

## **Indian Judiciary and the Status of Women**

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Women constitute nearly one half of the total population of India, but they are always put at disadvantageous positions on the basis of gender bias. Indian society is patriarchal in which women become victims of exploitation and violence everyday in one form or the other. Indian society is a tradition bound society where women are harassed right from their birth till death; for the sake of religion, customs and social sanctions. Before the enactment of the constitution of India, the concept of gender equality was almost unknown to us. Our constitution ensures equality for all including the women folk. Discrimination on the basis of gender, caste, class religion or place of birth is totally prohibited in the constitution of India, which is the supreme law of the land.

Equality is an article of faith in the constitution of India and is necessary not merely on the grounds of social justice; but as a basic condition for social, economic and political development of the nation.....disabilities and inequalities imposed on women have to be seen in the total context of the society where large sections of the population-male and female, adults and children-suffer under the oppression of an exploitive system. It is not possible to remove these inequalities for women only. Any policy or movement for emancipation or development of women has to form part of a total movement for removal of inequalities and oppressive social institutions, if the benefits and privileges won by such action are to be shared by the entire women's population and not to be monopolized by a small minority.<sup>i</sup>

The constitution of India is envisaged with a number of provisions for safeguarding the interests of women. The framers of the constitution were well aware of the discrimination and unequal treatment meted out to the fairer sex, from time immemorial.<sup>ii</sup> Therefore they added a number of provisions in the Constitution of India especially for improving the status of women. Besides, our Constitution also enables the state to adopt measures of affirmative discrimination in favour

of women.<sup>iii</sup> Moreover, article 15 of the Constitution of India states, “Nothing in this Article shall prevent the state from making any special provisions for women and children.” This provision of the constitution is not violative of the principle of equality. “Those who are unequal in fact cannot be treated by identical standards. That may be equality in law it would certainly not be real equality.”<sup>iv</sup> Therefore various kinds of special provisions have been made for the protection of the rights of women in the fundamental rights, fundamental duties and the Directive Principles of the State Policy. However, in spite of all these legal and Constitutional provisions, a woman in India is still becoming a prey to the exploitations everywhere. This is mainly because those who enforce the laws or interpret them do not always fully share the philosophy of gender justice concept.<sup>v</sup>

With the changing span of time the status of women in the society has been changed. Modern society has recognized the role played by women outside home as they are achieving the new horizons of success in various fields. However, in spite of all the strong position of some women throughout history, there has always been need for protecting and promoting the rights of women inside home as well as outside home without any kind of discrimination on the basis of caste, class, sex, gender, education, religion and ideology. Rape, adultery, kidnapping and seduction etc. are offences. They have so made to protect the right of the man against violation by other men. They are not designed to protect the persons of the women. For society looks upon the women as a property of man whether he is a father or husband. Those women who are not “owned” by a particular man have no protection. They are a free game. And this we see clearly every judgment in rape cases.<sup>vi</sup>

Gender equality means the equal rights for both men and women to achieve happiness, to take part in the national development. To achieve all these goals the co-operation of the state and its agencies is important because by granting equal status and opportunities to all the sections of the society equally all the people will come forward for the development of the nation. “Awareness of the sensitivity to the problem of gender bias is imperative in the judicial setting, since women look to our courts for justice and protection in cases of violence, abuse or discrimination.”<sup>vii</sup>

### **Empowerment of Women through Judiciary**

“Women’s emancipation or equality is a part of our general development plans but the government action can be neither effective nor adequate unless women themselves become more aware of their rights and the corresponding responsibilities.”

Mrs. Indira Gandhi

The constitution of India and other acts provide various kinds of rights to the citizens of India. The courts serve as the law enforcement agencies and the guardian of the rights of the people. But all these rights are dead letters unless they are properly implemented. It becomes more important to keep watching these laws and amending them from time to time so that they cannot remain only in papers. The judges play a dual role. On one hand they provide justice to the people who approach the courts on the other hand they restore the faith of the people in the judicial system of the nation. The main purpose of the judiciary is always the protection of the weaker section of the society. But the question is that to what extent judiciary has been successful in bringing equality for all sections of the society, mainly gender equality.

