

LEGISLATIVE AND JUDICIAL PERSPECTIVE OF WOMEN EMPOWERMENT

Author:- Dr. Saroj Chhabra

Associate Professor

Department of Law, Maharishi Markandeshwar University, Mullana, Ambala

Email:sarojatinder_ch@yahoo.co.in

Abstract

The development of any nation solely depends on the social status of women. Women constitute almost one half of the globe's population. Women have been victims of exploitations by male dominated society. Women need to be empowered and men need to be oriented about their obligations towards women. Both on national as well as international platform there are numerous laws aimed at empowerment of women in the areas of personal, labour, service and criminal and social economic matters. The Fundamental Law of the land namely Constitution of India guarantees equality for women. In spite of all these developments, the truth remains that widespread violations of women's rights continue to persist. Though plethora of legislations exists, due to ineffective enforcement, women are exploited by the male dominated society. All law is not justice; nor is all justice law alone. At times there could be more justice without law and likewise there could be times when strict adherence to, or mindless application of laws, could lead to injustice. The present research paper critically analysis the role of the legislature and judiciary in empowerment of women.

Key Words: Empowerment, Judiciary, Justice, Legislature, Women,.

Introduction

During the last three decades there has been a sea change in the concept of women's empowerment. A dialogue from *A Doll's House* written by Henrik Ibsen explains the inner voice of a woman. Helmer tells Nora—"First and foremost, you are a wife and mother." Nora replied—"That I don't believe any more. I believe that first and foremost, I am an individual, just

as much as you are." This dialogue carries a forceful message. A woman today expects herself—and rightly so—to be treated as an individual, a living human being, entitled to the same dignity and status, as her male counterparts.¹

Times have changed and so has the role of women in our society. Modern society has slowly accepted the significant role of women outside of homes, and women are gaining more and more recognition as leaders in both the private sector and public service.

However, despite the resilience and strength women have shown throughout history, there is a continuous need to respect, protect, fulfill, and promote women's rights at home, at work, and in all spheres of society, without distinction or discrimination on account of class, age, sex, gender, language, ethnicity, religion, ideology, disability, education, and status.

Gender equality refers to the right of men and women to enjoy the same opportunities to achieve their full potential and to pursue happiness, to contribute to nation building, and to share in the fruits of progress and development. All these would be possible with the State and its agents giving due recognition to the status of all persons as free and equal in dignity and rights, regardless of gender. Awareness of and sensitivity to the problem of gender bias are imperative in the judicial setting, since women look to our Courts for justice and protection in cases of violence, abuse, or discrimination².

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¹ Justice R.C. Lahoti, "Women's Empowerment—Role of Judiciary And Legislature,"(2005) 2 SCC (Jour) 49.

² Committee on Gender Responsiveness in the Judiciary, PWJA 18th National Convention-Seminar held at Tacloban, Leyte, on March 3, 2015.

International Treaties and Conventions

UNFPA (United Nation Population Fund) is a subsidiary organ of the United Nations General Assembly. It plays a unique role within the United Nations system, to address population and development issues, with an emphasis on reproductive health and gender equality and work in the area of gender equality and women's empowerment is firmly grounded in international law. The following major international agreements and declarations guide UNFPA's work in this arena.

The work of UNFPA is guided by the Programme of Action (POA) that was endorsed by about 179 governments in Cairo at the 1994 International Conference on Population and Development (ICPD, also referred to as the Cairo Conference). The Conference shifted the emphasis of population planning from reaching demographic targets to promoting human rights and sustainable development, changing the focus from numbers to people. It placed women's rights, empowerment and health at the center of this effort³.

A 1999 review of progress since the Cairo Conference included reports on national implementation efforts, global expert meetings and an international forum at The Hague, organized by UNFPA. It culminated in a special session of the United Nations General Assembly that identified Key Actions for the Further Implementation of the Programme of Action of ICPD and set new benchmarks for measuring progress towards ICPD goals, including several aimed at promoting gender equality and the empowerment of women.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is an international bill of rights for women. The General Assembly adopted the Convention in December 1979, and as of 2004, 179 countries had ratified it. Consisting of a preamble and 30 articles, CEDAW defines what constitutes discrimination against women and sets up an agenda for national action to foster greater equality. CEDAW is often referred to as the Women's Convention because, unlike conference declarations, it sets legally-binding principles and standards for realizing women's rights.

