

A Study on the Judicial Constitutions towards Women's Empowerment

In Our Democratic India

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In our democratic India, gender injustice have created a problem in all over the nation, whatever the cause, may be from the role of judicial commission in Nirbhaya's Act, 2013 to the trails of unexpected Asifa bano kathua case 2018, the apex took strong constitution. Yes, women have been ill-treated in every society for age and in India is no exception. We strongly speak about women's empowerment, from the Hindu adoptions and maintenance Act 1956 to Triple talaq and the protection of rights of marriage Act, Shayara Bano vs. Union of India 2017, whether the legislations and constitutions made so far has been followed by the people in our nation, the Indian judiciary feel convinced of the need for women's empowerment by law and by legal means. The constitution of India has taken a long leap in preventing and eradicating the lingering effects on such harmful incidents so far as women are concerned, Till today, our Indian constitution express the affirmative action's in favour of our Indian women towards their empowerment, thus this paper speaks about the study on the judicial constitutions towards women's empowerment in the democratic India to prohibit all types of discrimination against our Indian women and their red carpet for protection from her childhood and finally securing equal opportunity to women in all walks of life and participation.

1. Introduction

1.1 Constitutional Initiatives for Women

"Jawaharlal Nehru, the greatest emancipator of women in India, played a significant role for the amelioration of their socio - economic condition, His speech during Women and the freedom movement in India quoted "One can tell the condition of a nation by looking the status of its women" where, his every efforts to raise their status socially, economically, politically and educationally to make them equal to men, still our constitutions initiatives for women according, where here I want to salute Leila Seth (20 October 1930 – 5 May 2017) the first woman judge on the Delhi High Court where she became the first woman to become Chief Justice of a state High Court on 5 August 1991 and Justice Indira Banerjee is the Chief Justice of the Madras High Court, the second woman to hold the position in India.

Women who constitute a large portion of a human populace have been separated hassled and misused independent of the nation to which they have a place, un-mind of the religion which they declare and careless of the time allotment in which they live.[2] Everywhere ladies are stood up to with numerous difficulties. In all social orders to a more noteworthy or lesser degree ladies and young ladies are subjected to physical, sexual and mental mishandle that cuts cross wise over lines of salary, class and culture.

Tragically, India is one of the few nations where offenses against women have been expanding in huge way. Truth be told since ages the status and the situation of ladies in India is a questionable subject, as it mirrors the conflicting and the confusing idea of the Indian culture. In one way individuals offers supplications to ladies as goddess, more finished Indian custom and the way of life says that "yatra nari pujyante tatra ramante devta". Be that as it may, in the meantime and in opposite side ladies are thought to be in the optional position and they are put to monstrosities even before birth till death.

In mean time established law and conventional law through legal has been filling in as a guardian angel of ladies from barbarities and furthermore giving assistance from multiple points of view for liven up status of ladies in all lances of their life. The status of ladies in our nation has ascended to the present level which may not be up to the check but rather still attractive is a

direct result of dynamic legal and in addition open energetic individuals who effectively moved the status of ladies of our nation to the present level. The fair and autonomous legal has constantly assumed the part of a genuine Guardian of equity. Since freedom numerous a times the legal has professional effectively translated and opened up the ambit of administrative arrangements for the unprivileged half of the general public, i.e., the women of our nation.

1.2 Important legal provisions for women of India

From the Vedic age to till today, status and position of women has been changing with the passing of time. Historical studies and the scriptures indicate that Indian woman enjoyed a comparatively high status during the early Vedic period, later, the condition and status of women in India declined with the passage of time. During the medieval period, woman was given a position subordinate to man. Law and religion did not recognize the equality and equal rights of man and woman. Finally, when the British came in to contact with the Indian people in the latter half of the 18th century, the position of Indian woman had deteriorated to the lowest level. Ideologically, women were considered a completely inferior species, having no significance, no personality. But because of contributions made by many social reformers like Raja Ramohan Rai, Veresa Lingam, Ishwar Chandra Vidyasagar, Vivekananda, Jyothira Phule, Anne Besant, Mother Teresa, Mahatma Gandhi[6], Nehru, Dr. B. Ambedkar, Vinoba Behave etc. British government introduced some laws for the protection of women like the widow remarriage Act, 1856, Civil Marriage Act, 1872, Married women's property Act, 1874, The Child Marriage Restraint Act, 1921, The Prevention of Prostitution Act, 1923, The Hindu Inheritance Act, 1929, Sati Prohibition and more importantly special provisions for women protection in Indian Penal Code, 1860 etc.

