

THE ROLE OF JUDICIARY IN PROTECTING THE RIGHT OF WOMEN IN INDIA: A CRITICAL ANALYSIS

Aarzoo Thareja* & Sana Sharma**

The hue and cry of the innocent and dilapidated women can no more be left unheard. Hence there is acute necessity to rethink and re-look at the Constitutional provisions for the protection of women's right. All these situation of violence creates a huge and fascinating area to research. The main focus of this article is to examine the constitutional provision embedded in the Indian Constitution as well as the great judicial work interpreting and widening the scope of such provision in favors of women's right. The article highlights the day to day problems faced by women in every front of their life which gives them physical and mental set-back. The article emphasize for the personal and social growth of women.

Keywords: Rights, Judiciary, Elimination of Discrimination, Inadmissibility

INTRODUCTION

As once said by Mahatama Gandhi that difference regarding sex and physical forms denotes no difference, that means the gender or physical appurtenance in no way discriminates or differentiate a person form other. Women are the one who compliments men and are not the one to be counted as inferior. As per bible woman came out of the ribs of men and not from his feet or head that is, women are meant to be treated equal. Men and women are equal and plays important and equal role in development of their families as well as society at large. Men and women are the wheels of a single vehicle without anyone of which the vehicle is of no use or functionless. Despite of all these facts the legal equality in the status of women all over the world is a major battle these days. Although Indian history reveals the fact that during a point of time women were given equal opportunity and status as to men and even there had been a culture of upnayan sanskar in the society for women as well as men. Women were given rights in their ancestral property same as men had. But, with the pace of time things changed for the worse and not women have to fight for their rights and equal status in the society. Thus, the first task of post-independent India was provide a constitution to the people of India that could guarantee them rights being the citizen without any such discrimination.

Jurisprudence has placed the judiciary in the position where it has extended its power to go beyond the statutory framework and limit set by it and, to provide better and conniving justice to all. Judiciary acts as a watchdog in grating justice and scrutinizing the fact that no one is actually deprived of their rights guaranteed to them by the constitution of India and that they are satisfactorily safeguarded. This can be better termed as judicial activism that is

* Mody University, Lakshmangarh, Sikar, Rajasthan

** Mody University, Lakshmangarh, Sikar, Rajasthan (sanasharma42@gmail.com)

the judiciary keeping watch everywhere and taking action and initiative on its own motion sometimes to protect and deliver the safeguard of law where necessary.

Article 14 of the Indian constitution envisages within itself the twin concept of equality before law and equal protection before the law; it guarantees this right to all. On the other hand article 15 of the Indian constitution further in support to article 14 declares that there shall be no discrimination against any citizen of the country based on sex. In addition to this article 15(1) ensures the equality in opportunity as to employment.

In *Rajesh Kumar Gupta v. State of Uttar Pradesh*¹ the apex court held that reserving 50% of the total seats in favor of woman are not arbitrary. Article 39-A and 39A respectively anticipates in them the provisions duty bounding state to ensure free legal aid and equal justice to all without any discrimination. The state has a duty to ensure that legal system is operating to promote and provide equal opportunity and free legal aid. Under various of its decision apex court has very clearly and particularly held that legal aid and right to speedy trial has with the passage of time has raised to a standard whereby it has to be considered as fundamental right. Article 21 of the constitution through various Supreme Court judgements ensures a pauper the right that he will definitely be provided with a legal representative to ensure that he is getting opportunity to represent the case.

