



## Judiciary, playing a pivotal role in empowerment of women in India

Ravi Narain Soneja

Research Scholar, Department of Law, Madhav University, Sirohi

### Abstract

*Status of women in the society is very much important which decides the development of nation. The women constitute almost one-half of total population of our country. In ancient times women were worshipped and given place of Goddess. But in recent times the women is exploited by this male dominating society. Women are considered weaker section of the society by many people. They are socially, economically and politically backward. Thus the overall development of our country is affected. Women Empowerment is the need of an hour for the progress of our motherland. There are many laws framed nationally and internationally. In our Indian constitution also there are numerous laws framed for the empowerment of women. But due to lack of proper implementation of these laws the women are exploited. The fundamental law of our land guarantees equality for women but then also the scenario is these laws are violated and in this male dominating society the women is the victim of exploitation almost everywhere and in every field. This research paper critically analyses the pivotal role of judiciary in empowerment of women in India.*

**Keywords: Constitution, Empowerment, Judiciary and Legislature.**

### Introduction

According to the traditional Indian mentality, the present status of men and women is that the men are the head of the family. He will protect his family and will fulfill all the basic needs of the family by earning money. And the women will remain in the roof of his husband and will take care of family by doing household chores. Before the British invaded India, women in India were not allowed to work outside the home and earn. They were not considered 'person' as well. In India the Calcutta, in **Re Regina Guha**<sup>1</sup> and the Patna, in **Re Sudhansu Bala Hazra**<sup>2</sup> High Courts rejected the applications of women for enrolment under the Legal Practitioners Act. The full benches of these courts held that the women were not included in the term 'person'.

After the British period there was a constant increase in the status of women occurred. Nowadays times are changed. Women are accepted getting outside homes and achieving great success in both public and private ctors. Thus there is a constant need to protect women's right at home, outside home, at work place and in every sphere of society. It should be watched that any kind of discrimination could not occur in terms of caste, creed, gender, language etc.

Gender equality refers to 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 consideration 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 discrimination.<sup>3</sup>

According to **UNFPA Guidelines**, "The empowerment of women comprises five components women's sense of self-worth; their rights to have and to determine choices; their right to have access to opportunities and resources; their right to have the power to control their own lives; both within and outside the home; and their ability

<sup>1</sup> Re regina guhal 35 Ind Cas 925

<sup>2</sup> Re sudansu bala hazral 64 Ind Cas 636

<sup>3</sup> Chhabra, S *Legislative And Judicial Perspective Of Women Empowerment*. (n.d.). International Journal of Law and Legal Jurisprudence Studies. retrieved from <http://ijlljs.in/wp-content/uploads/2015/08/7-Research-PaperLEGISLATIVE-AND-JUDICIAL-PERSPECTIVE-OF-WOMEN-EMPOWERMENT.pdf>

to influence the direction of social change to create more just social and economic order on national and international levels.”<sup>4</sup>

There are numerous laws framed nationally as well as internationally. But women are then also exploited because of the male dominating society. This research paper critically analyze upon the pivotal role of judiciary upon the empowerment of women.

### **International treaties and conventions for Women Empowerment**

#### **1) Universal declaration of Human Rights (1948)**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. 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, political or other opinion, national or social origin, property, birth or other status.<sup>5</sup>

#### **2) Convention on Political Rights of Women (1952)**

Women shall be entitled to vote in all elections on equal terms with men, without any discrimination. Women shall be eligible for election to all publicly elected bodies, established by national law, on equal terms with men, without any discrimination. Women shall be entitled to hold public office and to exercise all public functions, established by national law, on equal terms with men, without any discrimination.<sup>6</sup>

#### **3) Convention on the Elimination of All Forms of Discrimination against Women (1967)**

The Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life -- including the right to vote and to stand for election -- as well as education, health and employment. States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms. The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations. It affirms women's rights to acquire, change or retain their nationality and the nationality of their children. States parties also agree to take appropriate measures against all forms of traffic in women and exploitation of women.<sup>7</sup>

#### **4) Declaration on the Elimination of Violence against Women (1993)**

The UN Declaration on the Elimination of Violence against Women was adopted by the United Nations General Assembly in 1993. It covers physical, sexual and psychological violence at home and elsewhere in society. The definition of violence against women that the UN presents in the Declaration is currently the most widely accepted definition: ‘Any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.’ The Declaration states three categories of violence against women: violence perpetrated by the state, such as violence against women in custody and as part of warfare, violence occurring within the general community, including rape, sexual harassment, trafficking in women and intimidation at work, and violence in the family and in the private sphere, for example incest and selective abortions<sup>8</sup>.

