

## CHAPTER 2

# LITERATURE REVIEW

This research study is rooted in a firm belief that democracy and its promise of equality and social justice can only be actualized when the vulnerable and most marginalized can access the legal system and seek justice with an expectation of fairness in upholding their rights. The research speaks for, and with, those on the margins. It has at its core - a liberationist philosophy committed to examining the consequences of poverty and sexism, and examines closely what processes and experiences transform into feelings of empowerment.

In this chapter, the endeavour is to review related literature to clarify these concepts that are significant for the study.

### KEY CONCEPTS

In the endeavour to situate the study in a framework, some of the key points that emerged and were discussed in the first chapter were that:

- The question of gender equality has to be understood in the context of the **democratic system** that the country has adopted.
- The process of **law making** in a democratic system also allows for participation of various actors, including civil society organisations
- **Civil society organisations** play multiple roles in this context - one is to work with vulnerable communities and sections of the society and to bring their concerns to the notice of the state; and to advocate changes in the various government systems that are meant to improve the conditions of the citizens.
- Traditional **social work** associated with provision of services and social change has evolved to include principles of human rights and social justice, and recognition of vulnerable people's abilities to shape their own future.
- One of the key concepts that have emerged in women's development discourse is that of "**empowerment**". This is a dynamic concept adopted both in community organization practice (means) as well as in a desired goal of development such as the Millenium Development Goals and Sustainable Development Goals.

These have been discussed to indicate the conceptual framework within which the study would be located. In this chapter, the endeavour is to examine some more concepts and their interrelations that will be critical to the study in terms of framing the exploration. As this was a qualitative study, the researcher has reviewed literature that have been part of the debates for instance, around the meanings of justice, multi-dimensional aspects of gender inequality, examining gender inequalities and law, and the capabilities approach to women's development.

## **A LITERATURE REVIEW ON STUDIES RELATED TO EMPOWERMENT AND PROGRESSIVE LAWS**

In the previous chapter, the researcher has presented how the democratic tradition has evolved, and today is acknowledged as a form of governance that is much more than merely ensuring equal voting rights. One of the key features of a stable democratic structure is its ability to ensure justice.

### ***EMPOWERMENT AS DESCRIPTION AND QUALITATIVE NARRATIVES***

One such recent exercise can be found in the book *Cartographies of Empowerment – The Mahila Samakhya Story*. Mahila Samakhya is as much a story of a government programme for women's education and empowerment, as it is of the celebration of the fight of poor women for their rights. Spread across eight states and more than 150 districts in India, the Mahila Samakhya programme grew out of a unique partnership between the women's movement and the government. In this collection of essays, concerned scholars from different parts of India chart Mahila Samakhya's fascinating journey of setting up poor women's collectives and women's agency in establishing an equal space and voice in the public domain - a radical departure from the more common approaches of organising women around economic concerns. The writers explore broad gender issues grounded within the field experience of Mahila Samakhya, providing insights into the workings of the programme at different levels, its conceptual challenges, strategic choices, the opportunities and pitfalls of partnership with government and above all the willingness of poor women to come together voluntarily to address and overcome gender barriers (Ramachandran, Jandhyala, & (eds), 2012).

*Paradoxes of Empowerment – Development, Gender and Governance in neo Liberal India is a book that interrogates the idea of development, empowerment, and collective feminist politics from the perspective of everyday action and interactions. It uses the ethnographic methods to study the structure, practices and effects of the MS program. It locates the experiences of women from Uttar Pradesh in a specific postcolonial, liberalising southern setting (Sharma, 2010).*

*There are several studies that examine empowerment from the economic point of view in the wake of the self help – micro-credit movement. These studies look at the economic sphere where increasingly there is evidence that economic empowerment does not necessarily translate into gender equality unless it is backed by other social processes that challenge patriarchy and the economic super structure.*

### ***SIMILAR STUDIES ON THE THEMES OF PROGRESSIVE LAWS AND EMPOWERMENT***

In the above sections the effort was to show through literature review a broad canvas of writings on the key concepts of the present study. In this section the researcher would present an overview of similar studies done that relate to the themes of progressive laws and empowerment.

