

Critical Analysis of Safety And Dignity of Women in India

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ABSTRACT

I INTRODUCTION

In ancient India women used to be much respected. There is no exclusion of women according to the Vedas. Motherhood is considered the greatest glory of Hindu women. The Taittiriya Upanishad teaches, “*Matrudevo bhava*”. Number of verses of Atharva Veda proves that women used to be very respected. The idea of equality was most forcibly expressed in the Rig Veda. Likewise in so many other mantras a woman has been presented to play an essential role in family and as wife. Similarly she has been given the lead stage in society works, in governmental organizations and for ruling the nation is also mentioned in Vedas.

India has one of the most progressive legal systems and largest democracy in the World. The irony lies in fact that in our country where women are worshiped as *Shakti*, the atrocities are committed against her in all sections of life. She is being looked down as commodity or as a slave, she is not robbed of her dignity and pride outside her house but she is also faces ill-treatment and other atrocities within the four walls of her house. Women were discriminated on every walk of her life. She was deprived of even education, independence, social status etc. The inferior status of women is often attributed to the inadequate and ineffective implementation the existing laws in India. While this is a problem, the key factor the interrelation between legislation and the treatment of women: many gender biased legislative provisions, despite the Constitutional guarantee of equality, continue to reiterate traditional feudal women's property rights and failed to provide women with equal access to economic resources.

From the aforesaid picture of women it raises a question, whether women is safe? What are parameters of women's dignity in the modern society? etc. In this backdrop, an attempt has been made to analyze and take review of Indian legal framework and different provisions in favour of women in India, so also an attempt is made to analyze the position, status and realities of the women's status and dignity in the instant paper.

II METHODOLOGY

The topic chosen for this research paper require systematic investigation of the concepts, the data available and analysis of the legal provisions and the modality of welfare institutions. Hence the author has adopted and followed the Doctrinal method.

Since in this paper different legislation, documents national and international so also judgments of Apex Court are taken, discussed and analyzed author has emphasized on the secondary data from library and news items published in the news papers.

Key Words :- Women, Dignity, Safety, Law and Judgments.

"If society will not admit of women's free development, then society must be remodeled." — Elizabeth Blackwell

I INTRODUCTION

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India has one of the most progressive legal systems and largest democracy in the World. Indian philosophy and Hindu mythology carve a beautiful picture of the women in the social arena and depict her to be fortress of knowledge, wealth and power. The irony lies in fact that in our country where women are worshiped as *Shakti*, the atrocities are committed against her in all sections of life. She is not robbed of her dignity and pride outside her house but she is also faces ill-treatment and other atrocities within the four walls of her house. The perusal of ancient history reveals that, position of women in India was very miserable. Earlier women were deprived of very basic rights in our patriarchal society. Women were discriminated on every walk of her life. She was deprived of even education, independence, social status etc. The inferior status of women is often attributed to the inadequate and ineffective implementation the existing laws in India. While this is a problem, the key factor the interrelation between legislation and the treatment of women, much gender biased legislative provisions,

despite the Constitutional guarantee of equality, continue to reiterate traditional feudal women's property rights and failed to provide women with equal access to economic resources.

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III INTERNATIONAL EFFORTS IN FAVOUR OF WOMEN

At International level there appears many efforts taken for the protection of interest, status and dignity of women. To give it force and effect International documents in the form of Conventions, Conference etc. are brought in to existence which have made binding upon all the member States. The said International efforts/documents are discussed herein below.

The landmark Declaration, **UDHR**, adopted by the General Assembly on 10th December 1948, reaffirms that "All human beings are born free and equal in dignity and rights" and that "everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion,... birth or other status"¹.

¹ www.un.org/overview/rights.html

As the international feminist movement began to gain momentum during the 1970s, the General Assembly declared 1975 as the International Women's Year and organized the first World Conference on Women, held in Mexico City. In 1979, the General Assembly adopted the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**), which is often described as an International Bill of Rights for Women. The Convention targets culture and tradition as influential forces shaping gender roles and family relations, and it is the first human rights treaty to affirm the reproductive rights of women².

Five years after the Mexico City conference, a **Second World Conference on Women** was held in Copenhagen in 1980. In 1985, the World Conference to Review and Appraise the Achievements of the UN Decade for Women; Equality, Development and Peace, was held in Nairobi. The Fourth World Conference on Women, held in Beijing in 1995, went a step farther than the Nairobi Conference. The Beijing Platform for Action asserted women's rights as human rights and committed to specific actions to ensure respect for those rights³.

