

interpretation of Section 139 of N.I. Act which shifts the burden of proof on the accused in respect of cheque bouncing cases and the manner in which this statutory presumption can be rebutted, has made detailed observations in the Special Leave Petition filed before it in case of *Rangappa v. Sri Mohan*<sup>10</sup>, by considering a catena of its previous decisions and has held that, the presumption mandated by Section 139 of the Act does indeed include the existence of a legally enforceable debt or liability and gone to the extent of holding the impugned observations in *Krishna Jadardhan Bhat*<sup>11</sup> (supra) to be incorrect. It has further opined regarding the nature of rebuttable presumption that, it is open to the accused to raise a defence wherein the existence of a legally enforceable debt or liability can be contested, but there can be no doubt that there is an initial presumption which favours the complainant and that, the rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. Further, regarding the construction and interpretation of reverse onus clause it has held that, “test of proportionality” should guide Court and the accused/defendant cannot be expected to discharge an unduly high standard of proof and it imposes an

evidentiary burden and not a persuasive burden. It has settled the position that, to rebut presumption under Section 139, the standard of proof is that of ‘preponderance of probabilities’ and if the accused is able to raise a probable defence which creates doubts about existence of legally enforceable debt or liability, the prosecution can fail and also that the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.

### Conclusion :

The presumption of legally enforceable debt/liability in cases of dishonor of cheque lies in favour of the complainant, but the same is rebuttable. The accused has responsibility to rebut the said presumption by leading cogent evidence or even from the materials submitted by the complainant, but bare denial of the transaction does not relieve the accused. Hence, the presence of this presumption is necessary for an effective redressal mechanism and it also instills faith in business community to use cheque confidently without fear.

## GLOBALIZATION AND WOMEN’S RIGHTS

By

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*“Gender inequality, which remains pervasive worldwide, tends to lower the productivity of labour and the efficiency of labour allocation in households and the economy, intensifying the unequal distribution of resources. It also contributes to the non-monetary*

*aspects of poverty – lack of security, opportunity and empowerment – that lower the quality of life for both men and women. While women and girls bear the largest and most direct costs of these inequalities, the costs cut broadly across society, ultimately hindering development and poverty reduction,”* by Gender and Development Group - World Bank, from the report

10. AIR 2010 SC 1898 = 2010 (2) ALD (Cd) 734 (SC)

11. AIR 2008 SC 2898 = 2008 (4) ALD 15 (SC)

“Gender Equality and the Millennium Development Goals” (2003).

### ***Introduction***

Globalization has raised controversies regarding who are the beneficiaries in the process. Globalization process which is often referred to as the removal of trade barriers /technological barriers between/among states, the free flow of capital, cultural and political transformations and exchanges has influenced the fair gender in a dramatic way. Access to new technologies, employment opportunities, better lifestyle and increased independence have paved way for new opportunities and resources to women.

However, women’s experiences with globalization are extremely complex and diverse. In some regions, deepening disparity and marginalization are creating fertile ground for burgeoning fundamentalist movements – based on ethnicity, nationality or religion. Private companies are increasingly able to patent and profit from indigenous knowledge and life forms, thereby creating a whole new range of ecological, ethical and human rights challenges. Promotion of globalization - diffusion of ideas/norms/practices of equality for women are conducive to some societies and some societies just resist.

Economic globalization brings transnational/multinational corporations involving long-term capital and human investment, incorporating higher wages, good working environment, sophisticated technology, training, corporate culture which raises self-confidence and brings about independence. All these directly or indirectly enhance socio-economic, political, technological culture of the host country especially women.

Now the question before us is globalization a boon/bane in furthering women’s rights ? Before we answer this, certain fundamental and technical issues arise - can we think without globalization ? how

far shall we succeed ? Myriad facets of globalization – socio-economic, political, cultural, technological, scientific, ideological have to be considered. It has exposed demarcations between skilled and unskilled labour, those who are ready for mobility and those who are not. All these leads to the question of human rights - invariably women’s rights. In every society women speaks of repression. Though in American society, women gained voting rights in 1920s, still they are treated as second class in terms of equal pay for equal work.

“In no society today do women enjoy the same opportunities as men” (United Nations 2 Development Programme 1995: 29). In the 1999 Human Development Report, both of the composite measures, the “gender empowerment measure” and the “gender development index,” “show disparities in every country” (United Nations Development Programme 1999)

Now the question HOW GLOBALIZATION AFFECTS WOMEN’S RIGHTS? I would prefer to answer this through some of the most important conventions and pragmatic approach.