After freedom, Indian government passed a few general and in addition unique laws particularly sacred arrangements for security of women to defend and to engage women in India. The change in women's position and status turned out to be further obvious when quickly after the autonomy, Indian women made their stamp by getting to be Governors, Cabinet pastors, and envoys. A few measures were taken by the Government of India to allocate level with status to ladies in the financial, political and social fields.

The rights accessible to lady in India can be arranged into two classes, to be specific as sacred rights and legitimate rights. The established rights are those which are given in the different arrangements of the constitution, which is the essential rule that everyone must follow. The legitimate rights, then again, are those which are given in the different laws. The Constitution of India vows fairness of status and chance to men and women. Being an overseer of constitution summit court has been endeavoring to satisfy protected destinations by various proclamations in a few cases.

At last it will be obvious from history that the barbarities against women are since time immemorial. What's more, in the meantime assurance of women from atrocities is additionally as old as abominations against women as religion, custom, moral, moral qualities and through social developments, national and universal lawful insurances and so forth however among all these the huge part has been playing by law through legal as a rescuer of women from outrages in current period. Legal shields shield women from monstrosities, infringement and so on as well as empowering women in social, educational, economical, political fields.

2. Special Constitutional rights for Women Empowerment – The Concept of Protective Discrimination

The Indian constitution not just allowed break even with status to women standard with men, yet in addition engages the state to receive measures of positive discrimination for women for equalizing the combined education, socio economic and political hindrances looked by them. Farmers likewise enabled the state to make uncommon laws, arrangements, plans and projects within a popularity based nation for headway of women in all circles. The farmers of constitution meant to give equity, freedom and equality irrespective of gender; it can be seen in Preamble, Fundamental Rights, and Directive Principles of state strategy, Fundamental obligations and other provisions.

The preamble is the way to open the mind of the creators. Established farmers meant to give equity, freedom and equality irrespective of gender, status, religion, belief and cast and so on by this one can comprehend that composers might want to build up a general public with sex uniformity, which straightforwardly or by implication endeavors to uphold the women empowerment.

2.1 Preamble Initiatives for Women Empowerment

National commission for women empowerment (January 1992):

The Government set- up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women review the existing legislation to suggest amendments wherever necessary.

Reservation for women empowerment in local self-government:

The 73rd constitutional amendment acts passed in 1992 by parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

The national plan of action for the girl child (1991-2000):

The plan of action is to ensure survival, protection and development of the girl child in order to safeguard the bright future of the girl child [2].

National policy for the women empowerment (2001):

The Department of Women and Child Development in the Ministry of Human Resource Development have prepared a “National Policy for the Women Empowerment” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.

3. The rights and safeguards enshrined in the constitution for women in India

1. The right to equality and equal protection of laws [Article 14]
2. The state shall not discriminate against any citizen of India on the ground of sex [Article 15(1)].
3. The state is empowered to make any special provision for women. In other words, this provision enables the state to make affirmative discrimination in favour of women [Article 15(3)].
4. No citizen shall be discriminated against or be ineligible for any employment or office under the state on the ground of sex [Article 16(2)].

5. Traffic in human beings and forced labor are prohibited [Article 23(1)].
The state to secure for men and women equally the right to an adequate means of livelihood [Article 39(a)].
6. The state to secure equal pay for equal work for both Indian men and women [Article 39(d)].
7. The state is required to ensure that the health and strength of women workers are not abused and that they are not forced by economic necessity to enter avocations unsuited to their strength [Article 39(e)].
8. The state shall make provision for securing just and humane conditions of work and maternity relief [Article 42].
9. The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation [Article 46].[9]
10. The State to raise the level of nutrition and the standard of living of its people [Article 47].[10]
11. It shall be the duty of every citizen of India to renounce practices derogatory to the dignity of women [Article 51-A(e)].
12. One-third of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women [Article 243-D(3)].
13. One-third of the total number of offices of chairpersons in the Panchayats at each level shall be reserved for women [Article 243-D (4)].
14. One-third of the total number of seats to be filled by direct election in every Municipal it shall be reserved for women [Article 243-T(3)].
15. The offices of chairpersons in the Municipalities shall be reserved for women in such manner as the State Legislature may provide [Article 243-T(4)]. Etc.
16. The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, every person who is a citizen of India and who is not less than eighteen years of age irrespective of gender, status etc entitle to be a voter. [Article 325[11] and 326[12]].

4. Legislative Initiatives towards Empowerment of Women in India

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 favor of women. 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.

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-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.

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 laborers 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 redressed of grievances and advice 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.