### **STUDIES AROUND PROGRESSIVE LAWS**

*Most of the progressive laws identified for the study are quite recent and not too many studies are available but still here are some studies that cover different aspects of the laws*

### ***PWDVA - PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005***

- i. Lawyers' Collective – Women's Rights Initiative has brought out each year monitoring and evaluation reports titled – 'Staying Alive – Evaluating Court Orders on Protection of Women from Domestic Violence Act, 2005'. It looks at data on infrastructure put in place under the PWDVA and information on the operationalisation of the law, by examining cases filed, proceedings adopted and reliefs obtained. The sixth report of 2013 analyses the trends and notes for instance that the PWDVA is most used by married women and that maintenance is the most

common relief claimed and granted by courts. It seeks to evaluate the extent to which women have been protected against violence within the framework of marriage or in other family contexts as daughters, mothers, widows or divorcees, and women in relationships in the nature of marriage through judicial pronouncements.

- ii. ***ICRW – International Centre for Research on Women initiated a study in 2013 in seven states of India to understand what have been the experiences of women who used the law. However the final report is not yet out.***
- iii. ***In Gujarat Gender Resource Centre – a quasi government body that offers capacity building for various government departments to offer gender sensitization – particularly the police staff and officials who implement the PWDVA bring out some reports too. Most of the reports cover how many trainings have been covered, or at most the number of positions that are vacant and so on. They only offer anecdotal narratives about success stories. There is little effort to understand the law users’ perspectives.***

### ***HINDU SUCCESSION ACT AMENDMENT 2005***

- i. 'Empowering Women With Rights to Inheritance—A Report on Amendments to the Law of Succession Act Necessary to Ensure Women’s Human Rights: A Human Rights Report and Proposed Legislation’ – by the The International Women’s Human Rights Clinic Georgetown University Law Center and The Federation of Women Lawyers: Kenya. (2009)

This report states that women of Kenya contribute significantly to the agricultural operations and to the GDP. Despite provisions of the Law of Succession Act that apparently give some protection to women, the interviews found that in practice, many women are unable to inherit property from their spouses, fathers, and other relatives. This inability to inherit property is the result of several important deficiencies in the Law of Succession Act, as well as the continuing use of African customary law of most ethnic groups in Kenya, which does not allow a woman to inherit land and must live on the land as a guest of male relatives by blood or marriage.”

This study adopts a qualitative methodology as it allows for indepth understanding of how the law is being used. To an extent the present study will also cover similar aspects that is to understand how the law has been actually used by women.

The present study will additionally examine the linkages with empowerment and how women perceive justice. This was not covered in the Kenya study.

- ii. 'Inheritance Laws and Women's Empowerment in India' – Research Digest World Bank - Volume 4 | Number 4 | Summer 2010 – This report provides evidence from the states of Maharashtra and Karnataka which enacted equal inheritance rights for women and men in 1994. The authors have studied the impact of the law in the year 2006, giving them sufficient time to observe its impact. The authors find that while the amendment did not fully eliminate the underlying inequality, it increased women's likelihood of inheriting land by 22 percentage points. Even in cases where the actual inheritance is not yet observed, the fact that a woman can expect to inherit property may increase her bargaining power or affect her marital prospects. Legal barriers to women's ability to inherit property often put women at a strong disadvantage and may be at the root of broader patterns of inequality. Indeed, stronger inheritance rights for women are likely to be a potent mechanism for improving a range of outcomes.

The authors use data from the 2006 nationally representative Rural Economic and Demographic Survey, conducted by the National Council of Applied Economic Research, on 1,371 rural Hindu households in Karnataka and Maharashtra. The survey contains detailed information on the parents, siblings, and children of household heads, providing quantitative measures of intergenerational transfers of both physical and human capital investments. A difference-in-differences strategy was used to estimate the impact of the new law, comparing the inheritance of land by males and females from fathers who died before and after the amendment of the act in the two states.

This would be a very comprehensive study as it covers a large sample across two states and traces the families over three years. Such a study requires resources which would

be outside the capability of a PhD scholar. And hence the effort would be look at the impact of this law in Gujarat and how it is being used by daughter.

iii. Study on Women India and Land Ownership by Landesa – Rural Development Institute a U.S.-headquartered nonprofit – (2014)

Eight years after the enactment of the national law, a study was conducted with the support of UN Women to compare the outcomes for 3 states. This study states that the 2005 inheritance law is not working for women as their husbands, fathers, and brothers migrate to cities in search of work, women across India have become the backbone of the country's agricultural sector. Nearly 80% of all rural women in India labor in the fields.