### **Indian legislature and Women Empowerment**

#### **1) Fundamental Law of our land [The Constitution of India]:**

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favor of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal

<sup>4</sup> United Nations Population Fund Guidelines for Women's Empowerment.(n.d.).Retrieved from <http://www.un.org/popin/unfpa/taskforce/guide/iatfwemp.gdl.html>

<sup>5</sup> Universal Declaration of Human Rights.(n.d.). Retrieved from [www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)

<sup>6</sup> Convention on Political Rights of Women.(1953, March 31).Retrieved from [www.un.org.ua/images/Convention\\_on\\_the\\_Political\\_Rights\\_of\\_Women\\_eng1.pdf](http://www.un.org.ua/images/Convention_on_the_Political_Rights_of_Women_eng1.pdf)

<sup>7</sup> CEDAW. (n.d.). Retrieved from <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

<sup>8</sup> The Declaration on the Elimination of Violence against Women. (2016, October 24). Retrieved from <http://www.includegender.org/about-gender-equality/conventions/the-declaration-on-the-elimination-of-violence-against-women>

protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.<sup>9</sup> Legislature of India has framed laws for Women in two major parts:

#### A. INDIAN PENAL CODE

##### 1) Rape (Sec. 376 IPC) :

Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.<sup>10</sup>

##### 2) Kidnapping & Abduction of women ( Sec.363-373)

The Indian Penal Code have made kidnapping and abduction of women is punishable with varying degree of severity according to the nature and gravity of the offence. The underlying object of enacting these provisions is to secure the personal liberty of women.

##### 3) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC):

Here the women are subjected to torture immediately after the marriage for Dowry. If the Women is burnt or murdered within the seven years of marriage then the punishment will be imprisonment for at least seven years to the life imprisonment according to the severity of crime.

##### 4) Mental torture and physical torture (Sec. 498-A IPC)

If the Husband or his relatives shows cruelty towards his wife then punishment up to three years of imprisonment or fine will be awarded.

##### 5) Molestation (Sec. 354 IPC):

If any person uses criminal intimidation in such a way to outrage the modesty of women then he must be confined upto three years or fine.

##### 6) Sexual Harassment (Sec. 509 IPC):

A man committing any of the following acts - physical contact and advances involving unwelcome and explicit sexual overtures; or demand or request for sexual favors; or showing pornography against the will of a woman; or making sexually colored remarks, shall be guilty of the offence of sexual harassment shall be punished with rigorous imprisonment for a term which may extend to three years, or with fine, or with both.<sup>11</sup>

#### B. SPECIAL LAWS

1) **The Dowry Prohibition Act 1961** If any person, after the commencement of this Act, gives or takes or abets the giving or taking of dowry, he shall be punishable with imprisonment for a term which shall not be less than five years, and with the fine which shall not be less than fifteen thousand rupees or the amount of the value of such dowry, whichever is more<sup>12</sup>

2) **The Immoral Traffic (Prevention) Act, 1956** is an Act which provides in pursuance of the International Convention signed at New York on the 9th day of May, 1950, for the prevention of immoral traffic. The Act intends to combat trafficking and sexual exploitation for commercial purposes. While prostitution is not an offence, practicing it in a brothel or within 200 m of any public place is illegal. The following Act leads to the codification of an Act those laws down rules and regulations regarding the sensitive issue of prostitution. It protects women and children from forceful flesh trade. This leads to reduction of objectification of women and children. Through this Act, children can be further protected and offenders, who force children can be punished for the same. The Act regularized prostitution and provides assistance to all women and children who have been

<sup>9</sup> Yunus, S., & Varma, S. (2015. )Legal Provisions for Women Empowerment In India. International Journal of Humanities and Management Sciences (IJHMS), 3(5). Retrieved from <http://www.isaet.org/images/extraimages/ED1015012.pdf>