³ Dinah Douglas, Sarah Walter, Aly El Salmy, Robert Cahill, *Un Population Fund Background Guide*, 2014, New York, 30 March - 3 April – Conference A, 13 - 17 April – Conference B, available at: www.nmun.org/ny14_downloads/BGGs/NY2014_BGG_UNFPA.pdf visited on March 5, 2015.

The Beijing Declaration and Platform for Action was adopted at the September 1995 at Fourth World Conference on Women (FWCW) by representatives from 189 countries. The Platform reflects a new international commitment to the goals of equality, development and peace for all women everywhere. It builds on commitments made during the United Nations Decade for Women, 1976-1985 and on related commitments made in the cycle of United Nations global conferences held in the 1990s⁴.

Adopted in 1993, the Declaration on the Elimination of Violence Against Women defines violence against women and calls on states to take specific measures against it. Beijing + 5 was a special session of the General Assembly entitled "Women: 2000: Gender Equality, Development and Peace for the Twenty-First Century" that took place in June 2000 at United Nations Headquarters, New York. At that session, governments reaffirmed their commitment to the goals of the 1995 Fourth World Conference on Women in Beijing and also adopted future actions and initiatives for the year 2000 and beyond. The United Nations Millennium Declaration was unanimously adopted at the conclusion of the Millennium Summit on September, 2008, the first General Assembly of this century and the largest-ever gathering of world leaders. It contains a statement of values, principles and eight specific goals with related targets that constitute an international agenda for the twenty-first century. Goal 3 is "to promote gender equality and empower women". However, gender equality and women's empowerment are widely recognized as being essential to achieving the other seven Millennium Development Goals as well.

Security Council Resolution was passed unanimously on 31 October 2000. Resolution (S/RES/1325) is the first resolution ever passed by the Security Council that specifically addresses the impact of war on women, and women's contributions to conflict resolution and sustainable peace. A number of regional conventions and declarations, such as the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women, 2003, identify regionally specific definitions of rights that apply in those regions.⁵

⁴ Promoting Gender Equality, "Background on Key International Agreements and Declarations", available at: www.unfpa.org/gender/rights.htm visited on 24 February 2015 .

⁵ United Nation Population Fund, "Promoting Gender Equality", available at: www.unfpa.org/gender/rights.htm, visited on February 16, 2015.

Legislative Initiatives towards Empowerment of Women in India

In India there are numerous laws aimed at empowerment of women in the areas of personal, labour, service and criminal and social economic matters. The Fundamental Law of the land namely Constitution of India guarantees equality for women. It would be proper to refer some of the most important legislations pertaining to empowerment of women.

1. Constitution of India, 1950:

The Constitution of India not only guarantees equality to women but also empowers the State to adopt measures to positive discrimination in favour of women. The principle of gender equality is enshrined in the Indian Constitution in its Preamble, Fundamental Rights, Fundamental Duties and Directive Principles. Article 14 of the Constitution of India guarantees equality before law. Article 15 prohibits discrimination on the grounds of sex. Article 16 states about equality of opportunity for all citizens in matters relating to employment. The 73rd and 74th amendments to the Constitution of India provided for reservation of seats (at least 1/3) in the local bodies of Panchayats and Municipalities for women. Another Constitution Amendment (108th Constitution Amendment) reserving 33 per cent in Parliament and State Legislature is in the pipeline.

2. Indian Penal Code, 1860:

Sections 292, 293 and 294 provide for punishment in sale and exhibit of obscene books objections and for obscene act in public place. Section 304(b) deals about murder of women in connection with demand of dowry. Sections 312 to 318 deal about punishment for causing miscarriage. Section 354 provides punishment for outraging the modesty of any women, S. 366 deals about kidnapping for marriage against her will. Section 366-A deals about procurement of minor girls for sexual purpose. Section 376 deals about punishment for rape. Section 494 protects women from bigamy. Section 497 deals about protection of married women from adultery. Section 498-A of Indian Penal Code deals about subjecting women to cruelty by her husband or relatives and her husband and S.509 provides punishment for uttering words and gesture or act intended to insult the modesty of a woman.