The UN system continues to give particular attention to the issue of violence against women. 1993 General Assembly **Declaration on the Elimination of Violence against Women** contained "a clear and comprehensive definition of violence against women and a clear statement of the rights to be applied to ensure the elimination of violence against women in all its forms". It represented "a commitment by States in respect of their responsibilities, and a commitment by the international community at large to the elimination of violence against women". **International Women's Day is observed on 8 March**. The International Day for the Elimination of Violence against Women is observed on 25 November⁴.

On 2 July 2010, the UN General Assembly unanimously voted to create a single UN body tasked with accelerating progress in achieving gender equality and women's empowerment. The new UN Entity for Gender Equality and the Empowerment of Women- or UN Women—merged four of the world body's agencies and offices. UN Women became operational on 1st January, 2011 and former President of Chile, were appointed as Under-Secretary-General for UN Women⁵.

² www.un.org/womenwatch/daw/cedaw

³ www.un.org/womenwatch/daw/beijing/platform

⁴ www.un.org/en/events/women/iwd

⁵ www.women.org

IV LEGISLATIVE FREMEWORK IN INDIA IN THE INTEREST OF WOMEN

In India almost half of the Indian population is women. They have always been discriminated against and have suffered and are suffering discrimination in silence in the civilized as well as the primitive society. Even though self-sacrifice and self-denial are their nobility and fortitude and yet they have been made subjected to all inequalities, indignities, inequity and discrimination, from time immemorial⁶. These are few factors which prompted the legislature to make various laws to give the women their due share.

In order to ameliorate the condition of women in India Legislature enacted the large volume of enactments and many of these legislations were enacted in colonial period. Which are as follows:

- (1) 1829, Abolition of Sati;
- (2) 1856 Widow Remarriage made legal;
- (3) 1870 Female infanticide banned;
- (4) 1872 inter caste, intercommunity marriages made legal;
- (5) 1891 age of consent raised to 12 years for girls;
- (6) 1921 women get rights to vote in Madras province;
- (7) 1929 Child Marriage Restraint Act was passed;
- (8) 1937 women get special rights to property;
- (9) 1954 Special Marriage Act was passed;
- (10) 1955 Hindu Marriage Act was passed;
- (11) 1956 Suppression of Immoral Traffic in Women and Girls Act was passed;
- (12) 1961 Dowry Prohibition Act was passed;
- (13) 1981 Criminal Law Amendment Act was Passed;
- (14) 1986 The Indecent Representation of Women (Prohibition) Act was Passed;
- (15) 1987 Commission of Sati (Prevention) Act was passed.

⁶ Justice K. Rama Swamy in *Madhu Kishwar v State of Bihar* (1996) 5 SCC 148.

Constitution of India which is the *Law of the Land*, the **Preamble** to the Indian Constitution contains various goals including “the equality of status and opportunity” to all the citizens. This particular goal has been incorporated to give equal rights to the women and men in terms of the status as well as opportunity. Further the idea of equality is enshrined in **Article 14**. The general principle of equality is specifically enumerated in **Article 15(1)** which prohibits the State to discriminate against any citizen on the grounds only of religion, race, caste, sex, and place of birth or any of them. However, **Article 15(3)** permits the State to make special provisions for women and children. Further **Article 16** provides that “there shall be equality of opportunity for all citizens and they shall not be discriminated on the basis of religion, race, caste and sex”.

Part IV of the Constitution of India, in **Article 39(a)** provides that the State in particular direct its policy towards securing that citizen, men and women equally, have the right to an adequate means of livelihood. Further **Article 39(e)** of the Constitution provides that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 42 of the Constitution incorporates a very important provision for the benefit of women. It directs the State to make provisions for securing just and human conditions of work and for maternity relief. The State has tried to implement this directive by enacting the Maternity Benefit Act, 1961.

Art. 44 direct the State to secure for the citizens a uniform civil code throughout the territory of India. This particular goal is towards the achievement of gender justice. Even though the State has not yet made any efforts to introduce Uniform Civil Code in India, the judiciary has recognized the necessity of the uniformity in application of civil laws like law of marriage, succession, adoption and maintenance etc, in the case of *Sarala Mudgal V Union of India*⁷ and others cases so as to confer a special status upon women.

The **Part IV –A** (Art. 51-A) which is a code of Ten Fundamental duties of the citizens of India, also shows concern towards women in **Article 51(A)(e)** of the Constitution which provides that “**it will be the duty of every citizen to renounce practices derogatory to the dignity of women**”.

⁷ AIR 1995 SC 1531.

