



ROLE OF LAW IN EMPOWERMENT OF WOMEN: AN EVALUATIVE STUDY

KEYWORDS

R.Shanmugam

Research and Development centre, Bharathiar University, Coimbatore

Dr.Rangasami

Research and Development centre, Bharathiar University, Coimbatore

Introduction

All over the world, 8th March, is celebrated as International Women's day. But, gender equality is proclaimed as fundamental right by the United Nations Charter in 1945. However, years before this signing, women in San Francisco rose up in arms for their rights as early in 1912, there was a strike by total workers for equality.

India, the second highest populous country of the world, comprises women as half of the total. Women in ancient India, especially during the Vedic and Indus civilizations, received a great divine, honor and were worshipped as goddess. After some period the status of women had been gradually diminished. In contemporary India, it is very pathetic to note that even after adopting the Constitution, the Indian women did not, so far, get their due share; of Justice-social, economic and political, and Equality of status and opportunity; which they are entitled to. For no fault of hers, she has been suppressed and oppressed in every walk of life.

1. Constitutional Rights

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 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.

• RIGHT TO EQUALITY

The state shall not deny to any person equality before the law and the equal protection of the laws within the territory of India. The Government can make provisions for reservations of seats for women in educational institutions.

The state Government can make provisions for reservation of seats for women in local bodies, the 73rd Amendment of the Constitution provides for the reservation of 1/3rd seats in all tiers of local Government for women.

• RIGHT TO LIFE AND PERSONAL LIBERTY

Article 21 assures the right to live with human dignity, free from exploitation. As far as Personal Liberty is concerned, it means freedom from physical restraint of the person by personal incarceration or otherwise and it includes all the varieties of rights other than those provided under Article 19 of the Constitution. The state is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly

when he belongs to the weaker section of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him.

PREVENTION OF SEXUAL HARASSMENT OF WORKING WOMEN

The Supreme Court of India, in 1997, in the Vishaka Judgment, for the first time, acknowledged sexual harassment at the workplace as a human rights violation. The Supreme Court relied on the Convention on the Elimination of All Forms Discrimination Against Women, adopted by the General Assembly of the United Nations, in 1979, which India has both signed and ratified. In its judgment, the Supreme Court outlined the Guidelines making it mandatory for employers to provide for sympathetic and non-retributive mechanisms to enforce the right to gender equality of working women.

RESERVATION OF SEATS IN ELECTION TO LOCAL BODIES

The parliament has succeeded in its efforts to provide for reservation of seats to women in elections to the panchayat and the municipalities. According to Article 243D (3) not less than one third of the total number of seats to be filled up by direct election in every Panchayat, shall be reserved for women and such seats to be filled up by direct election in every Panchayat. Article 243D(3) of the constitution provides similar provisions for reservation of seats to women in direct election in every municipality. Therefore, reservation of 33% of seats to women candidates to hold office and perform all public functions at the panchayat and municipal level is within the Constitutional mandate.

• RIGHT AGAINST EXPLOITATION

Articles 23 and 24 of the constitution are designed to prevent exploitation of men by men. Thus rights ensured by these two articles may be considered as complementary to the individual rights secured by Articles 19 and 21 of the constitution.

• DIRECTIVE PRINCIPLES OF STATE POLICY

A very important and useful provision of women's welfare and well-being is incorporated under Article 42 of the Constitution. It imposes an obligation upon the State to make provisions for securing just and humane conditions of work and for maternity relief. Some of the legislations which promoted the objectives of this Article are the Workmen's Compensation Act, 1923, the Employees State Insurance Act, 1948, the Minimum Wages Act, 1948, the Maternity Benefit Act, 1961, the Payment of Bonus Act, 1965 etc

2. Criminal Law Amendment Act, 2013

On 16 December 2012 a female physiotherapy intern was beaten and gang raped in Delhi. She died from her injuries thir-

teen days later, despite receiving treatment in India and Singapore. The incident generated international coverage and was condemned by the United Nations Entity for Gender Equality and the Empowerment of Women, who called on the Government of India and the Government of Delhi "to do everything in their power to take up radical reforms, ensure justice and reach out with robust public services to make women's lives more safe and secure". Public protests took place in Delhi, where thousands of protesters clashed with security forces. Similar protests took place in major cities throughout

3. 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 procreation 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.

4. CODE OF CRIMINAL PROCEDURE, 1973 :

Under S. 125, Code of Criminal Procedure, a woman has got right to maintenance. In *Mangatmul vs. Punnidevi* it was Held that the maintenance must necessarily encompass a provision for residence. Maintenance is given that the lady can live in a manner more or less to which she is accustomed. The concept of maintenance must therefore include provision for food and clothing and the like and take into account the basic need of a roof over .

5. 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.

6. HINDU ADOPTION AND 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.

7. INHERITANCE AND SUCCESSION RIGHTS OF WOMEN AND DAUGHTERS UNDER PERSONAL LAWS

The general law relating to the inheritance and succession can easily be referred to The Indian Succession Act, 1925. Under this Act every Indian is entitled to equal shares on inheriting the property on the death of a person. The exceptions are Hindus, Sikhs, Jains, Buddhists and Muslims as they are governed under separate laws of succession. As for the persons of different faiths than Hinduism and Mohammedan, the Indian Succession Act, 1925 applies.

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. This Act provides penalty for giving and taking the dowry and increase punishment twice, first in 1985 and second time in 1986. Further, it prohibits the demanding of dowry and makes any agreement for giving or taking dowry to be void. If, any dowry is given, it shall be transferred to the woman in marriage and if not transferred, such person is punishable. Offences under this Act are cognizable for certain purposes and to be non-bailable and non-compoundable.