<sup>10</sup>Section 376 IPC. (n.d.). Retrieved from <https://lawrato.com/indian-kanoon/ipc/section-376>

<sup>11</sup> Sexual harassment and punishment for sexual harassment. (n.d.). Retrieved from <https://www.kaanoon.com/indian-law/ipc-354a/>

<sup>12</sup> Dowry Prohibition Act, 1961. (n.d.). Retrieved from <http://wcd.nic.in/act/dowry-prohibition-act-1961>

forced into the same. The provisions of the Act clearly state that it is an offence to force any child for flesh trade or trafficking of a child for various other purposes.<sup>13</sup>

- 3) **The Protection of Women from Domestic Violence Act 2005** is an Act of the Parliament of India enacted to protect women from domestic violence. It was brought into force by the Indian government from 26 October 2006. The Act provides for the first time in Indian law a definition of "domestic violence", with this definition being broad and including not only physical violence, but also other forms of violence such as emotional/verbal, sexual, and economic abuse. It is a civil law meant primarily for protection orders and not meant to penalize criminally.<sup>14</sup>
- 4) **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013** An Act to provide protection against sexual harassment of women at workplace and for the prevention and redressal of complaints of sexual harassment and for matters connected therewith or incidental thereto.<sup>15</sup>
- 5) **The Maternity Benefit Act, 1961 (Amended in 1995)** An Act to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits.<sup>16</sup>
- 6) **The Medical Termination of Pregnancy (MTP) Act** to provide termination of certain pregnancies by the registered doctors or medical practitioners for the particular matter or matters connected thereto.
- 7) **The Equal Remuneration Act, 1976** The Act is being implemented by the Central Government in relation to any employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a banking company, a mine, oil field or major port or any corporation established by or under a Central Act. In the Central sphere, the enforcement of Equal Remuneration Act, 1976 is entrusted to the Chief Labor Commissioner (Central) who heads the Central Industrial Relations Machinery (CIRM).<sup>17</sup>

### Judicial activism and Empowerment of Women

The power of supreme court for the protection of constitutional rights of citizens are of the widest amplitude and there is no reason why the court should not adopt activist approach similar to courts in America and issue to the state directions which may involve taking to positive actions with a view to securing enforcement of the fundamental right. The Judiciary has been assigned this active role under the constitution. they have to exercise their judicial powers for protecting the fundamental rights and liberties of citizens of our country. Therefore in order to achieve this mission the judiciary has to exercise and evolve its jurisdiction with courage, creativity and circumstances and with vision, vigilance and practical wisdom<sup>18</sup>

**Delhi Domestic Working Women's Forum v. Union of India** is a PIL filed under Art 32. This case occurred when six working ladies were travelling in Muri Express where they were raped by seven Army Personnel. Here the Epic court gave Guidelines for rehabilitation and compensation of Working Women who are rape victims.<sup>19</sup>

### Court Directions for Protection of Women and Gender Equality

In a Significant case of **Vishakha v. State of Rajasthan**, the supreme court has laid down executive Guidelines for Sexual harassment of Women at Workplace until some laws are formed concerning this subject. The epic Court guided that it is the duty of of an Employer to protect her women employee from sexual harassment of women at the place of work. Vishakha is an NGO working for "GENDER EQUALITY". The Supreme Court Held that it has the power to lay down these Guidelines under section 32 to protect their fundamental rights under article

<sup>13</sup> Immoral Traffic Prevention Act,1956. (n.d.). Retrieved from <http://www.hrln.org/hrln/child-rights/laws-in-place/1715-the-immoral-traffic-prevention-act-1956.html>

<sup>14</sup> Protection of Women from Domestic Violence Act, 2005. (n.d.) Retrieved from [https://en.wikipedia.org/wiki/Protection\\_of\\_Women\\_from\\_Domestic\\_Violence\\_Act,\\_2005#cite\\_note-1](https://en.wikipedia.org/wiki/Protection_of_Women_from_Domestic_Violence_Act,_2005#cite_note-1)