The 73rd and 74th Amendments to the Constitution in 1993, have provided for reservation of seats in the local bodies of Panchayats and Municipalities for women, laying a strong foundation for their participation in decision making at the local levels.

The Criminal Laws like, The Indian Penal Code, Criminal Procedure Code also contains numerous provisions to deal with the crimes committed against women; enactments like Dowry Prohibition Act supplement the existing criminal laws to combat the evil of dowry. Number of labour and industrial laws provide for the protection and welfare of the women, prohibition of employment of women in dangerous activities and crèche facility for the children of working women providing a sense of security and dignity to working women.

To protect the women hood, dignity of women and save the female fetus and to abet the menace of inhuman acts of killing of female fetus, the Parliament has enacted the **Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994** to arrest this undesirable trend. Recently the Government's piecemeal approach to protect women has taken a step forward enacting the Domestic Violence Act, 2005 a law providing protection to women from domestic violence.

Women who are usually exploited for prostitution, immoral trafficking or illegal activities, in need of protection from such abuse and torture the Parliament has enacted The Immoral Traffic (Prevention) Act in 1956.

For safety and dignity of working women, the Parliament enacted, **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**, to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and matters connected therewith or incidental thereto. These are various direct and indirect legislations passed for her empowerment, safety and life with dignity.

V JUDICIAL RESPONSE TOWARDS WOMEN'S DIGNITY

Our judiciary has always contributed to build a new socio-economic order and played very important role in fulfilling the dreams of our Constitution makers. The Indian Judicial System has independently and effectively intervened on the issue of women emancipation.

In *CEHAT V Union of India and others*⁸ The Apex Court has given several directions regarding sex selection and sex selective abortion and for proper implementation of enactment, saying female feticide is a heinous act and indicator of violence against women

In *C. B. Muthamma V Union of India*⁹, a provision in service rules requiring a female employee to obtain the permission of the Government in writing before her marriage is solemnized and denying her the right to be promoted on the ground that the candidate was married woman, was held to be discriminatory against woman and hence unconstitutional. However, the Court made it clear that “it does not mean that the men and women are equal in all occupations and in all situations and do not exclude the need to pragmatise where the requirements of particular employment, the sensitivities of sex or the peculiarities of social sectors of the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern”.

In *Air India V Nargesh Mirza*¹⁰, the Supreme Court struck down the provision of rules which stipulated termination of service of an air hostess on her first pregnancy and the retirement and the option of Managing Director, as it arbitrary and abhorrent to the notions of a civilized society.

In *Pratibha Rani V Suraj Kumar*¹¹ the Supreme Court held that the **stridhan** property of married women has to be placed in her custody, and she enjoys complete control over it. The mere fact she is living with her husband and using the dowry items jointly does not make any difference and affect her right of absolute ownership over them.

⁸ AIR 2003 SSC 3309

⁹ AIR 1979 SC 1868

¹⁰ AIR 1981 SC 1829

¹¹ AIR 1985 628

In *Gita Hariharan V Reserve Bank of India*, in this case the Court interpreted section 6 of the Hindu Minority and Guardianship Act 1956 and held that the mother could act as the natural guardian of the minor during the father's lifetime if the father was not in charge of the affairs of the minor.

In *Surjit Singh Thind V Kanwaljit Kaur*¹², the Punjab and Haryana High Court has held that allowing medical examination of a woman for her virginity amounts to violation of her right to privacy and personal liberty enshrined under Article 21 of the Constitution.

In landmark judgment in *Vishaka and others V State of Rajasthan*¹³, the Supreme Court held that sexual harassment of working women at her work place of an employment amounts to violation of rights of gender equality and right to life and liberty which is clear violation of Article 14, 15 and 21 of the Constitution. The Court further observed that the meaning and content of the fundamental rights guaranteed in the Constitution of India are of sufficient amplitude to encompass all the facts of gender equality including prevention of sexual harassment or abuse. Further Supreme Court in this case said that, as there is no law relating to sexual harassment in India, therefore the provisions of International Conventions and norms are to be taken into consideration, and issued certain guidelines to be observed at all work places or other institutions, until a legislation is enacted for the purpose. The same was also retreated in *Medha Kotwal Lele V. U.O.I.*¹⁴ to ensure safe work environment for women.

Similarly court in *Sheela Barse V State of Maharashtra*¹⁵ dealt with the issue of mistreatment of women in police station and court laid down various guidelines for the protection of rights of women in custodial and correctional institutions.

