. 24.

¹² INDIA CONST. art. 39

¹³ INDIA CONST. art. 40.

¹⁴ INDIA CONST. art. 42

¹⁵ INDIA CONST. art. 45.

¹⁶ INDIA CONST. art. 46

¹⁷ INDIA CONST. art. 47.

¹⁸ This percentage can be bigger than the population of many countries of the world.

property is out of the question, even if such property exists it is usually in the name of male of the house (either husband or father-in-law or grandfather-in-law). If the poor woman is thrown out of the house then her only option is going back to her parents house which again in turn creates a different form of physical and mental harassment for her

As a daughter if she is denied access to education due to mindset of the head of the family then the girls are confined to do household work and their access to education which is their fundamental right under Article 14, 21 and 21A is blocked as it is not taken as a very serious subject, it is still believed that daughter should learn household chores which she has to perform in their “new homes” once they get married and sent off.

The teenage daughters who have not achieved the legal age of 18 years old are also married, the child marriage has decreased significantly but still in practice as per UNICEF “India has the 1.5 million child brides which is highest in the world”¹⁹ despite having “legislation”²⁰. We need to work more extensively.

The schooling structure plays an important role in providing education, but the same is not clear to those who stop their poor girls from going to school but allow the boy of the house. The gender discrimination starts and equality of opportunity stops, the parents of such daughter in practicality prefer to get their daughter employed in households for doing the chores like cleaning, cooking, though employing such children below the age of 14 violates Article 23 and 24 of our constitution and the child and Adolescent Labour (Prohibition and Regulation) Act of 1986 prohibits employment of child in any industry upto the age of 14, nevertheless this happens. The daughter of such house is usually taught compromising and adjustment as the principles of her life even to such a sense that they can even “starve”²¹ themselves to make sure that others in the family get the meal

During adolescence the girls start to menstruate, the basic sanitary napkin which is an essential item becomes inaccessible to them due to poverty such expenses on essential items become luxury for them and even the poverty line of the government does not add these expenses for computing the poverty line. guaranteeing the right to water, sanitation, and hygiene is “an enormous human rights challenge of the twenty first century that has yet to be met.”²².

¹⁹ While the prevalence of girls getting married before age 18 has declined from 47 per cent to 27 per cent between 2005-2006 and 2015-2016, this is still a huge number.

²⁰ The Prohibition of Child Marriage Act, 2006.

²¹ A quarter of women of reproductive age in India are undernourished, with a body mass index (BMI) of less than 18.5 kg/m (Source: NFHS 4 2015-16).

²² Opinion of Craig Mokhiber; Chief of the UN Human Rights Office Development and Economic and Social Issues Branch;

<https://www.ohchr.org/en/newsevents/pages/everywomansrighttowatersanitationandhygiene.aspx>.

The girls if they were enrolled in schools are usually asked to drop out or stop going because they start menstruating and maybe parents consider her to be unfit to study or they may be married off to their “new” homes. If a menstrual cycle becomes the reason cannot be justified. When an adolescent is forced into the sanctity of marriage it makes her task more difficult when compared to poor girls getting married after attaining the age of majority. The mindset, level of maturity, understanding does play an important role in it. If a married girl by chance bears a child then such pregnancy can be dangerous for both the fetus and the mother as they are not ready physically mentally and emotionally to bear it. Another aspect that needs to be discussed is pregnancy of poor women in general, low level of nutrition, anemia and malnutrition can hurt the mother as well as the child.

In all of it the girl who has become a woman is always taught that she is the passenger of the car of her life should always take secondary position in decisions revolving the household, in addition to doing all the household chores if they are employed then the wage they earn generally goes into the hands of their husbands, they are burdened with additional chores such as in rural areas it can be helping husbands by working in fields and in urban areas it can be helping husbands in their workplaces. If the males of the household has any addiction such as to liquor, smoking or prostitution then the family income becomes more squeezed and managing expenses (mainly food or rent) becomes very very difficult. If the women is wage worker and becomes pregnant then the benefits of paid maternity leave is not available to them, if they are absent they won't get the wage, because of wide availability of labour and inadequate protection for wage working women, the self-employed women who sell vegetables or work in fields also don't enjoy maternity benefits as mentioned in article 45 of the constitution. the legislative action in this regard will be discussed in part 2 of this paper.

Sometimes the wife due to factors such as not working properly in the house, death of husband, not able to take care of the household, argue with husband, not able to give birth, if gave birth then always to girl or demand basic things which are essential but become luxury in such households, then the husbands/ head of such families throw them out of the house with or without their children, leaving them only one option to go their parents place where they are kept as outsider and considered as liability, they are required to work, usually they have to give their earnings to their father, brother or any senior male member to reimburse them for living and using their house to stay. The divorce for poor women is not formal always, once they are asked to leave is as good as good divorce.

When the poor women attains the age of 60 and above, the control of the household in matters of decision making and finance generally goes to the son, either father gives it to them or after

the death sons assume those duties, even then also her role is limited, if she works the money goes in sons hands and if not then she is just as a piece of furniture waiting for her death.

if the woman somehow becomes the head of the family as she has no son to look after her and her husband is dead but she does have daughters, then all responsibilities lie on her, in such case security of other members becomes a hassle for all of them, Apart from money, food and shelter too.