3. Code of Criminal Procedure, 1973: Under S. 125, Code of Criminal Procedure, a woman has got right to maintenance.
4. Indian Evidence Act, 1872: Sections 113(a), 113(b) and 114(c) provide for presumptions as to abetment of suicide by a married woman within 7 years of marriage, as dowry death of a woman and as to absence of consent of woman for sexual intercourse.
5. Hindu Adoption Maintenance Act, 1956: Section 18-A provides for obligations of husband to maintain his wife. Section 18(2) provides right of wife to live separately and S. 19 provides for maintenance of widow by her father-in-law.
6. Hindu Succession Act, 1956: Section 14 of the Act provides for property of female Hindu to be her absolute property. Section 23 provides right of female legal heirs in the dwelling house.
7. The Hindu Minority and Guardianship Act, 1956: Section 6 of the Act provides for mother as a natural guardian for minors below 5 years.
8. The Hindu Marriage Act, 1955: Section 13(2) of the Act provides for wife to present a petition for divorce. Section 13(b) provides equal right for wife for getting divorce by mutual consent. Section 24 of the Act provides for relief for interim maintenance and expenses. Section 25 of the Act provides for right to a wife to seek permanent alimony and maintenance and S. 26 of the Act provides right to claim custody of children.
9. The Dowry Prohibition Act, 1961: Under the provisions of this Act demand of dowry either before marriage, during marriage and or after the marriage is an offence.
10. The Muslim Women (Protection of Right on Divorce) Act, 1986: Under the provisions of the Act provides for maintenance of women by the relatives after the iddat period.
11. The Factories Act, 1948: The provisions of this Act provides for health, safety, welfare, and working hours for women labourer working in factories.

12. The Equal Remuneration Act, 1976: It provides for payment of equal wages to both men and women workers for the same work or work of similar nature. It also prohibits discrimination against women in the matter of recruitment.
13. The Employees State Insurance Act, 1948: The Act provides for insurance pension and maternity benefits to women workers.
14. The Maternity Benefit Act, 1961: It provides for maternity benefit with full wages for women workers.
15. The Medical Termination of Pregnancy Act, 1971: The Act safeguards women from unnecessary and compulsory abortions.
16. The Child Marriage Restraint Act, 1976: The Act provides safeguards for girls from child marriage.
17. The Immoral Trafficking (Prevention) Act, 1986: The Act safeguards women from prostitution.
18. The Prenatal Diagnostic Technique (Regulation and Prevention of Measure) Act, 1994: This Act prohibits diagnosing of pregnant women and also identification of child in the womb whether it is male or female.
19. The Indecent Representation of Women (Prohibition) Act, 1986: The Act safeguards women from indecent representation.
20. The Commission of Sati (Prevention) Act, 1992: It safeguards women from Sati.
21. The National Commission for Women Act, 1992: The Act provides for a setting up a statutory body namely the National Commission for Women to take up remedial measures, and facilitate redressal of grievances and advise the Government on all policy matters relating to women.

22. The Family Courts Act, 1984: The Act provides for setting up a Family Court for in-camera proceedings for women.

23. The Tamil Nadu Prohibition of Eve-teasing Act, 1988: The Act provides punishment for eve-teasing.

24. The Protection of Women from Domestic Violence Act, 2005: The Act provides for punishment for domestic violence committed by husband and his relatives and also provides legal assistance for women suffering from domestic violence. It also provides interim maintenance to women and also for compensation and damages.⁶

25. The Criminal Law (Amendment) Act, 2013: It deals with the amendments in the laws relating to sexual assault in Section 375, 376, 354 and 509 IPC and the relevant sections of the Code of Criminal Procedure 1973 and the Indian Evidence Act 1872.