In *Apparel Export Promotion Council V A.K. Chopra*¹⁶, again Supreme Court reiterated Vishka ruling and said that attempts of sexual harassment of female results in violation of fundamental rights to gender equality enshrined under Article 14 and 21 of the Constitution. The Court further stated that international instrument such as the convention on the Elimination of All Forms of Discrimination against Women and the Beijing

¹² AIR 2003 P&H 353

¹³ AIR 1997 SC 3011

¹⁴ 2015 (1) SCC 297

¹⁵ AIR 1983 SC 378

¹⁶ AIR 1999 SC 625

Declaration casts obligations on the state to take appropriate measures to prevent gender inequalities and protect the honour and dignity of women.

Recently the in the landmark judgment in *Shayara Bano V Union of India*¹⁷, the Supreme Court has objected and condemned the Oral Talaq in Muslim religion. Further the Court held that the Muslim practice of Triple Talaq unconstitutional, striking it down by 3:2 majority. The Supreme Court said Triple Talaq violates the fundamental right of Muslim women as it irrevocably ends marriage and is the basic tenets of Quran. The court pointed out that, 'The whole Quran expressly forbids a man to seek pretext for divorcing his wife, so long as she remains faithful and obedient to him'.

In *Sabarimala Temple Entry*¹⁸. A 4:1 majority held that the temple's practice of excluding women is unconstitutional. It held that the practice violated the fundamental right to freedom of religion - Article [25\(1\)](#) - of female worshippers. It struck down Rule 3(b) of the Kerala Hindu Places of Public Worship Act as unconstitutional. Rule 3(b) allowed for Hindu denominations to exclude women from public places of worship, if the exclusion was based on 'custom'.

Apart from these cases numerous cases can be cited in which the Apex Court had given the judgments, helping to give a dignified status to the women, for example *Gaurav Jain V Union of India*¹⁹, *Delhi Domestic Working Women's Forum V Union of India*²⁰, *Bodhisathwa Gautam V Subhra Chakraborty*²¹.

VI ANALYSIS

Presently it is a harsh reality that women have been ill-treated in every society for ages and India is no exception. They are considered as an object of male sexual enjoyment and reproduction of children. They are discriminated at two levels, firstly they suffer because of their gender and secondly due to grinding poverty and on the basis of religion also. The vulnerability of the women as a class has nothing to do with their economic independence. The women have been a victim irrespective of her economic background. The rich and the poor

¹⁷ (2017) 9 SCC 1

¹⁸ Indian Young Lawyers' Association V. State of Kerala, <https://www.scoobserver.in/court-case/sabrimala-temple-entry-case/plain-english-summary-of-judgment>

¹⁹ AIR 1990 SC 292

²⁰ (1995) 1 SCC 14

²¹ (1996) 1 SCC 490

alike are the victims of social barriers and disadvantages of varying kinds. Women are deprived of economic resources and are dependent on men for their living. Women works are often confined to domestic sphere, she had to do all house hold works, which are not recognized and unpaid. In modern times many women are coming out to work but have to shoulder the double responsibility. Moreover, she is last to be considered and first to be fired as she is considered to be less productive than her counterpart. Her general status in the family and in the society has been low and unrecognized.

In most families, women do not own any property in their own names and do not get a share of parental property. Due to weak enforcement of laws protecting those women continue to have little access to land and property. In fact, some of the laws discriminate against women, when it comes to land and property rights²².

In nutshell from the cradle to grave, females are under the clutches of numerous evils acts as discriminations, oppressions, violence, within the family, at the work places and in the society. In this scenario we hardly say that in reality women are not at all having honorable status and dignity.

VII CONCLUSION

After independence the founder father of the nation, wanted to reform the society and were keen to establish an egalitarian society. But they didn't succeed. Many evils are still practiced on women such as bigamy, dowry demands are still on rise, and women are still harassed for dowry and oral Talaq. Malnutrition and illiteracy are growing at alarming rate, rape and molestation and honor killing etc. have become daily phenomenon, and moreover still she is still treated as commodity.

In spite of having so many enactments dealing with women and judgments of the Apex Court protecting women, the conditions of women has not been improved and she still faces all types of atrocities, The legislature and judiciary somewhat fails to provide respect and dignity to women in society. In this scenario woman empowerment really appears to be a myth, though one may say that women entrepreneurs, scientists, doctors and the like have contributed in nation's development, but still there are many things yet to be done.

²² http://en.wikipedia.org/wiki/women_in_India

It is said that the law without the public opinion is nothing but a bundle of papers. The gap between the men and women cannot be bridged by just enacting laws without any public support and opinion.

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