It found that despite their time spent working in orchards, cotton fields, and rice paddies, and changes to inheritance laws, women rarely inherit the land that has sustained them and that they have sustained. A survey was conducted with 1,400 women and 360 men in agricultural districts with large numbers of women farmers in three Indian states, Andhra Pradesh, Bihar, and Madhya Pradesh.

Further, in depth interviews were conducted with 48 women and 12 men across all 3 states. Additionally key informant interviews were conducted with Tehsilders, Patwaris, Gram Panchayat Presidents, staff of the District Legal Services Authority and lawyers.

The study found that just one in eight women whose parents own agricultural land inherit any of it. The data presented in the report clearly points out that while inheritance is the dominant way by which land is transferred through generations, women's inheritance of agricultural land has not changed much in one generation or in other words very few women have inherited agricultural land. It also points out that objection from brothers is even higher compared to that of parents. There is relatively larger occurrence of the widows getting husband's land in inheritance in comparison to daughters getting land from the parents. Women's knowledge of provisions of law is quite rudimentary, and perhaps the most startling evidence is that even when women have received land, it is far less than an equal share.

The methodology followed by this study is of mixed methods and also covers a large sample but conducts indepth interviews with a much smaller number of women and men. It does seek to get the views of the officials as the focus of the study is to see how is the law helping women to get access to laws.

While such a large study is out of the purview of a PhD study as it is a self funded study, the relevance of the study remains to look at how women are getting access to land using this law.

iv. 'Tribal Women Organising For Land Rights In Dahod And Panchmahaals, Gujarat' - Sita Mamidipudi And Sejal Dand, ANANDI – (2014)

This paper analyses tribal women's resistance to dispossession from land in Gujarat. It analyses four in-depth case studies of tribal women who have claimed their rights to land and livelihoods with the support of the DMS and ANANDI. Each woman has made individual claims to natal, marital or forest lands. They have also been part of the collective's struggle for the rights to food, employment and social protection. Individual and collective resistance, struggles and strategies of tribal women claiming land rights are analyzed in the context of feminist organizing by DMS and ANANDI who have been working in Dahod and Panchmahaals, Gujarat for the past two decades on protecting and promoting women's rights and the efforts of the state-level network, Working Group for Women's Land Ownership (WGWLO). When women claim inheritance rights, they are resisted by the family; the claims then require negotiation and support from community-based collectives. Even if families agree to support women's claims, mutation is complicated and expensive, involving lengthy procedures. This process hits a roadblock when the land is contested – whether by non-tribals or other powerful members in the community.

Women face endemic violence throughout the process of claiming, acquiring or retaining land from their families, the community and the state. They require support from collectives to stand up against the violence, and demand accountability from the police in being responsive and sensitive to their context.

## **SEXUAL HARASSMENT AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL)**

This is among the most recent progressive laws passed by the Government of India in 2013. Previously there were Supreme Court guidelines issued to affect the formation of committees at workplaces to address issues of sexual harassment. The purpose of including this Act in this study was to be able to understand how a law that has been passed recently affects law users perspectives. Thus there are very few studies on the subject matter.

Two university level papers that are based on secondary sources review the strengths and weaknesses of the Act. The overviews of the same are presented below:

- i. Study by Student of Goa University – (2014) - The paper compares crimes against women and gives a brief overview of the Bhanwari case that triggered the legislation, before making recommendations on how the Act should be implemented. (2nd Year P.G. student, Dept. of Forensic Medicine & Toxicology, Goa Medical College, Goa in J Indian Academy Forensic Med. October-December 2014, Vol. 36, No. 4)
- ii. Study by Gujarat National Law University (2014) – This paper presents a critique of the Act from various quarters and suggests means to strengthen the Act.
- iii. A study from Singapore conducted in 2008 – is available on line which points to the need to have a civil law that will help women to deal with sexual harassment at workplace. (AWARE – an advocacy group in Singapore – 2008)

## **MAHATMA GANDHI NATIONAL RURAL EMPLOYMENT GUARANTEE ACT**

- i. A Comparative Study of some of the Employment Guarantee Schemes across the Developing Countries – Working Paper - Saumya Chakrabarti - Working Paper Series: No. 2 (2012-2013) UGC SAP (DRS-I) Department of Economics and Politics

This study is based on secondary sources and provides an comparison of the Employment Guarantee Scheme across four developing countries – Argentina, Brazil, South Africa and Bangladesh.