<sup>15</sup> The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, (n.d.). Retrieved from <http://lawmin.nic.in>

<sup>16</sup> The Maternity Act 1961. (n.d.) retrieved from <http://www.ilo.org/dyn/travail/docs/678/maternitybenefitsact1961.pdf>

<sup>17</sup> Equal Remuneration Act,1976. (n.d.). Retrieved from <https://labour.gov.in/womenlabour/equal-remuneration-acts-and-rules-1976>

<sup>18</sup> Pandey,J.N.(2013).Judicial Activism.s.s.srivastava(Ed.).*The Constitutional Law of India* (pp408-419).Allahabad:CentralLaw agency

<sup>19</sup> Delhi Domestic Working Women's Forum v. Union of India [(1991) 4 SCC 406]



14, 19 and 21. These Guidelines for Sexual Harassment at workplace will be considered as LAW defined by the Supreme court which comes under Article 141.<sup>20</sup>

### **Judicial Guidelines for improvement of pathetic condition of Prostitutes and Rehabilitation of their Children**

In a significant case of Gaurav jain v. union of India, a PIL was filed by a Public Spirited Advocate for the protection of the Prostitutes and for enhancement of the pathetic condition of prostitute. The children born to them are illegitimate children and till this case they were not accepted socially. In this epic case the court gave Guidelines to rehabilitate the children of the prostitutes and to give social acceptance to them. The Supreme Court provided guidelines to educate them and protect them to fall in the pits of the red light areas. The voluntary and social organizations were guided to take necessary steps to improve the pathetic condition the prostitutes and to protect them from again falling into the Red Light Areas.<sup>21</sup>

### **Conclusion and Suggestions**

- The Empowerment of Women is done by our constitution and legislature but almost most of the laws are confined and limited to the books only. They are actually not implemented to its fullest extent.
- Actual women empowerment will be done when these laws will be actually implemented without any hesitation.
- Most of the women who are victims of any kind of assault and harassment do not knock the doors of court. They do not even reach to the police station to register a F.I.R.
  1. The greatest reason for that is that women fear that they will be socially criticized and their family will have to hear if anybody comes to know about that matter.
  2. Also one of the reasons is that no man will come with marriage proposal to such woman whose modesty is outraged.
- Most of the women do not know about what women empowerment is and what are their legal rights as they are uneducated or less educated.
- In this male dominated world many women are suppressed, restricted and limited to do only household chores and are not allowed to do anything of her interest outside the homes.
- Thus necessary steps should be taken to overcome such problems by the Government and Judiciary by linking up with Voluntary and Social organizations by:-
  1. Organizing education camps by providing knowledge to the women in need about their constitutional rights.
  2. Problems of the needy women should be solved by arranging meeting with the advocate who can provide legal guidance to her and to proceed her case if any.
  3. Women related street plays can be organized.

### **References**

1. Re regina guhal 35 Ind Cas 925
2. Re sudansu bala hazral 64 Ind Cas 636
3. Chhabra ,S *Legislative And Judicial Perspective Of Women Empowerment.* (n.d.). International Journal of Law and Legal Jurisprudence Studies. retrieved from <http://ijlljs.in/wp-content/uploads/2015/08/7-Research-PaperLEGISLATIVE-AND-JUDICIAL-PERSPECTIVE-OF-WOMEN-EMPOWERMENT.pdf>
4. United Nations Population Fund Guidelines for Women's Empowerment.(n.d.). Retrieved from <http://www.un.org/popin/unfpa/taskforce/guide/iatfwemp.gdl.html>
5. Universal Declaration of Human Rights.(n.d.). Retrieved from [www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)
6. Convention on Political Rights of Women.(1953, March 31). Retrieved from [www.un.org.ua/images/Convention\\_on\\_the\\_Political\\_Rights\\_of\\_Women\\_eng1.pdf](http://www.un.org.ua/images/Convention_on_the_Political_Rights_of_Women_eng1.pdf)
7. CEDAW. (n.d.). Retrieved from <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>

<sup>20</sup> Vishakha v. State of Rajasthan [AIR 1997 SC 3011]

<sup>21</sup> Gaurav Jain v. Union of India [AIR 1997 SC 3021]