Law versus Justice

In spite of all these legal developments, the truth remains that widespread violations of women's rights continue to persist. The forces of globalisation and extremism and the unwillingness of other segments of humanity continue to pose a threat to women's human rights. Structural inequalities and power imbalances facilitate such violations. Urge for easy money, at times greed, facilitating a life full of comforts, possibly luxury, has in the recent few years made women more susceptible to exploitation and violence.⁷ The law cannot change a society overnight, but it can certainly ensure that the disadvantaged are not given a raw deal. The Courts can certainly go beyond mere legality insulating women against injustice suffered due to biological and sociological factors. Justice is a combination of various factors: enactment of laws responsive to the changing needs of time, their effective enforcement, progressive and proactive

⁶R. Seyon , “Legislative And Judicial Initiatives Towards Women Empowerment,” available at: <http://www.krishnastudyacademy.com/legal-essays/294-judicial-activism-in-the-area-of-women-empowerment>, visited on February 16, 2015.

⁷Siddhartha Dash, “Women Empowerment in India”, Orissa Review, December, 2004, P.56.

interpretation and application so as to fill up any void that is left and not taken care of by statutory enactments. It is the law in action and not just the law in papers which is important.⁸

Judicial Activism and its role in Women Empowerment

As a general rule legislature makes law, executive implements it and judiciary interprets it but in recent past judiciary has acquired a new dimension, it is no more merely an interpreter or a passive viewer but its new role is that of an active player. Although its new role has started many debates but one cannot rule out that its new role has proved to be a boon for women, there are many decisions and guidelines in the favour of women which is a great contribution to the women empowerment. Today, when other two wings of the government have failed to exercise their part, the judiciary is proving itself a faithful keeper of constitutional assurances. Besides, it is working in consonance with the international conventions.⁹ Jurisprudence extended the power of judiciary to go beyond the statutory limit to give better and complicit justice. Arthur Schlesinger Jr. introduced the term "judicial activism" in a January 1947 Fortune Magazine article titled "The Supreme Court: 1947". According to A.M Ahmadi, judicial activism is a necessary adjunct of the function since the protection of public interest happens to be its main concern. In our Country Judiciary is known as the independent wing of government. This Independent Judiciary has two roles

1. The traditional role i.e. to interpret the laws and another is
2. Judicial activism i.e. to go beyond the statute and to exercise the discretionary power to provide justice.

Basically the traditional role of the judiciary is interpretation of statutory and constitutional provisions for providing justice. The judiciary (also known as the judicial system or judicature) is the system of Courts that interprets and applies the law in the name of the state. Law is powerless and requires a strong agency to maintain its existence. The level of implementation and the capability of the executor determine the fate of law. During the recent past, the term

⁸R. Revathi, *Laws Relating to Domestic Violence*, Asia Law House, Hyderabad, 2004.

⁹Anjali Singh, Research Scholar, CMJ University, Modrina Mansion "Judicial activism- a helping hand in Women Empowerment", available at: www.ssmrae.com/admin/..., visited on November 17, 2013.

‘Judicial Activism’ has assumed immense significance. It may be define as dynamic process of judicial outlook in a changing society.¹⁰

Role of Judiciary in giving Equal Status to Women

In the landmark case of *Randhir Singh Vs Union of India*¹¹, the apex Court opined that the principle of equal work is not a fundamental right but it is certainly a constitutional goal. Article 39(d) of the Constitution states "that there is equal pay for equal work for both men and women." Similarly, in *Grihakalyan Vs Union of India*¹² it was held that the denial of equal pay for equal work becomes irrational classification within the meaning of article 14 of the constitution. In *Air India Vs NargeshMeerza*¹³, the Court held that the termination of service on pregnancy was unreasonable and arbitrary, therefore violative of article 14.

Role of Judiciary as Protector

Article 15(3) provides special provision for women and children, article 16 talks about the equality of opportunity in matter of public employment, but there is no provision or enactment by the legislature to provide protection against sexual harassment at work place, therefore judiciary in *Vishakha Vs State of Rajasthan*¹⁴ has applied its latent and most cogent weapon and laid down certain guidelines to protect women against sexual harassment at work place in consonance with international conventions and declarations(CEDAW-1979 and Beijing Declaration for protection of women at work place against sexual harassment). The vibrant judiciary has recently exalted the dignity of women by its golden judgments. In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*¹⁵, the Supreme Court extended the benefits of the Maternity Benefit Act, 1961 to the Muster Roll (Daily Wagers) female employees of Delhi Municipal Corporation. In this case, the Court directly incorporated the provisions of Article 11 of CEDAW, 1979 into the Indian Law. In *Delhi Domestic Working Women’s Forum*

¹⁰Judicial Activism in the Area of Women Empowerment, available at :

<http://www.krishnastudyacademy.com/legal-essays/294-judicial-activism-in-the-area-of-women-empowerment> visited on March 10, 2015.