### ***Conventions and organizations***

At the outset of the modern human rights movement, the *UN Charter* (1946) laid special emphasis on the importance of the principle of nondiscrimination, which was subsequently built into the UDHR’s Article 2, mandating that all persons are entitled to all human rights “without distinction of any kind,” including race, sex, religion, political opinion, national and social origin, among others (Brownlie and Goodwin-Gill 2002, 19).

Non-Governmental organizations (NGOs) held meetings parallel to the UN Conferences. Attendance at the NGO forums grew considerably over time—from 1,000 in 1975 to 30,000 in 1995 (True and Mintrom 2001). These grassroots connections complement and

support the connections made among official Governmental delegates. The increasing number and activism of women's NGOs ensured that other UN conferences and specialized agencies would also address the gender dimension (Joachim 2003).

In underdeveloped and developing countries women suffer from physical violence, hunger, malnutrition, harassment, unequal pay, discrimination in employment opportunities, illiteracy *etc.* All these problems paved way to women's organizations/movements which in turn created awareness and empowered women socially, economically and politically. In 1953, these organizations forced UN to bring *Convention on the Political Rights of Women*, which came into force in 1954. In 1979 again these movements through political pressure virtually compelled the UN to adopt a *Convention on the Elimination of All Forms of Discrimination against Women, 1979* (in force, 1981). Although many nations did not ratify, including the United States, CEDAW became the main international legal document on women's rights (Keck and Sikkink 1998). Its existence created a source of legitimacy with which women could justify their claims to their own national Governments (Bernard 1987). Analogous to the *Draft Declaration of Indigenous Peoples' Rights*, this convention advances a set of women-specific rights and protections explicitly redressing problems of discrimination in the areas of political participation, employment, law, health care, education, and other spheres of social, economic, and cultural life, not to mention the enhancement of women's legal capacities in civil matters and matters regarding marriage, reproduction, and the family (Brownlie and Goodwin-Gill 2002, 212–23). Although many nations did not ratify, including the United States, CEDAW became the main international legal document on women's rights (Keck and Sikkink 1998). Its existence created a source of legitimacy with which women could justify their claims to their own national Governments (Bernard 1987).

In 1995, the Beijing Conference on Women's Rights symbolically demonstrated the power of the coordinated women's human rights. It emphasized that the principle of shared power and responsibility should be established between women and men at home, in the workplace and in the wider national and international communities

After the 1995 Beijing Conference called for the World Bank to assess how their programs affected women, the Bank sought input from women's NGOs in its policy processes, and increased its spending on women's health, education, and microfinance (Hafner-Burton and Pollack 2000). A number of regional organizations have also adopted programs and policies to promote gender equality and mainstreaming. The European Union and the Organization of American States are notable examples.

During the past decade, the international women's rights movement has been assisted local women's NGOs in the areas of health, education, entrepreneurial training, financial support *etc.*, for socio-legal reforms and community projects. For ex., *SEWA (Women and Work)*, *Sandesh India*, an electronic clearinghouse for NGOs working for women, children and the elderly, *Sakhyadita*, the international association of Buddhist women, *Bahai Vocational Institute For Rural Women*, India. All these give a pragmatic approach in understanding the strategies and effects of globalization-from-women's rights perspectives. SEWA has established a Women's Cooperative Bank with 125,000 members, and through the aid of globalization, they have even reached the women in the rural areas of India. Markets in different areas can now be reached by Indian women who have a part in businesses, or by craft-making women who have licenses to export their goods. With more freedoms and opportunities, these women are raising their standard of living by generating more income (AKF-ISP News)

After the adoption of UDHR, no doubt, in the beginning states played predominant role in protection and guarantee of human rights. Nevertheless, states also sometimes violated human rights locally and internationally. State's sovereignty was in question. As a result collective state intervention emerged stating that that internal state human rights abuse is of international concern and that domestic jurisdictions are limited by human rights. Thus a liberal concept of 'State sovereignty' arose which is bound by international treaties and international laws.