Indian judiciary has made successful efforts for bringing out equal rights for women, like a social reformer. It is continuously playing a dynamic role for the protection of women. The role of the judiciary can be further discerned from a number of progressive decisions rendered over the decades.<sup>viii</sup>

Although various laws made by the government prevent people from committing crimes against women, but this is also true that even today women are becoming the victims of exploitation in this male dominated society. In present times, various scholars are of the opinion that women are empowered today at par with men. But it is yet a question to what extent it is true. Except some ‘elite class’ women living in urban areas, their condition is same as it was before independence. Here the question arises whether existing laws and provisions, national women Right Commission and Judiciary is able to protect the rights of women or not, although the equality of

status has been guaranteed to women by the constitution is it reality or myth?<sup>ix</sup> Like prosecutors and police officers, judges play an important role in legal system response to domestic violence. Because they are generally the final authority in civil and criminal matters involving domestic abuse, judges hold substantial power to sanction batterers, protect battered women and to send messages to the community that domestic violence will not be tolerated.<sup>x</sup>

In the courtroom, judges are the enforcers and the interpreters of the existing laws; they may also have the ability to establish courtroom policies and procedures that promote victim safety and are respectful of all parties. Outside of the courtroom, judges are often community leaders and can play vital roles in the effort to eliminate domestic violence.<sup>xi</sup>

### **Women also have right to live with dignity as an individual- Article 21**

Article 21 of the Constitution says that no person shall be deprived of life and personal liberty except according to the procedure established by law. It also includes the right of human beings to live with dignity. It was held by the Supreme Court in *Shri Bodhi Sattwa vs. Shubra Chakraborty*<sup>xii</sup> case and *Railway Board vs. Mrs. Chandrima Das*<sup>xiii</sup> case that rape violates this right of women.

It was added by 42<sup>nd</sup> amendment 1976 that Article 21 has to be read with article 51A(e) which states that “to promote harmony and the spirit of common brotherhood among all the people of India transcending religious, linguistic and regional or sectional diversities; to promote practices derogatory to the dignity of women” the duties under Article 51A are obligatory on the citizens, but it should be invoked by the courts while deciding cases and also should be invoked by the courts while deciding cases and also should be observed by the state while making statutes and executing laws.<sup>xiv</sup>

### **Rape is Violative of Article 21**

Honorable Supreme Court of India in *Bodhisattva Gautam vs. Subhra Charaburty*<sup>xv</sup> case stated that “Rape is thus not only a crime against women the person of a woman (victim), it is a crime

against the psychology of a woman and pushed her into a deep emotional crisis. It is only by her sheer will power that she rehabilitates herself in the society, which on coming to know of the rape, looks down upon her in derision and contempt. Rape is, therefore the most hated crime. The physical scar given by rape can heal up, but the mental scar given by rape will remain forever. It is crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, namely the right to life with human dignity contained in Article 21 of the Constitution of India.

### **Right to Reputation**

The Supreme Court referring to *D.F. Marison v. Mannie Davies*<sup>xvi</sup> in *Smt. Kiran Bedi vs. Committee of inquiry*<sup>xvii</sup> stated that, "Good reputation was an element of personal security and was protected by the Constitution, equally with the right to enjoyment of life, liberty and property. The Court affirmed that the right to enjoyment of private reputation was of ancient origin and was necessary to human society."

The full bench of Bombay high Court in *Pargati Verghese vs. Cyril Varghese*<sup>xviii</sup> struck down section 10 of the Indian divorce Act, according to which a Christian wife who wants divorce from her husband had to prove adultery along-with cruelty or desertion on the ground that it violates the fundamental right of Christian woman to live with human dignity under article 21 of the Constitution.