III. PART 2

It would be unfair to say that the legislative and executive has not done much, many efforts in the form of schemes/laws have been successful but still a long way to go. The population living in multidimensional poverty has decreased from “54. 7% to 27. 5%²³. The novel coronavirus or covid19 and the lockdown associated with it could increase this number.

The sarva shiksha abhiyan and right of Children to Free and Compulsory Education Act, 2009 ensures elementary as well as primary school upto 14 years of age for all children, Such as free books, stationary, school bags, uniforms and many other benefits. The act has provisions for separate toilets girls can be seen as a legislative compassion to understand its importance of girls. we need to understand it more compassionately that a girl child’s education has to be taken more seriously. The enrollment of girls in school is beginning of the process but continuing and not dropping out in between is the challenge.

The initiative of Beti Bachao Beti padhao which aims at changing the minds of the people and simultaneously improving the male to female ratio in the society has been successful but it would achieve more if the scheme had more. The Government has set up special schools for the girls under Kasturba Gandhi Balika Vidyalaya, the few challenges faced by these schools can range from Lack of infrastructure, non availability of adequate teachers, dropouts.

The prohibition of child marriage Act 2006 has decreased the number of child marriages, but there is a long way to go to finish it.

The biggest employment guarantee scheme that has been implemented is the Mahatma Gandhi National Rural Employment Guarantee Scheme with aim to provide employment to one member of poor rural household, with minimum 100 days of employment, another feature of this scheme is one-third of the beneficiaries should be women, this is a very successful scheme and has received worldwide recognition. From the last 7 years more than 50% of the

²³<https://www.in.undp.org/content/india/en/home/sustainable-development/successstories/MultiDimesnionalPovertyIndex.html>.

beneficiaries of this employment scheme has been female workers, still there is a long way to go. The female labourers do get creche service at the site if there are more than 5 female labourers, as well as two feeding breaks per day. In general the paid maternity leave is not available to female labourers in this scheme only state of chhattisgarh since 2013 is providing one month paid maternity leave female workers which is still less than prescribed 24 weeks.

The unorganised workers social security Act 2008 is a landmark law which for the first time considered giving minimum benefits to the poor labourers who could not enjoy the benefits similarly enjoyed by the organised sector, as per section 3 of this act one of the benefits written for the benefit of poor women labourers is of health and maternity benefit, currently no wage linked scheme has been implemented for maternity benefit under this act, but the one which is existing has been notified under national food security act of 2013, Pradhan Mantri Matru Vandana Yojana (PMVVY) which provides assistance of 6000 rupee to pregnant and lactating mother for first child birth under two phases. keeping child care expenses in mind this amount is highly inadequate and the benefit of this scheme reaches only one third of the eligible mothers.

The destitute women do not have legal protection in the form of parliamentary enactment but various state govts have schemes for them which provide inadequate assistance to them.

IV. PART 3

It becomes important to talk about the ways that can help us to minimise the gap of inequality and bring male-female, boy-girl at par with each other in society, keeping this in mind we have to understand that the female suffering is not only limited to childhood but extends upto their old age.

Firstly we need to we need to establish balika vidyalaya in every village and town with proper infrastructure, teaching staff and latest resources to promote female education,

Secondly, beti bachao beti padhao should be made a statutory act with more detailed framework for education of girl child, it should even have provisions to penalise those who try to hinder access to education of girls.

Thirdly. Sanitary pads should be made available free of cost to all girls through schools, to female labourers at their workplace, make sanitary pads available in ration shops through public distribution schemes and fix free quotas for women through aadhaar card,

Fourthly, if their parents are not allowing them to study or forcing their daughter to work or get married, such people can be disqualified from various government schemes like

MGNREGS, public distribution scheme till the time they dont correct it, this way it will ensure a system of checks and balance,

Fifthly, a women centric employment guarantee scheme which guarantees them work can do wonders to cover all those women, in addition to MGNREGA this will make sure that women employment is better protected.

Sixthly, maternity benefits should be notified by in every scheme and acts of the legislation wherever they are expressly written but not notified for a minimum of 16 weeks for upto two children, the amount so provided should be adequate and respectful to the dignity of women,

Seventhly, poverty line should be calculated keeping, sanitary pads, water, electricity, transportation expenses in mind, “right to life is not just mere animal existence”²⁴,

Eighthly, poverty is no excuse to look on the other side when mental health of poor women is talked about, schemes should be made to provide them with access to specialists free of cost, in schools it should be made mandatory to have a counsellor to benefit children in general and the girl child, and

Ninthly, formulate legislative protection for the destitute women by taking care of their special needs.

Every effort and every action shall help us to eliminate poverty, end suffering of poor women and women in general and destroy this vicious circle of poverty for good. This is a very small step towards our bigger goal of achieving equality.

²⁴ Maneka gandhi vs union of india.