### **Working women**

We find majority of women in service sectors- jobs that used to be relatively well paid, high status men's jobs, but which have been de-skilled and demoted in the job hierarchy. In banking sector women have displaced men in jobs which are now lower paid and proletarianised. One of the best example is 'teaching' wherein creative, innovative, interactive or the stereotype/ prototype approach is taken to impart education. But what is required by global education is not questioning rather is about the production of 'adaptable workers' and 'the development of attitudes necessary for the workplace'. World Bank, *Priorities and Strategies for Education: A World Bank Review* (Washington DC, 1995). To promote these results, strict regulation, as in the National Curriculum in the UK, has been introduced across the developed world telling teachers exactly what to teach and how to teach it, for exactly how long, in what order and at what pace. To carry out simple, repetitive tasks in banking women are being recruited at considerably lower pay than traditional bank workers. Even call centres are mostly staffed by women for 24/7 working hours. All conversations with customers are monitored and 'rated' according to standard criteria, and recorded, both for security backup and random checks.

The expansion of global capitalism has also seen the partial socialisation of housework

in developed countries to an extent which has gone largely unremarked. Increasing incomes have transformed women's lives – electronic devices like washing machines, dish washers, microwave ovens, *etc*, eateries – a trip to a cafe for egg and chips. There has also been a huge growth in industrial food production, as more and more women in developed countries pay to have many of the tasks involved in cooking done for them—prepared vegetables and salads, ready meals, sauces. If you're willing to pay 300 percent more you can even buy your strawberries ready chopped. Of course, there has always been one food for the rich and another for the poor, and convenience food maintains that division. The dearer product is far healthier, contains less fat and sodium, has fewer additives, and generally contributes to keeping better off people alive longer than the poor.

Women constitute half the world population, perform nearly two-thirds of works hours, receive one-tenth of the world's income and own less than one-hundredth percent of world's property

— A Report of the United Nations, 1980

Wherever women are working they usually earn less than men, sometimes less than men who are doing exactly the same work. In less industrialised countries women earn as little as half their male counterparts' wages. In every industrialised country the poorest women tend to earn two thirds, while professional women earn about three quarters of men's wages. Even in jobs where it seems women have total equality—such as the media—controversy erupts from time to time as it emerges that women are being paid considerably less than their male co-workers. (B Oaff, 'New Economy, Same Old Story for Women', in *The Guardian*, 12 May 2001.)

### **Conclusion**

The Hand who rocks the cradle.  
May rock the world.

Globalization has created an environment for change. These changes have impacted all sectors of human life. Globalization has given women a stronger voice. There has also been an increased emphasis on women's rights at the grass roots level - women gained greater personal autonomy and independence

Expanded chances to earn an independent income can provide a foundation from which, over the longer term, to attain enhanced social and political status. As Sassen puts it, "In addition to the relatively improved empowerment of women in the household associated with waged employment, there is a second important outcome – their greater participation in the public sphere and their possible emergence as public actors" (Sassen 1996 : 27). Economic globalization may also provide the seeds for cultural changes that improve the conditions of women's lives. In an impressive study of public attitudes towards gender roles in 70 nations, *Ronald Inglehart and Pippa Norris* (2003) argue that economic growth is only part of the story: substantial changes in social norms, beliefs and values are also necessary. Sinead O Connor, in the foreword to her CD *Universal*

*Mother*, synthesizes in a few sentences which is a revolutionary credo :

Women can make politics irrelevant by creating some kind of spontaneous cooperative action which is totally far from people's ideas of state structure, social structure ....very sacral forms of interrelations, which do not follow some hierarchical patterns which are fundamentally patriarchal ...the opposite to patriarchy is not matriarchy, but fraternity. And I think that it is women who are going to have to break this pattern of power and find the trick of cooperation ([www.jstor.org/stable/3185003](http://www.jstor.org/stable/3185003)).

Unless there is pragmatic consensus and idem on practical ideas and affirmation of a single body of norms for guidance globalization would remain as a debatable question. Nevertheless, I strongly believe that, on balance and over time, increasing cross-national exchange and communication will lead to improvements in the status of women.

#### Sources

1. Pollack and Hafner-Burton 2000, Cichowski 2001a and 2001b, and Jupille 2001
2. Meyer 1999.

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## CAPITAL PUNISHMENT FAIR OR JUSTIFIED IN TANZANIA

By

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*"The death penalty casts a shadow on democracy."*—America's 16th President  
*Abraham Lincoln.*

### 1.0 Introduction

Murder and Treason are the only offences which are punishable by death in Tanzania.

But in other countries, there are other offences other than murder and treason which attract death penalty. In China, human trafficking and serious cases of corruption