The study covers different types of employment guarantee programs that different nations offer. The author uses the term ELR – “Employer of Last Resort” to use the common term.

Her study shows that in most nations these programs have been quite successful in reducing unemployment, and in employing women in significant numbers.

This study further strengthens the position of the present study, which seeks to understand how the MGNREGS empowers women. The limitation of this paper is that it does not cover any primary sources of data collection and therefore does not offer any information on the specific experiences of women who participate in large numbers in such programs.

The researcher also finds it problematic to call an employment guarantee programme as a “Employer of Last Resort” as in a welfare state like India, the position from which this law has been passed is that of offering jobs at the village so that men and women do not have to migrate out – so it is like the program is the employer of “first” choice.

- ii. ***‘MGNREGA – Role of Panchayati Raj Institutions in Implementation of MGNREGA’ Dec 2006; PRIA; India***

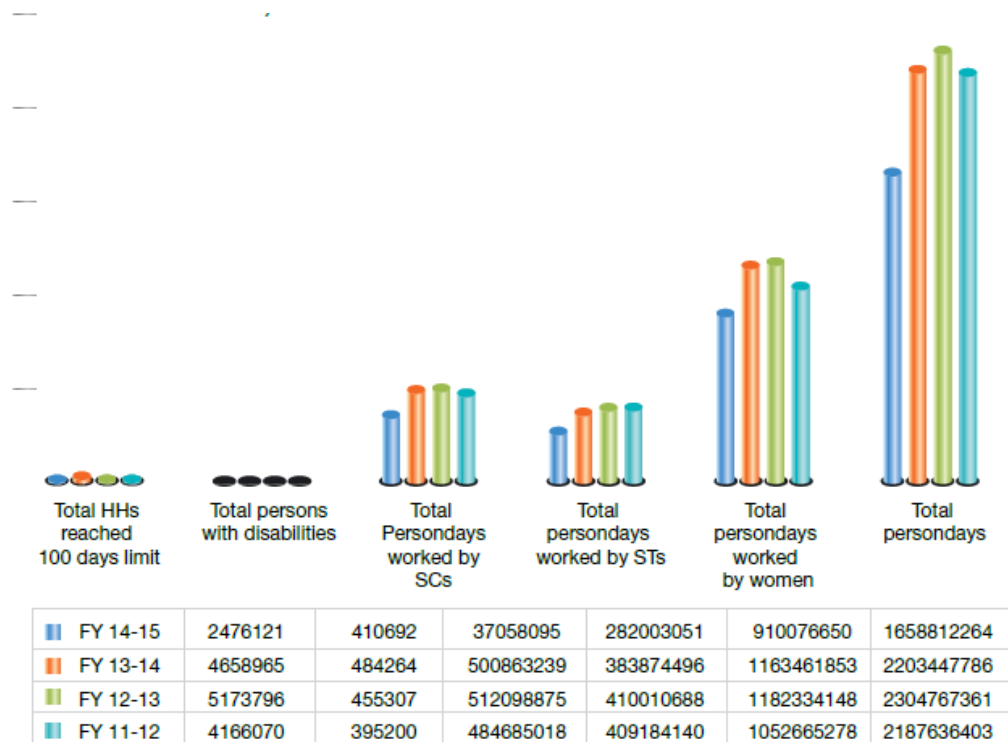
***This study looks at how panchayats have been able to play their roles as principal authorities for planning and implementation of the schemes under MGNREGA, and what are the opportunities available to, and challenges faced by them. This is a report published soon after the passing of the Act, and hence seeks to identify the interventions required to enable panchayats to fulfill their responsibilities towards poor and marginalized Indians.***

- iii. **MGNREGA - Sameeksha II An Anthology of Research Studies (2012-2014); UNDP New Delhi – 2016**

MGNREGA Sameeksha II is an anthology of research conducted by several academicians, scholars and policy analysts. It is seen as a guide largely for implementers and policy makers. It uses government data, published research and studies to present an overview on various important facets of the Act. Relevant to this study is their section on women’s role

in MGNREGA. They present data which validates the choice of inclusion of this Act in the present study.

