

The Role of Law in Advancing Women's Economic Empowerment in India

Dr. Kartik Agre

Assistant Professor (Senior Scale), School of Law, UPES, Dehradun.

Dr. Vivek Goyal

Associate Professor, Graphic Era Hill University.

Dr. Seema Modi

Assistant Professor, Centre for Legal Studies, Gitarattan International Business School, Delhi.

Dr. Indra Daman Tiwari

Assistant Professor, School of Law, T.S. Mishra University, Lucknow.

Dr. Pallavi Tiwari

Advocate, MP High Court, Jabalpur.

Abstract

Women's economic empowerment is a major part of the ongoing debates related to development and human rights in India today. Neither the translation of constitutional equality guarantees into economic outcomes let alone outcomes for women nor the increasing number of protective laws has been uniform or easy to determine, but remains subject of debate. This paper covers the backdrop provided by the constitutional provisions, labour legislations, property rights, anti-discrimination law and the Supreme Court jurisprudence in matters of women's economic, social and financial participation in India. It examines the shortcomings between formal legal protection and the socio-economic reality that exists on the ground with a special focus on informal protection; enforcement gaps; and intersectional disadvantage. Overall, in the paper, the author has suggested that, though law is an indispensable cornerstone for women's economic empowerment, it remained inadequate in isolation and thus in nature; hence, we need a more coordinated/cumulative approach that should encompass an empowering approach to social policy, simultaneously with legislative/reform measures and a proper institutional machinery.

Keywords: Women's economic empowerment, Indian labour law, constitutional equality, property rights, gender discrimination, judicial activism.

1. Introduction

Economic empowerment the capacity of individuals to participate in, contribute to, and benefit from economic processes on equal terms is widely recognized as foundational to gender equality and human development. In India, the question of how law enables or constrains women's economic participation is particularly urgent, given the country's demographic size, its aspirations as a rapidly developing economy, and the persistent structural disadvantages faced by women across caste, class, religion, and geography.

However, the difference between the idealized architectural design and reality is enormous. This review analyzes the legal tools used to promote women's economic empowerment and evaluates their impact, based on the judicial analysis and empirical research, identifies areas with gaps that lack sufficient tools or whose current tools are ineffective as intended, and offers pathways for reform. After this introduction the paper moves on to six parts: the law following the introduction is dealt with in Part II; the contributions of the judiciary are considered in Part III; property and inheritance rights are covered in Part IV; structural limitations are critically discussed in Part V; policy suggestions are offered in Part VI.

2. The Legislative Framework

2.1. Labour and Employment Legislation

India's statutory regime regarding women economic rights has been gradually progressing since Independence. Even if the bicameral body is elected as a result of an open mandate and Electoral List methods are used, they are still able to fail to pay equal wages in accordance with the Equal Remuneration Act, 1976, which provides that employers must pay equal wages to those engaged in the same work or similar work of men and women, and prevents discrimination in recruitment.¹

The Maternity Benefit Act, 1961, which has been amended significant in 2017, increased paid maternity leave period for two children to twenty-six weeks and provided for crèche facility in case of workplace units with fifty employees.

Institutional redress mechanisms were created through enactment of the “Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013”, based on landmark Supreme Court guidelines announced in the case of Vishaka, as a means to make the workplace environment safe and accessible for women.

More recently the “Code on Wages 2019”, which combines the Equal Remuneration Act with three other wage related laws, aims to provide universal minimum wage protection and gender equality in payment across the different sectors of the economy, even in the informal sector.²

One of the most operationally significant laws, in terms of economic participation, is the “Mahatma Gandhi National Rural Employment Guarantee Act, 2005” (MGNREGA), which specifies that one third of the beneficiaries should be women, and stipulates equal wages for women and men workers.³

2.2. Entrepreneurship and Financial Inclusion

Financial empowerment of women is not just about working but being an entrepreneur or having assets! Under the “Micro, Small and Medium Enterprises Development Act, 2006”, the women entrepreneurs can register their enterprises and enjoy priority loan, government procurements and credit guarantee facilities.⁴

The “Pradhan Mantri Jan Dhan Yojana” (PMJDY), launched in 2014, has been pivotal in advancing financial inclusion, with over 55 per cent of accounts opened under the scheme belonging to women.⁵

Gender based targeted credit facilities under the Stand-Up India scheme and Mahila Udyam Nidhi scheme have been conceived as hassle-free credit options to women entrepreneurs. Although these schemes lead first and foremost in the field of executive policy, they are to a large extent the subject of statutory controls on banking and credit and enterprise development.

3. Judicial Contributions to Women's Economic Rights

The Supreme Court of India has played a transformative role in translating constitutional guarantees into enforceable rights for women in the economic sphere. In “Vishaka v. State of Rajasthan”, the Court, in the absence of legislation, laid down binding guidelines on sexual harassment at the workplace, framing freedom from such harassment as integral to the right to work under Articles 14, 15, 19, and 21.⁶

In “Mary Roy v. State of Kerala”, the Court struck down provisions of the “Travancore Christian Succession Act” that discriminated against women in matters of inheritance, holding them inconsistent with the Indian

¹ The Equal Remuneration Act, 1976 (Act 25 of 1976).