Pursuant to article 39(d), the parliament has enacted Equal Remuneration Act, 1976. The doctrine contained in this article and the act passed thereto can be judicially enforceable by the court. In *Randhir Singh V. Union of India* supreme court has held that the principle of equal pay for equal work though not a fundamental right is certainly a constitutional goal and therefore is applicable and enforceable through article 32 of Indian constitution. The credo of equal pay for equal work is equally applicable to the people employed on daily wage basis. Eight years later also apex court delivered other landmark judgement *Daily Rates Casual Labour V. Union of India*² embossing the same as held in *Randhir Singh's*³ case that the doctrine of equal pay for equal work as held earlier is equally and without doubt applicable on those receiving daily wages. Article 39(e) puts responsibility on the government of country to ensure health and strength of the worker class including the protection of men, women and children who are under age. Article 42 ensures that all the humans will be treated just and equally as well as maternity relief to the women. Article 51-A(a) provides that it shall be the duty of every citizen of India to abide by the constitution and its mandate as well as to respect the ideals enshrined in it similarly article 51A(e) puts the mandate on every citizen of India that being the citizen it shall endeavor to promote and maintain the common brotherhood and harmony as well as peace full cohabitation with the other members of the society. And shall not practice or shall do anything that will be derogatory to the dignity of women-hood.

REVIEW OF LITERATURE

¹ AIR (1982) SC 1555

² 1987 AIR 2342, 1988 SCR (1) 598.

³ 1982 AIR 879, 1982 SCR (3) 298.

Time has witnessed that for a very long time and for many centuries women were subjected to mental and physical torture and harassment within the four walls of their home. The offences such as dowry demand, child infanticide, and sati-pratha are all such forms of violence against the women. It is considered that silence, self-sacrifice are the ornaments of women which they are expected to wear without uttering a word of complaint. With the turn towards the new era, new thoughts emerged in regard to women and every child of human species who has known women to be a inferior gender started to think it differently as women started to raise voice for reliasation of their rights, despite of the fact that such raises were quashed innumerable times. Indian society is a semi-feudal type of society where women are treated as secondary citizens with several bondages in day to day life. This disgraceful treatment were not only confined into the four walls of house but when women steeped into the outer world to work and take the economic stand of their own they were subjected to new sorts of harassment by their co-workers, supervisors and many other people with whom they interacted in outer world. The framers of the Indian constitution at the time of independence were well aware about the plight of women in society and therefore, they made certain provisions in constitution to secure and guarantee them the rights they needed. Despite of the fact that women's right were secured by the constitution makers by embedding them in basic legal book of the country in absence of any proper machinery to put these rights into fruitful implication these provisions remained far away from achieving their goals. To quote it almost took a period of twenty six years to implement the constitutional provision of equal pay for equal work for both men and women. On the other hand the problem is that most of such rights of women have been provided under the chapter of directive principles of state policy which are not having any time frame moreover; these are not justifiable in nature thus the problem for their implication remain as it is.

Many can dent this fact but the latest census of 2011 revels the correct position and thinking of the society. According to the census of 2011 there are 940 women over 1000 males that show that mind of Indian people are still prigs and stuck to the old orthodox concepts. 2001 was declared as the women's empowerment years will the huge promises to achieve the constitutional objective of equality without discrimination as to gender, but they remained far away from being fulfilled. There is no doubt about the fact that Indian constitution does not lacks the rights and duties guaranteed to the state for implementation of such rights the basic problem in every field in our country is the lack of executive framework to implement those rights guaranteed by our grundnorm. Hence its essential to re-examine these constitutional rights full of opportunities and infinite chambers of thoughts to be researched on.

OBJECTIVES

The objective of this research is to study and indentify the provisions embedded in the Indian constitution for securing women's rights and to identify the problems faced by them in lack of implementation of such rights. This research also notes the roles played by the Indian judiciary as well as the National Women's Right Commission in order to secure these rights and try to put them into actual implementation and realization.

LIMITATION

Under the article the basic focus is to study the existing legislation regarding women and their rights secured by such legislatures and the protection available to them under constitutional provisions and the complimenting role played by the judiciary with regard to rights of women working. The study is also limited to the secondary available source of India.