**Figure 4: An overview of MGNREGA's Performance in Terms of Person Days (Data as on 5<sup>th</sup> May 2015)**



*The report states that at an aggregated level, women's participation in the scheme is higher than the mandatory 33 percent ; It was 54.86 till May 2015. At a disaggregated state level women's participation varies across states with those like Kerala, Goa and Tamil Nadu showing higher women's participation. Andhra Pradesh and Himachal also show high participation. Gujarat has an average participation of 43 percent for the years 2011 to 2014. States like Uttar Pradesh show very low women's participation as do the North Eastern states and Jammu and Kashmir.*

The Sameeksha report does not offer further analysis as it is sates that "it would be beyond the scope of this document, yet clearly this brief attempt implies two things: one that some states may show a higher coherence on several gender empowerment related parameters and high women's participation in MGNREGA is certainly one of the

**important parameters in this assessment.** In other states the complexities of negotiation and confrontation for gender empowerment may show differential effects.”

It is seen that high women’s participation rates in MGNREGS, women’s literacy rates and sex ratios are concurrent in the high performing states, while this may not be so equivocal and linear in other states.

While this report establishes what the researcher started off with based on her experience of working in the field with most recent data, it points to the links that this scheme would have to empowerment indicators.

The present study will throw light on other empowerment indicators.

- iv. **Evaluation of the Impact of Processes in the MGNREGA Scheme of Karnataka – A study conducted for planning, programme monitoring and statistics department of Govt of Karnataka – By National Institute of Advanced Studies – Bangalore – 2011**

*This report focuses on issues that arise around worker seeking work, the process of providing that work, the consequences of that work for the rural economy and society and the processes involved in enabling and monitoring the scheme.*

Since the study looked at both the enabling processes within government and the impact on the rural economy, it needed information from two different sources: information on and from the official machinery, and data about the households in the villages. The data about the functioning of the official machinery was collected through a qualitative survey. The second set of data from households in the villages was collected through a multi-stage stratified cluster sample, where the village was treated as a cluster of households.

*This study is gender neutral, without any women’s perspective and does not even have a section that provides any specific recommendations to address women’s special needs.*

- v. **Women and NREGA – A study by ILO and ISST – June 2006**

*This study seeks to understand the practical ways in which NREGA can be designed so as to allow women to participate fully and benefit from it as best as possible and to examine whether such participation leads to women's empowerment. It defines productive participation to include four parameters – participation; conditions of work; use of existing skills; and avoidance of leakages.*

*This study will help frame further interrogation of whether these conditions are adequate to define empowerment.*

## RIGHT TO INFORMATION ACT

- i. State of Information Commissions and the Use of RTI Laws in India Rapid Study 3.0 Based on the Annual Reports of Information Commissions (2012-2014) – By Commonwealth Human Rights Institute New Delhi.

This is a comprehensive report by a very respectable organisation that has been working to promote the use of RTI, highlighting issues of prisoners of India and to strengthen police reforms.

The methodology followed in this report is of comparing the Annual Reports put out by the various State Information Commissions and at times through filing RTI applications if data was not available in the public domain. Presented here are some highlights that pertain to Gujarat and specifically to women. There isn't much available in terms of women's engagement with RTI.

Gujarat has reported a 41% increase in the number of RTI applicants in 2013-14 while Karnataka has witnessed a 31% increase in the number of RTI applications at 4.25 during the same period as compared to the previous year.

Odisha is the only State which has reported a decline in the number of RTI applications. In Odisha 52,305 requests were filed in 2011-12 this number fell by 17.76% to 43,011 in 2012-13. Himachal Pradesh also reported an 18% decline in the number of RTI applications filed in 2012-13 (61,202) as compared to the previous year, this could be due partly to a 16.6%

decline in the number of public authorities (110) reporting their RTI statistics to the SIC as compared to 2011-12 (132 public authorities).