² The Code on Wages, 2019 (Act 29 of 2019).

³ The Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (Act 42 of 2005), s. 6(1) (providing for equal wages).

⁴ The Micro, Small and Medium Enterprises Development Act, 2006 (Act 27 of 2006).

⁵ Pradhan Mantri Jan Dhan Yojana, Ministry of Finance, Government of India, Guidelines (2014).

⁶ Vishaka v. State of Rajasthan, AIR 1997 SC 3011.

Succession Act, 1925 and recognising women's equal right to property as a dimension of their equality and dignity.⁷

In “Anuj Garg v. Hotel Association of India”, the Court invalidated a statutory provision that prohibited women from being employed in establishments serving liquor, holding that protective legislation based on gender stereotypes could not be justified under Article 15(3) if it curtailed rather than advanced women's economic freedom.⁸

“The National Legal Services Authority v. Union of India” decision, while principally concerned with transgender rights, broadly affirmed the right of all persons to self-identification and economic participation free from discrimination a holding with significant implications for women at the intersection of gender and other identities.⁹

In “Vineeta Sharma v. Rakesh Sharma”, the Constitution Bench definitively clarified that daughters also possess equal coparcenary rights in the property of a Hindu Undivided Family (HUF) by birth and reiterated the stance of the Hindu Succession (Amendment) Act, 2005 to be applied to HUF properties.¹⁰

In certain significant instances, as Indira Jaising has pointed out, the Court has served as a forum of progressive norm setting in the area of women rights when the legislature has lagged behind.¹¹

But has noted Ratna Kapur and Brenda Cossman that judicial rhetoric on gender frequently re-invents essentialist notions about what constitutes 'womanhood', and highlights women's frailty and deservingness of protection rather than their agency or equal citizenship.¹²

4. Property and Inheritance Rights as Economic Empowerment

Property rights lie at the heart of women's economic empowerment. Women's bargaining power in households, access to credit, and ability to undertake economic activity as well as their resilience to economic shocks are mediated by access to and control over resources (land, housing, financial assets and productive resources).

In the beginning “Hindu Succession Act 1956” continued the Mitakshara coparcenary system where the daughters were not coparceners. One of the important reform laws was the Hindu Succession (Amendment) Act, 2005 which granted co-ownership of ancestral property to a daughter by birth on an equal footing with her brothers.¹³

This reform was further reiterated and extended to all in the Vineeta Sharma case, which clarified the ambiguity with respect to its retrospective scope of application and provided an outright judicial blessing for the equal rights of daughter to property.

Moreover, Flavia Agnes has pointed out how the personal laws, based on the religious criterion, would provide a distinction of property law for women of different religious communities, thus leaving the Muslim women at a significant disadvantage in the aspect of inheritance law, as per Shariat law.¹⁴

⁷ Mary Roy v. State of Kerala, AIR 1986 SC 1011.

⁸ Anuj Garg v. Hotel Association of India, (2008) 3 SCC 1.

⁹ National Legal Services Authority v. Union of India, (2014) 5 SCC 438.

¹⁰ Vineeta Sharma v. Rakesh Sharma, (2020) 9 SCC 1.

¹¹ Indira Jaising, 'Gender Justice and the Supreme Court of India' 4 Supreme Court Cases (Journal) 1 (1997).

¹² Ratna Kapur and Brenda Cossman, Subversive Sites: Feminist Engagements with Law in India 23 (Sage Publications, New Delhi, 1996).

¹³ The Hindu Succession (Amendment) Act, 2005 (Act 39 of 2005), amending s. 6 of The Hindu Succession Act, 1956.

¹⁴ Flavia Agnes, Law and Gender Inequality: The Politics of Women's Rights in India 56 (Oxford University Press, New Delhi, 1999).

The sketch of the underlying scholarship of Lotika Sarkar's work from Indian Law Institute highlighted that the absence of a common family law leads to a continuing system of enforced inequality in the field of property rights for women between communities.¹⁵

But land is an area of contention, especially for women involved in agriculture and tribal communities. Although woman, the law gives provision for joint titling of land under MGNREGA and under various State level schemes in practice land records do not indicate woman's ownership and she is unable to avail agricultural credit and various Government schemes. Much like the difference between statute and practice, the difference between entitlement and what is recorded speaks to more significant implementation problems, social norms, and bureaucratic practice that are beyond a legal solution's scope.

5. Structural Limitations and Critical Analysis

5.1. The Informality Challenge

The single most significant structural limitation on law's capacity to advance women's economic empowerment in India is the scale of women's participation in the informal economy. The International Labour Organization estimates that over 90 per cent of India's female workforce is informally employed.¹⁶

Informal workers domestic workers, home-based piece-rate workers, agricultural labourers, street vendors are structurally excluded from the protections of most labour legislation, which is designed for the formal employer-employee relationship. "The Equal Remuneration Act", the "Maternity Benefit Act", and the "POSH Act" all apply primarily to establishments in the formal sector, leaving the majority of working women effectively outside their reach.