¹¹AIR 1982 SC 879.

¹²(1991) 1 SCC 619.

¹³AIR 1981 SC 1829

¹⁴AIR 1997 SC 3011.

¹⁵ AIR 2000 SC 1274

*v. Union of India*¹⁶, the Supreme Court suggested the formulation of a segment for awarding compensation to rape victims at the time of convicting the person found guilty of rape. The Court suggested that the Criminal Injuries Compensation Board or the Court should award compensation to the victims by taking into account, the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape. In *Gourav Jain v. Union of India*¹⁷, the Supreme Court laid down guidelines including the necessity of counseling, cajoling, and coercing the women to retrieve from prostitution and rehabilitate them. The Supreme Court in *Sakshi vs. Union of India*¹⁸ had recognized the inadequacies in the law relating to rape and had suggested that the legislature should bring about the required changes and based on these recommendations Criminal Amendment Act, 2013 has been passed that came into force on February 3, 2013 . And recently on September 13, 2013 the four convicts in the December 16, 2012, Delhi gang-rape case were awarded death penalty by a Delhi Court and said the gravity of the offence cannot be tolerated¹⁹, thus playing a deterrent role in the society.

Role of Judiciary as Social Reformer

The Supreme Court created liberal judicial trends for protection of women giving favorable decisions not in constitutional matters but in case of customary laws also, such an example is *Shah Bano Case*²⁰ where the apex Court set aside the personal law and bring the Muslim women under the purview of Section 125 Cr.p.c. Similarly in *ShamimAra Case*, the Supreme Court declared that the triple talaq is not a valid talaq. Such interpretations by the judiciary provides new dimensions to the concept of women liberty and provides a room for growth and individual development of the women. In *State Of Maharashtra And Another vs Madhukar Narayan Mardikar*²¹, the decision of the supreme Court that even a woman with easy virtue is entitled to privacy and no one can invade her privacy as and when he likes, therefore her evidence cannot be overthrown merely because she is a woman of easy virtue, here the apex Court consider her "a free human being with an independent will", and breaks the traditional

¹⁶(1995) 1 SCC 14.

¹⁷AIR 1997 SC 3012.

¹⁸AIR 2004 SC 3566

¹⁹The Times of India, September 13,2013

²⁰AIR 1985 SC 945.

²¹AIR 1991 SC 207.

myth that a lady of easy virtue does not have individuality. The effort of Indian judiciary is commendable, whenever and wherever it gets a chance it interprets the law according to the changing needs of the society as done by it in the case of *Githa Hariharan v. Reserve Bank of India*²² where Section 6(a) of Hindu Minority and Guardianship Act, 1956 and Section 19(b) of the Guardians and Wards Act, 1890 interpreted in such a way that father and mother get equal status as guardians of a minor.

Role of Judiciary as a Catalyst

The role of the judiciary is not confined to the interpreter but it also worked in the direction of social welfare, In *Cehat and Ors. Vs Union Of India*²³, the Supreme Court of India played such role and monitored the implementation of the Pre Natal Diagnostic Techniques Act and issued several beneficial directives. This petition put the issue of sex selection and sex selective abortion on fore front and as a consequence many activities have been taken up by the government and non governmental agencies on this issue.

Concluding Remarks

Thus the judicial decisions rendered by the Indian Courts depicts the active role played by the judiciary to protect women from exploitation at a stage where legislations are uniformed due to lack of adequacy of enforcement machinery. It is true that judiciary cannot step into the legislature's shoes but it can "certainly go beyond mere legality insulating women against injustice suffered due to biological and sociological factors." Justice is a combination of various factors: enactment of laws responsive to the changing needs of time, their effective enforcement, progressive and proactive interpretation and application so as to fill up any void that is left and not taken care of by statutory enactments. It is the law in action and not just the law which is important.²⁴ Thus a significant single factor which could make the delivery of justice, just and meaningful, a sensitised judiciary—a judiciary which views the circumstances and situation in a holistic manner. Judges too have their own philosophy and their own convictions depending on

²²AIR 1999 SC 1149.