METHODOLOGY

Despite of the fact that the statutes such as the equal remuneration act 1986, the sexual harassment act of 2013 has been passed, the problems regarding women and the crimes against them are proliferating at a large pace. As per the report of National Crime Record Bureau⁴ the crimes against women in 2012 increased by 6.4% as compared to its previous year 2011. The cases between the years 2008 to 2012 has rapidly increased with a faster pace. In year 2008 the total crimes recorded and reported against the women were 1,95,856 following 2,03,804 in year 2009, 21,585 cases in year 2010, 2,28,650 cases in 2011 and 2,44,270 cases in year 2012 thus a rapid and constant increase in crimes against women can be clearly seen. Year 2012 reported 24,923 rape cases against women. The statics provided here are only based on the cases which were reported. It is very easy to confer that there are thousands of cases which remain unreported every year and they might be of more heinous in nature but the sad plight of the nation is that they go unreported. The cases also remains unreported due to fear of defamation to the victims and the family such problems are deep rooted in the culture that it would take a long time to discrete such thinking from the cultural and traditional mind set of the society.

Since the formation of United Nations organization its primary focus enshrined in its preamble is to bring and maintain dignity for human rights and achieve the international goal of gender equality. The very first article of the UN charter proclaims to achieve and promote respect for human rights and freedom of people without ant discrimination as to gender. India was also the member state which rectifies the CEDAW (1979) on July 9th, 1993. The convention lay down on each state who agreed to the convention a duty to oblige by it. The convention secures the enjoyment of rights to women irrespective of their marital status, in economic, social, cultural and civil front.

*Apparel export Promotion Council v. A.K Chopra*⁵, It is the first case in which the supreme court apply the law laid down in case of *Vishakha v. State of Rajasthan*⁶ and upheld the dismissal from service of a superior office of the Delhi based apparel export promotion council who was found guilty of sexual harassment of a subordinate female employee at the work place on the ground that it violated her fundamental right guaranteed by article 21 of Indian constitution. The apex court also held that the international instruments such as

⁴ Indian government agency responsible for collecting and analysing crime data

⁵ AIR 1980 SC 1535

⁶ (1997) 6 SCC 241, AIR 1997SC. 3011, (1998) BHRC 261, (1997) 3 LRC 361

CEDAW⁷ and Beijing declaration⁸ directs all state parties and give a message loud and clear for maintain and respecting honor and dignity of women. These international instruments put an obligation on member state as well as India for gender sensitization and the message as well as the duty cast upon the nations by these international instruments is to be put to implication and not allowed to be drowned.

Madhu Dishwar v. State of Bihar⁹, the apex court held that international instruments namely CEDAW and Beijing declaration are integral scheme and complementing part of international rules in regard to fundamental rights and directive principles enshrined in part 3 and part 4 respectively of Indian constitution.

Article 2(e) of CEDAW impose duties on state parties to put the bone marrow in dry bones of their constitution to make them strong and not hollow as well as to prevent and stop gender based discrimination on economic social and cultural front . Article 2(f) read with articles 3, 14, 15 of international conventions of CEDAW makes an integral scheme collateral to Indian constitution and protection of human right

Great judicial work has been reflected in Vishakha v. State of Rajasthan where Supreme Court has laid exhaustive guidelines to prevent sexual harassment of working women in places where they work for financial gains, this was a step forward reflecting judicial activism which laid down guidelines until legislation is enacted for the same purpose. the petition was filed by a social worker by the way of public interest litigation putting light for the enforcements of rights of working women at their work places under articles 14 19 and 21 of the constitution and requested the judiciary to find suitable methods for realization of true meaning of concept of gender equality. Gender equality includes protection from sexual harassment and a right to work with dignity which is universally recognized as basic human rights. International conventions and norms are of great importance in the formulation of the guidelines to achieve this purpose. later, on the guidelines of Vishaka v. State of Rajasthan parliament brought criminal law amendment act in 2013 as well as new statute for the same purpose Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 , the basic aim of the act is to ensure protection of women irrespective of their age at all work places and covered under its ambit both public and private sectors where organized or unorganized for prevention of such incidents to look into an investigate into complaints of sexual harassment .