10. THE FACTORIES ACT, 1948 :

The provisions of this Act provides for health, safety, welfare, and working hours for women labourer working in factories.

11. 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.

12. THE MATERNITY BENEFIT ACT, 1961:

It provides for maternity benefit with full wages for women workers. This Act empowers the women to avail 12 weeks paid leave at the time of each delivery, out of which six weeks before delivery and six weeks after delivery. This benefit is also applicable at the time of adoption of a child. Before the maternity period, pregnant women are entitled to work in favourable conditions.

13. THE MEDICAL TERMINATION OF PREGNANCY ACT, 1971:

The Act safeguards women from unnecessary and compulsory abortions. The object of the Act is to provide for termination of certain pregnancies by registered medical practitioners and for matters connected therewith or incidental thereto. Further, it explains when and where the pregnancy can be terminated, and by registered medical officer only. The termination of a pregnancy by a person who is not a registered medical practitioner shall be an offence punishable under IPC.

14. THE IMMORAL TRAFFICKING (PREVENTION) ACT, 1986:

Trafficking in Women and Children is the gravest form of abuse and exploitation of human beings. Trafficking in human beings take place for the purpose of exploitation which in general could be categorized as (a) Sex-based and (b) Non-Sex-based. Non sex based trafficking could be for different types of servitude, like domestic labor, industrial labor, adoption, organ transplant, camel racing marriage related rackets etc. But the growing traffic in women is principally for the purpose of prostitution. The Act safeguards women from prostitution.

15. 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. The state of Maharashtra became the first in country to ban prenatal sex determination through the enactment of Maharashtra regulation of prenatal diagnostics techniques act.

16. THE FAMILY COURTS ACT, 1984:

The Act provides for setting up a Family Court for in-camera proceedings for women.

17. THE PROTECTION OF WOMEN UNDER DOMESTIC VIOLENCE ACT, 2005

The Parliament of India enacted to protect women from domestic violence. The Act provides for punishment for domestic violence committed by husband and his relatives and also pro-

vides legal assistance for women suffering from domestic violence. It also provides interim maintenance to women and also for compensation and damages.

18. JUDICIAL INITIATIVE TOWARDS EMPOWERMENT OF WOMEN

Though plethora of legislations exists, due to ineffective enforcement, women are exploited by the male dominated society. Male dominated society has found ways to circumvent the provisions of the Act and act as a blockade against women empowerment. Due to the failure of the legislations to protect women, judiciary has come forward to protect women. In protecting the women, the Indian Judiciary has removed all the procedural shackles and has completely revolutionised constitutional litigations. The judiciary has encouraged widest possible coverage of the legislations by liberal interpreting the terms. The judiciary has shifted from doctrine approach to the pragmatic approach, which was conducive to all interests in the society. The Courts have shown greater enthusiasm in granting the constitutional provisions for all women.

Conclusion

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 depict 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. 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 percent empowerment. The women are empowered by constitution and many other legal provisions in India but, most of them are limited to books only. All these empowerments should be implemented strictly, then only it can be called empowerments.

REFERENCE

1. Aejaz, Ahmed. (2008, 4th May). Muslim Women's Right to Inheritance. [Weblog]. Retrieved 23 June, 2015, from <http://www.lawyersclubindia.com/forum/muslim-women-s-right-to-inheritance-9490.asp#.VIGQB9lrKM8>
2. Banashri, b savanoor. (c2000,). Need To Change The Mindset of People. [Weblog]. Retrieved 23 June 2015, from <http://www.legalserviceindia.com/article/I292-Female-Foeticide.html>
3. Bhanu, pratap singh. (2009, 28 February). National Commission for Women. [Weblog]. Retrieved 23 June 2015, from <http://www.legalserviceindia.com/article/I318-National-Commission-For-Women.html>
4. Chandrasekharan pillai, K. N. (1999). Women and Criminal Procedure. In amita dhanda & Archana parashar (Eds), In Engendering Law: Essays in Honour of Lotika Sakar (pp. 161-172). Lucknow: Eastern.
5. Faisal, Mohd & Kartik, Joshi. (2015). JUSTICE TO WOMEN: CONSTITUTIONAL PERSPECTIVE AND JUDICIAL APPROACH. Lawmantra, 2(9), . Retrieved 22 June, 2015, from <http://journal.lawmantra.co.in/wp-content/uploads/2015/08/71.pdf>
6. Important constitutional and legal provisions for women in india. (c2015). Retrieved 22 June, 2015, from http://backcast.org/mospi__nic__in--Mospi_New--upload--women_man_p_2010--Rights__doc.html
7. Jayakumar, Y. .F. (2013). LIBERTY AND REPRODUCTIVE HEALTHCARE JUSTICE: INDIAN PERSPECTIVE. Retrieved 23 June, 2015, from <http://www.jus.uio.no/english/research/news-and-events/events/conferences/2014/wccl-cmdc/wccl/papers/ws7/w7-Jayakumar.pdf>
8. krishna lyer,V.R. (2003). Search for A Vision Statement on Women's Empowerment vis-a-vis Legislation & Judicial Decisions :A VIBRANT VISION AND MILITANT MISSION. Retrieved 23 June , 2015, from http://ncw.nic.in/pdfReports/Womens_Empowerment_Legislation_Judicial%20Decisions.pdf
9. Maheshwari, V.I.D.H.A.N. . (2000,). Article 21 of The Constitution of India - The Expanding Horizons. [Weblog]. Retrieved 23 June 2015, from <http://www.legalserviceindia.com/articles/art222.htm>
10. Malavika kumar. (2000,). Trafficking in Women and Children - An ounce of prevention is worth a pound of cure. [Weblog]. Retrieved 23 June 2015, from http://www.legalserviceindia.com/articles/tch_wo.htm