### **Need for Judicial Intervention**

It is prevalent in India that the legislature makes the laws, executive implements the laws and the judiciary is responsible for interpretation of these rights. But nowadays the Judiciary is playing the role of more than the interpreter of the laws. It is using its discretionary power to improve the condition of weaker sections of the society especially women and children."Judiciary is the system of courts that interprets and implies the laws in the name of the state. Law is powerless

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and requires a strong agency to maintain its existence. The level of implementation and the capacity of the executor determine the fate of law.<sup>xix</sup>

Various types of atrocities against women such as rape, child marriage, eve-teasing, sexual harassment and female feticide still exist in our society. Violence against women still prevails in one form or the other which is not only a local issue. “In this light the judicial wing of the state has to play a vital role in the elimination of such discrimination in particular and for the upholding of women and children rights in general.”<sup>xx</sup>

Indian Judiciary is playing an important role in protecting the human rights of women. Honorable Supreme Court in its decision in *Surjeet Singh v. Kamaljeet Kaur*<sup>xxi</sup> stated, “A wife should undergo a medical examination to prove her virginity was found to violate her right to privacy and personal liberty enshrined under Article 21 of the Constitution.” The human rights of women were ensured by the makers of the Constitution while making the Constitution of India and our Judiciary is playing an active role as the protector of these rights. Judges have the responsibility to take steps for the enforcement of the basic rights of the citizens for the betterment of the society. “The apex court and the high courts are armed with writ jurisdiction to check the violation of fundamental rights.”<sup>xxii</sup>

The makers of the Constitution rightly visualized the condition of women at that time and realized that it can be made better by granting more rights to women and imposing some duties on the state and its various agencies. It doesn't mean that mere granting of these rights is sufficient, but they are useless unless their proper implementation is made. It becomes the duty of the state to protect the rights of women. Fundamental rights, fundamental duties and the Directive Principles of the state policy act as the guidelines for the state. But all their usefulness depends on their proper implementation with the collective efforts of all the law enforcement agencies. “In this regard, much would depend upon the judiciary and its allied institutions. In this regard, protection of life and personal liberty bear special significance.”<sup>xxiii</sup>

At the present times, there is a need for the environment that is safe for women, based on law and order. For the safety of women, streets should be well policed and safe. The functioning of the courts should be made more speedy and efficient. There are millions of cases pending in Courts in India. At least the cases related to crime against women should be resolved first so that they can be able to rehabilitate themselves and start a new life. It needs immediate intervention of judiciary to solve the problems related to women. The government should make efforts to recruit new judges to lessen the burden of judiciary so that the critical cases can be resolved timely.

### **Judiciary as an Instrument of Social Change**

The Supreme Court of India has always been liberal in its decisions while deciding the cases related to women. Such treatment of judiciary towards women has widened the area of rights of women and has provided the chance for protecting the rights of women. The judgment of supreme court in case of State of Maharashtra and others v. Madhukar Narayan Mardikar<sup>xxiv</sup> said that even a woman with easy virtue has right to pervade her privacy according to one's own desires. There, honorable Supreme Court of India declared such a woman as 'a free human being with independent will'. Moreover, the Supreme Court of India discarded the age-old misconception that a woman with easy virtue doesn't have any individuality of her own.

In another case named Mohd. Ahmed v. Shah Bano Begum and others<sup>xxv</sup> honorable Supreme Court of India set aside the personal law of the Muslims and brought the Muslim ladies under the scope of section 125 of the Criminal Procedure Code in relation to maintenance of wives.

### **Judiciary as a guide for making laws in favour of women**

Article 15 (3) of the Constitution empowers the state to make special provisions for the protection of women and children. Article 16 provides equality of opportunity in matters of public employment. But there are no provisions in the Constitution of India for the protection of women from sexual harassment at workplace. Till 2013 there was enactment in this regard.

Honorable Supreme Court of India in *Vishakha vs. State of Rajsthan*<sup>xxvi</sup> laid down certain guidelines for the protection of women from sexual harassment at workplace using its discretionary powers. “The Supreme Court observed that in the absence of an enacted law to provide for the effective enforcement of the basic human right of the gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplace or other institutions, until a Harassment (prevention, prohibition and redressal) Act, 2013. It is true that the judiciary cannot interfere into the business of legislature, but it can “certainly go beyond mere legality insulating women against injustice suffered due to biological and sociological factors.