The supreme court of India has interpreted several human rights addressing women by putting it with the framework of fundamental rights enshrined in part 3 of the constitution of India. These interpretations has left and gone the American bills of right much beyond. Indian judiciary by their interpretation has remarkably tried to avoid and eliminate the vacuum created by few conditions and feeling such vacuum between municipal law and given situation by applying international conventions whenever necessary. In enumerable cases the

⁷ International convention securing women's right, adopted in 1979 by UN general assembly.

⁸ Resolution adopted by UN on rights of women.

⁹ AIR 1996 5 SCC

Supreme Court has done positively commendable work in setting remarkable standards of gender equality and realization of human rights in regard to women.

Ranghubans Saudagor Singh v. state of Punjab and Haryana¹⁰, the Indian constitution prohibits discrimination on ground of sex alone but when the peculiarities of sex is taken along with other facts and consideration establishing a reasonable nexus in regard to the object of classification then the bar embedded by constitution under articles 15 and 16(2) cannot be attracted

Air India v. Nargesh Mirza¹¹, Supreme court struck down the air India and Indian airlines regulation on the retirement and pregnancy bar on the services of air hostesses as unconstitutional on the very ground that the conditions which has been laid down therein were entirely non justifiable, unreasonable and arbitrary. The condition that the services of air hostess would be terminated on first pregnancy was most unreasonable and arbitrary and liable to be stroked down and therefore clearly violative of article 14 of Indian constitution.

Mumbai High Court in Pragati Vargheese v. C. George Vargheese¹² has stuck down section 10 of the Indian Divorce Act, 1869 under which a Christian wife has to prove adultery along with cruelty or desertion while seeking the divorce on the ground that it violates the fundamental rights of Christian women guaranteed under Articles 21, 15 and 14 of the Indian Constitution. The court also struck down sections 17 and 20 of the act which stipulated that an annulment or divorce passed by the District Court has to be confirmed by the 3 judges bench of High Court. The apex court in several cases has rejected the plea of husband and any other person who demanded the virginity test on the women to prove her chastity on the very ground that its violative of article 21 of the constitution.

Sarla Moudgil v. Union of India¹³ the court held in this particular case that if a person just with the intention to do the second marriage adopts Islam that marriage cannot be termed as legal on the ground that husband being a Muslim has right to do the second marriage and escape the responsibility. Court further in Noor Saba Khatoon V. Mohd. Quasim¹⁴ allowed the divorced wife who was unable to maintain herself financially even after the expiration of the period of iddat till the time she gets re-married or is able to maintain herself financially.

CONCLUSION

There can be innumerable incidents were women has brought pride and honor for the country as well as it cannot be denied that women has made position on economic, social and cultural front shoulder to shoulder with men. In fact they are leading in every field and creating milestones hard to compete with. However, despite of all these facts the reality is harsh with regard to Indian society that is they are still subjected to various forms of

¹⁰ AIR 1972 Punjab and Haryana

¹¹ AIR 1981 SC 1868

¹² AIR 1997 Bom 349

¹³ 2000 (2) ALD Cri 686

¹⁴ 2003 (3) JKJ 184

discriminations in day to day life. Sexual violence has been one of the leading factors threatening women and creating hindrance in their freedom. The inequality is the theme of the main battle to be fought in the present era. The constitutional provisions in addition to the legislative provision have provided enough of the law to fight this battle and create positive discrimination favoring women of the country. In India within democratic-polity framework various programs have been aimed at their empowerment and elevation in different life spheres. We could find that if we scrutinize the series of decision by the Indian judiciary at all the levels I has taken a sympathetic and serious attitude towards providing appropriate justice to the women been subjected to various crimes against them. The court's work has never been limited only up to providing them the decision granting relief but courts have laid down in various judgments the guidelines on various points of fact and law where it found necessary for protecting the rights of women in addition awarding huge amounts as compensation to them. The women subjected to crimes do deserve a liberal attitude legally and socially as they are already and always have been the victim in society.