Prabha Kotiswaran has critically observed that Indian labour law's conceptual framework, premised on the male breadwinner model and the regulated factory as the normative site of work, systematically fails to capture the diversity of women's economic activity.¹⁷

B. Enforcement Deficits

5.2. Enforcement Deficits

In fact, even in the formal sector, women's economic rights laws are very inequously enforced. Labour inspectorates remain with insufficient staff and are overloaded. The subset of smaller establishments often has non-functioning Internal Complaints Committees or committees with the wrong composition, as required by the POSH Act. N.R. Madhava Menon's earlier research at the ILI on the theory of the vertical gap between law in books and law in practice is sadly relevant.¹⁸

India's Gender Equity Score is relatively high while the scores are lower in the areas of enforcement and outcomes, per the "World Bank Women, Business and the Law report".¹⁹

The SDG India Index, compiled by NITI Aayog, reveals that despite making formal attempts towards equality, yet gender gaps continue with employment, wages and ownership of assets.²⁰

¹⁵ Lotika Sarkar, 'Women and the Law' 25 *Journal of the Indian Law Institute* 365 (1983).

¹⁶ International Labour Organization, *Women and Men in the Informal Economy: A Statistical Picture 12* (ILO, Geneva, 2018).

¹⁷ Prabha Kotiswaran, 'Beyond the Consumer: Rethinking Gender in Indian Labour Law' 22 *Social and Legal Studies* 297, 299 (2013).

¹⁸ N.R. Madhava Menon, 'Women and Law: Contemporary Problems' 15 *Journal of the Indian Law Institute* 1 (1973).

¹⁹ World Bank, *Women, Business and the Law 2023 7* (World Bank Group, Washington D.C., 2023).

²⁰ NITI Aayog, *SDG India Index and Dashboard 2020–21: Partnerships in the Decade of Action 88* (NITI Aayog, New Delhi, 2021).

5.3. Intersectional Dimensions

Gender inequalities for women in India are not even: caste, religion, disability, and geography are important factoring in women's disadvantages. SC & ST women are doubly discriminated when it comes to jobs, credit facilities, and property. While the constitutional provisions put forward a formal acknowledgment of the caste-based disadvantage, the disadvantage of women from certain caste groups is not adequately reflected in the law.

Formal equality, which is clothed in Indian constitutional jurisprudence, is clearly inadequate to grapple with systemic, structural and intersectional inequalities and law must venture into substantive equality, argues Upendra Baxi.²¹

The capabilities approach, as elaborated by Amartya Sen, can be used as a complementary approach: The legal right is a necessary precondition for increasing substantive freedom, but still it is not sufficient, as further education, health, and social norms and institutional support are required.²²

6. Conclusion

This review has expanded to show that India has a significant legal framework dedicated to positive efforts in the economic empowerment of women, the vision of the Constitution, the initiatives of legislators, the activism of judges and the advocacy of scholars. Constitutional guarantees of equality, a body of labour legislation addressing pay, maternity, and workplace safety, reforms to property and inheritance law, and an expanding framework for financial inclusion and entrepreneurship together constitute a significant normative architecture.

However, the distance between formal legal entitlement and substantive economic equality remains large. The preponderance of women in informal, unregulated work; chronic enforcement deficits; the fragmentation of personal laws; and the intersectional dimensions of gender disadvantage all constrain law's transformative potential. As the National Policy for Women 2016 acknowledges, legal reform must be integrated with investment in education, healthcare, childcare infrastructure, and attitudinal change to be effective.²³

Three directions for reform are indicated by this review. First, extending the coverage of labour legislation to the informal economy through the Code on Wages and analogous reforms is imperative for reaching the majority of working women. Second, the establishment and proper functioning of institutional enforcement mechanisms labour courts, Local Complaints Committees; grievance redressal cells must be prioritized. Third, a uniform civil code or, at minimum, harmonization of personal laws on property and succession to eliminate gender-differential treatment across religious communities deserves renewed legislative attention.

Law, as Amartya Sen reminds us, is an instrument for expanding human freedoms.

For Indian women, the expansion of economic freedom through law requires not merely the enactment of rights but their vigorous, equitable, and intersectionally sensitive enforcement. The project of women's economic empowerment through law is, ultimately, the project of making the constitutional promise of equality real in the lived experience of every woman in India.

²¹ Upendra Baxi, 'Developments in Indian Administrative Law' in M.P. Singh (ed.), *Comparative Constitutional Law 45* (Eastern Book Company, Lucknow, 2011).

²² Amartya Sen, *Development as Freedom* 198 (Oxford University Press, New Delhi, 1999).

²³ Ministry of Women and Child Development, *National Policy for Women 2016: Draft Policy* (Government of India, New Delhi, 2016).