It can be concluded that without changing the basic cultural values of our society, the goal of equality cannot be achieved in the field of career opportunities, financial security and social status. In this regard, law can play a diffident and valuable role. This becomes more important in case of Indian culture where the level of literacy is very low and strong traditions of gender discrimination are prevailed. Law can only create opinion about the prevailing situations but it cannot change the thinking of the people. Seminars and conferences would be beneficial only for the researchers and academicians, not for the illiterate people of the society who don't know anything about the laws. Something more has to be done solve the problems of women. There is a need to alter the social norms, orthodox rituals, customs and narrow thinking of the people which force women to be the victims of exploitation and crime. All educational institutions, religious leaders, policy makers, social reformers and media should work collectively to fight with the crime against women.

Thus, in real sense, the empowerment of women is not only a combination of legal enactments and Constitutional sanctions. The role of laws for the welfare of women cannot be denied but it is not possible to bring about desired changes for improving the status of women in the society only with the legislative action. It must be considered that there is a huge gap between law and social elements which act as the barriers in the way of its actual enforcements which has to be filled up with the joint efforts of society and the law enforcement agencies.

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<sup>i</sup> Asima Sahu, *Women's Liberation and Human Rights*, pointers Publishers, Jaipur, 2000

<sup>ii</sup> SR Myneni, *Law Relating to Women*, Asia Law House, Hyderabad, 2015, p.18

<sup>iii</sup> Article 15 and 16 of the Constitution of India

<sup>iv</sup> Late Chief Justice Mukherjee in Lotika Sarkar and B.Sivaramaya, *WOMEN AND Law: Contemporary Problems*, Vikas Publishing Pvt. Ltd., New Delhi, 1994, P.3

<sup>v</sup> S.P. Sathe, *Sexism in Law and Justice*, 81JSW (July 1992) Vol. VIII as quoted in Preeti Misra, *Domestic Violence against Women: Legal Control and Judicial Response*, 2006.

<sup>vi</sup> Lotika Sarkar and B.Sivaramaya, *op.cit*

<sup>vii</sup> Committee on Gender Responsiveness in the Judiciary, PWJA 18<sup>th</sup> national convention-seminar held at tacloban leyte, on March 3, 2015.

<sup>viii</sup> Saroj Chhabra, *Women and Children-Role of Courts*, International Journal of Law and Legal Jurisprudence Studies, Volume 2, Issue 5, P. 92.

<sup>ix</sup> *Supra* Notes 3

<sup>x</sup> [www.stopvaw.org](http://www.stopvaw.org)>role of Judiciary, Stop Violence against Women (Visited on 14 April, 2014)

<sup>xi</sup> *Ibid*.

<sup>xii</sup> (1996) 1 SSC 490.

<sup>xiii</sup> (2000) 2 SSC 465.

<sup>xiv</sup> *Supra* Notes 25

<sup>xv</sup> 1996 AIR 714, 1989 SCR (1) 20.

<sup>xvi</sup> 55 American LR 171

<sup>xvii</sup> 1989 AIR 714,1989 SCR(1)20

<sup>xviii</sup> AIR 1999 Ker 345.

<sup>xix</sup> Saroj Chhabra, *op.cit*. p.9

<sup>xx</sup> *Supra* Note 25

<sup>xxi</sup> Surjeet Singh v. Kamaljeet Kaur AIR 2003, P&H

<sup>xxii</sup> *Supra* Note 25.

<sup>xxiii</sup> Lalita Dhar Parihar, *women & Law-From Improvishment to Empowerment-A Critique*, Eastern Book Company, Lucknow, 2011, First edition, p.452

<sup>xxivxxiv</sup> AIR 1985 SC 945

<sup>xxv</sup> AIR 1985 SC 945

<sup>xxvi</sup> AIR 1997 SC3011