

**WOMEN AND LAW: TOWARDS GENDER JUSTICE***By*

**—Dr. M.V. RANGA RAO,**  
Asst. Professor of Law,  
University College of Law,  
Kaktiya University,  
Warangal, A.P.

***Introduction***

Women constitute about one half of the global population, but they are placed at various disadvantageous positions due to gender difference and bias. They have been the victims of violence and exploitation by the male dominated society all over the world. The exploitation against the women goes unabated from times immemorial, sometimes in the name of religion, sometimes on the pretext of writings, in the scriptures and sometimes by the social sanctions.<sup>1</sup>

For centuries past, women all over the world have not only been denied full justice, social economic and political but also as a weaker sex. They have been used, abused, exploited and then discarded to lead immoral, street, vagrant and destitute life till their death.

***Crimes against Women: The Present Scenario:***

The equality of status guaranteed by the Constitution is only a myth to millions of women for whom life is stalked by various kinds of violence within their homes, at work place and in educational system. Women becomes the victims of torture, domestic violence in every 10 minutes, one molestation in every 22 minutes, one kidnapping and abduction in every 40 minutes, one connected with prostitution every 70 minutes and one dowry death in every 106 minutes in India.

Thus, every five minutes one women is victimized by crime in India.

***Gender Equality: The Constitutional Mandate and the Legislative Frame Work:***

The Constitution of India, in categorical terms, prohibits gender discrimination in whatsoever manner or of whatsoever nature. The Constitution of India guarantees both rights and privileges to women through Fundamental Rights and Directive Principles of State Policy. Article 14 confers on men and women equal rights and opportunities in political, economic and social spheres. Article 14 prohibits discrimination against any citizen on grounds of religion, race, caste, sex, *etc.* alike. Article 15(3) makes a special provision enabling the State to make affirmative discrimination in favour of women. Similarly, Article 16 provides for equality of opportunities, Article 39(a) mentions that the State shall direct its policy towards securing for both men and women, equally, the right to a means of livelihood, Article 39(c) ensures equal pay for equal work. Article 42 directs the State to make provision for ensuring just and humane conditions of work and maternity relief. Above all, the Constitution imposes a fundamental duty on every citizen through Article 51(A)(e) to renounce practices derogatory to the dignity of women.

In order to safeguard the various constitutional rights, the State has enacted many women-specific and women-related legislation's some of such legislations are:

1. R.K. Baig, "Domestic Violence and Crime Against Women Criminal Justice Response in India", Criminal Law Journal, January 1999, p.1.

Equal Remuneration Act of 1976. The Hindu Marriage Act of 1955 as amended in 1976. The Immoral Traffic (Prevention) Act of 1956 as amended and renamed in 1986. Dowry Prohibition Act of 1961. An amendment brought in 1984 to this Act made women's subjection to cruelty a cognizable offence. The second amendment brought in 1986 makes the husband or in-laws punishable, if a woman commits suicide within seven years of her marriage and it has been proved that she has been subjected to cruelty. Also, a new criminal offence of 'Dowry Death' has been incorporated in the Indian Penal Code. The Child Marriage Restraint Act of 1976 raises the age for marriage of a girl to 18 years from 15 years and that of a boy 21 years and makes offences under this Act cognizable. The Factories Act of 19 provides for establishment of a creches where 30 women employed (including casual and contract labourers). The Medical Termination Pregnancy Act of 1971 legalizes abortion by qualified professional on humanitarian or medical grounds. The latest to the roster are Prevention of Domestic Violence Act 2005.

### ***Gender Justice: The Judicial Response:***

It is significant to note that, the Indian Judiciary, has been playing the role of a catalyst in protecting and promoting the human rights of women. The Judiciary has been working as epitome in protecting the rights of women. At a time when the Legislature has failed to perform its duty of promptly responding to the needs of the women, in the changing socio-economic scenario and when the Executive has become lethargic towards the problems of women, the Judiciary has step into fill this vacuum and through its activist role, has passed several landmark judgments, of far-reaching implications for the emancipation of women. Some of the rights articulated by the Judiciary pertaining to the women need a special mention:

1. *Right to live with human dignity:* The apex Court has held that, the fundamental right to personal liberty mean, not merely confined to physical existence but it includes within its ambit the right to live with human dignity.<sup>2</sup>
2. *Right to privacy of women:* The Courts have held that, fundamental right to life under Article 21 of the Constitution also includes, the right to privacy.<sup>3</sup>
3. *Mothers as equal guardians:* Though father is considered to be the natural guardian of a minor child, through its historic judgment, the Supreme Court has held that, even at times, mother can also act as the natural guardian of a minor child, where the welfare of the child is the paramount consideration.<sup>4</sup>
4. *Rights to seek divorce and maintenance:* The Courts have declared that under Section 125 of the Criminal Procedure Code, every woman is entitled for maintenance.<sup>5</sup>
5. *Right to Stridhana and right against dowry:* The Courts have also declared that, woman will have absolute rights over the property which she receives as 'stridhana' and that a woman is entitled to receive back the dowry amounts paid by her.<sup>6</sup>
6. Protection against illegal arrests and detentions and right to compensation. The right to compensation is yet another significant right declared by the Judiciary, wherein, woman as a

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2. *Maneka Gandhi v. Union of India*, AIR SC 1976

3. *T. Saritha v. Venkatasubbaiah*, AIR 1983 AP 356

4. *Githa Hari Haran v. RBI and Vandana Shiva v. J. Badhopadhyaya*, 1999 AIR SCW 811 = 1999 (2) ALD (SCSN) 13.

5. *Mohd. Ahmed Khan v. Shabbanu Begum and others*, AIR 1985 SC 1945

6. *Prathiba Rani v. Suraj Kumar*, AIR 1985 SC 628

- victim of a crime has a right to seek compensation from the wrongdoers.<sup>7</sup>
7. Protection of women from prostitution and rehabilitation of their children.<sup>8</sup>
  8. *Right to economic empowerment*: The Supreme Court in a number of cases held that right to economic empowerment of a woman is a human rights of women.<sup>9</sup>
  9. *Right against sexual harassment*: The Courts have held that, it is the duty of the employer or other responsible persons in work places or other institutions, whether public or private, to prevent sexual harassment of working women.<sup>10</sup>
  10. Right to equal remuneration.<sup>11</sup>
1. Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including violence and abuse in the family, sexual assault and sexual harassment in the workplace;
  2. Preventive measures, including public information and education programmes “gender sensitive training of judicial and law enforcement officers and other public officials” to change attitudes concerning the roles and status of men and women;
  3. Protective measures, including refuges, counselling, rehabilitation and other support services for women who are the victims of violence or who are at risk of violence.

### ***Gender Justice: The Future Strategies:***

The status of women in our country stems from their less economic liberty and consequent dependence and lack of decision making power. They do not have control over the resources for lack of access to the decision making structures in the country. The Legislators can play a pivotal role in empowering the women by making reservations in various decision making structures. The bill for reservation of 33 per cent seats for womenfolk in Parliament and State Legislative Assemblies has not yet been passed for lack of unanimity between various political parties of the country. This reservation is the prime need of the hour.

The other measures which are necessary to provide effective protection of women against gender based violence, *inter alia* are:

7. *Rudalshab v. State of Bihar*, AIR 1983 AP 1086
8. *Gourav Jain v. Union of India*, AIR 1997 SC 3021
9. *Maslimani Mudaliar v. Idol of Swamy Nathan Thukkoli*, AIR 1996 SC 1967
10. *Visakha v. State of Rajasthan*, 1997 (2) ALD (CrL) 604 (SC) = AIR 1997 SC 3011
11. Quoted in *Mobd. Wasim Ali*, “Crimes Against Women : An Appraisal of Judicial Trends in India, Cr.L.J. February, 1999 P.17.

The police officers, prosecutors and Judges at all levels of hierarchy need to be exposed to the gender equality education which would enlighten them on existing assumptions, myths and realities about women. There is urgent need to training of the persons involved in the criminal justice system, nature of violence against women, domestic violence *etc.* The participation of victims, NGOs, lawyers and social activists in such training programmes may help in sensitizing the gender based violence by the law enforcement agency.

To conclude in the words of the great saint Guru Nanak

*“It is from woman, the condemned one, that we are conceived and it is from her that we are born. It is to women that we are engaged, and married. It is to woman who is our life long friend. And it is she who keeps our race going. It is women through whom we establish our socialites. Then why denounce her from whom even kings and great men are born.”*