Only two SICs have captured gender break up of RTI applicants. In Chhattisgarh women constituted 6.9% of the RTI applicants while in Nagaland they comprise 2.53% of the RTI applicants. None of the other ICs including the CIC have captured gender breakups in their annual reports. The available data shows that the proportion of women RTI applicants could be significantly lesser than the 8% figure reported in the RAAG-2 report published last year.

In Gujarat 23.5% of the RTI applications were rejected under Section 24 as they pertained to security and intelligence organisations exempted by the Government from the ordinary obligations of transparency like other public authorities. In comparison, Section 24 was invoked only in 6.52% of the cases where RTI applications were filed with the Central Government. Karnataka SIC has not reported the use of Section 24 for rejections during the current period.

Thus one can see that few states even maintain separate records for women RTI applicants and those who do show that the numbers are really are below 10%.

This reality itself points to the need to study what has been the reason as to what are the experiences of women who have used RTI.

- ii. ‘Who Uses The Right To Information Act In India, And For What? – An empirical analysis of a sample of RTI applications filed by the people of India’ – Prepared by Right to Information Assessment and Advocacy Group In collaboration with Transparency Advisory Group 2014 -

The report points out among many other things that only 6% women are using RTI compared to 94% males. It also points out that about 24% users are from rural areas.

- iii. “Poor use of RTI by Women” News Article in Greater Kashmir (June 2016) -

This states that the Act was enacted in the state in 2004, and then amended in 2009. "The data available with J&K RTI Movement, a non-governmental organization reveals that less than one percent women make use of the RTI Act in J&K," Dr Sheikh Ghulam Rasool, patron of the movement, stresses the dire need to create more awareness about the importance of the RTI Act among women, so that they make use of the transparency legislation.

- iv. Right to Information – Vital Tool for Women Article in Newsletter of Development Alternatives (2011) – by Pritisha Borah

This report states that while some well known and well educated women have employed the RTI, such as wife of slain IPS officer Mr. Kamte, women in general, and rural women, in particular, are still hardly using the RTI. ([http://www.devalt.org/newsletter/mar11/of\\_4.htm](http://www.devalt.org/newsletter/mar11/of_4.htm))

- v. A study of stakeholders' experience and Views on RTI Act 2005' (2013) –

This study has been undertaken by MSW students of the Faculty of Social Work, M.S. University, and is based in Vadodara city.. It comprises of two parts – one studying the responses of 37 RTI applicants, and the other studying the experiences of 50 Public Information Officers. This was a group research, where in they covered applicants and Public Information officers of the Police department, Vadodara Municipal Corporation, District Education Office and the Labour Department. Survey method was used.

## **B      GAPS IN KNOWLEDGE**

*Review of literature indicates that empowerment is still a highly contested arena and therefore calls for a more qualitative approach. Thus, the effort in this research is to bring to the empowerment debate a perspective from women law users. While choosing these law users the effort is to recognize the agential role the women play in overcoming the barriers to substantive equality.*

It is the researcher's view that overall, the concept of empowerment is difficult to measure precisely, and is more amenable to extrapolation based on a set of interrelated concepts. Hence, there is a case for further exploration.

*While there are studies that look at economic empowerment, in the wake of the new laws being passed there are hardly any studies of this nature, which justifies the research.*

*The various studies mentioned above look at either aggregate data or give recommendations for improvement of the laws from a gender perspective. Except for the study on Inheritance in Panchamahaals and Dahod, none of the studies mentioned offer a voice to rural women on the connection between its use and empowerment. Even the Panchamahaals-Dahod study looks at the struggles women have to go through to access land, and do not adequately cover whether these women feel empowered through the use of the laws.*

*Thus there is a case for studying the impact of progressive laws on empowerment from women law users' perspective.*

The findings of this study will be useful to social work practitioners as it will provide insights through the lived experiences of women. For the policy makers and agencies involved in implementing laws and capacity building programs for women, the study will provide guidelines on how to improve practice. It will provide the basis for further research on empowerment processes, and thus be of use to academicians. Since there are fewer doctoral studies using qualitative methods, this study will provide an additional basis for

teaching/learning the appropriateness of participatory, qualitative methodology for similar studies. – will move this Methodology