²³(2003) 8 SCC 412.

²⁴ Justice R.C. Lahoti, "Women's Empowerment—Role of Judiciary And Legislature," (2005) 2 SCC (Jour) 49.

the background wherefrom they come, but then, there is a collective qualitative philosophy of justice dispensation in which personal inhibitions and predilections have no place.

In his speech delivered by Justice Lahotia on the occasion of the release of the book "Search for a Vision Statement on Women Empowerment vis-...-vis Legislation and Judicial Decisions" prepared by the Indian Trust for Innovation and Social Change and published by the National Commission for Women suggested the following principles to be kept in mind by the judges to achieve the goal of gender justice:

- (1) be informed of the historical and cultural background in which the women have lived over the ages and understand their feelings and have regard to their needs as a class;
- (2) because the women are weaker sections of the society, strike a balance in your approach in dealing with any issue related to gender, or where a woman is victim, in such a way, that the weaker are not only treated as equals but also feel confident that they are equals;
- (3) treat women with dignity and honour and inculcate confidence in them by your conduct, behaviour and ideology whenever they come to you as victims or seekers of justice;
- (4) do not allow them to be harassed and certainly do not do anything yourselves which may amount to harassment of a woman; and
- (5) make efforts to render a woman victim quick, speedy, cheaper and effective justice—true to its meaning.

He further suggested few Courtroom tips which he himself followed as a trial Court judge and also as a member of the higher judiciary. These are:

1. Women to be treated with Courtesy and dignity while appearing in the Court. Any comment, gesture or other action on the part of anyone in or around the Courtroom which would be detrimental to the confidence of the women is to be curbed with a heavy hand.
2. Any gender bias is carefully guarded against in the Courtroom and this protection should be extended to any female present or appearing in the Court either as a member of the staff or as

party or witness or member of legal profession. A message should clearly go that any behaviour unbecoming of the dignity of woman shall not be tolerated by the Court.

3. Court proceedings involving women must begin on time and proceeded with in an orderly manner and with dispatch so that they are concluded as expeditiously as possible avoiding the need for repeated appearance of women in the Court.

4. The examination and cross-examination of women witnesses, in particular in cases relating to violence against women shall be conducted under the supervision of the presiding judge with such care and caution as to avoid prolixity and any harassment to the witness.

5. The female members of the Bar need to be encouraged in the profession, maybe by giving assignments as Court Commissioners for inspections and recording statements of witnesses.

6. Preference may be given to female lawyers in the matter of assigning legal aid work or amicus curiae briefs so that they have more effective appearances in Courts.

7. Crime against women ought to be dealt with on priority basis so as to be decided finally at an early date lest the delay should defeat the justice.

In the end it can be concluded that the legislations, which take care of rights and privileges of women, are numerous in number. But due to ignorance and illiteracy those legislations cannot be properly enforced. The plethora of Indian Legislations aims at women empowerment. The judicial decisions rendered by the Indian Courts depicts the active role played by the judiciary to protect women from exploitation at a stage where legislations are uniformed due to lack of adequacy of enforcement machinery. Being the guardian of the fundamental law of the land it tries to interpret the laws according to the principles enshrined in the Constitution. Society and social set ups are not static but dynamic, so in order to be in pace with such changes it is necessary that the interpretations must be accordingly. The emergence of this role of judiciary is the outcome of the depraved system, in a democracy where other two organs ended in a fiasco, the judiciary remained the last hope of the people. By using its discretionary power it tries to provide justice to women in socio-economic context. "The judge infuses life and blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate

to meet the needs of the society, "was rightly said by Justice P.N. Bhagwati. Thus both the legislative and judicial initiatives have placed the women in a better place in the society. Yet the woman in India has to go for miles to achieve cent per cent empowerment.