5. Judicial Activism and its role in Women Empowerment

All arrangements of the Constitution and all laws ordered by the legislation body get their genuine significance and import through the procedure of legal elucidation. The Constitutional order and the different laws accommodating defensive segregation for ladies identifying with a few parts of their social, financial and political life have come up under the watchful eye of the courts. Through different gadgets like legal audit, legal activism, social activity suit and the obligation of authorization of essential rights the prevalent Courts in India have advanced a sexual orientation law which has given substance and life to the sacred plan of defensive segregation for women. The following overviews in various cases outline of the judicial approach in different cases has been discussed here, where the Courts have effectively conveyed their decision to fortify position of women.

Judicial Approach in the issues identifying with Education:

Education is the primary vehicle for human, economic and social development, profiting both the individual and society. The Supreme Court in Mohini Jain and Unnikrishnan cases recognized the right to education is an implied fundamental right. According to the court, the education has proximate relationship with life, protection of environment, eradication of untouchability, and other related rights. The National Commission on review of the working of the Constitution has also endorsed the similar view. As a result the parliament inserted Article 21-A to the Constitution by the 86th Constitutional amendment in 2002. This amendment also introduced new fundamental duty on parents to provide education to their children under Article 51-A to take affirmative action to full-fill the Constitutional mandate, the Parliament passed the Right to Education Act, 2009 with effect from April 1st 2010. The Act deals with various facets like appointment of teachers, standards, curriculum, infrastructure, community participation and responsibility of the State to provide primary education etc.

According to Section 3 of The Right of Children to free and compulsory Education Act, 2009, "Every child of the age of six to fourteen years shall have a right to free and compulsory education in a neighbourhood school till completion of elementary education." Sections 8 and 9 of the same Act provides for certain duties of appropriate Government and local authority to be achieved viz., In Padmaraj Samarendra v. Province of Bihar, allotment of a few seats for young lady understudies in Medical Colleges was tested on the ground that it is exclusively in light of sex. The Court while justifying the apportioning of seats for girl students held as sensible and it can't be said to be separation on the ground of sex alone.

Judicial approach in the matters of Employment:

Some activists and lawyers said she was raped solely because of her work. Several activist groups who subscribed to that view filed a Public Interest Litigation in the Supreme Court of India, under the collective platform Vishakha, which sought detailed directions on how sexual harassment of women in the workplace could be prevented. The guidelines the SC issued in 1997, which came to be known as the Vishakha Guidelines, were to be 'strictly observed in all workplaces' and were binding and enforceable in law. In December 2013, Vishakha was

superseded by the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, which kept the essence of the Guidelines and added more provisions.

The National Commission for Women submitted drafts of a Code of Conduct for the Workplace in 2000, 2003, 2004, 2006 and 2010. The Protection of Women against Sexual Harassment at Workplace Bill was introduced by the then Women and Child Development minister, Krishna Tirath, in 2007.

Judiciary towards sex-workers and sexually abused women:

The Sexual Harassment of Women at Workplace Act retains the essence of the earlier Vishakha Guidelines but does not fix accountability for transgressions. In September 1992, a woman named Bhanwari Devi was raped. Her fault: she had tried to prevent the marriage of a one-year-old girl. It was part of her job, as a Saathin, or friend, in the Women's Development Project of the Rajasthan government, as per a government campaign, to persuade villagers to abandon the practice of child marriage. At first, she had suffered social boycott for her temerity. When that didn't work, five men raped her in front of her husband. A trial court acquitted all five men. Her story, and its aftermath, aren't hard to find. It is not a pleasant one. It was approved by the Union Cabinet in January 2010, tabled in the Lok Sabha in December 2010. It was referred to the Parliamentary Standing Committee on Human Resources Development, which published its report in November 2011. The Cabinet made amendments in May 2012. The amended Bill was passed by the Lok Sabha in September 2012, the Rajya Sabha in February 2013, signed by the President in April 2013 and came into force on December 9, 2013 as the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act.

Judicial role in Acid attacks, regulate and restrict the sale of acids:

Pragya Prashun was on her way from the Hindu holy city of Varanasi to the capital New Delhi days after her wedding, when a distant male relative poured acid on her. "I initially didn't realize what was happening. My skin was burning, fumes were coming off it, and it smelled as though a tire was burning on my body," recalls Prashun, who was only 22-years old at that time.

The relative attacked her with acid because she had rejected his marriage proposal. Ten years have passed since the assault, which burned 47 percent of her body. "There are many unreported cases of acid attacks where victims die, especially in rural areas. Sometimes people try to hide information if the attacker was the husband or a family member of the victim," said Prasun, who runs Atijeevan Foundation, an organization that rehabilitates acid attack survivors in the southern city of Bangalore. In 2013, the Supreme Court of India ordered the government to limit over-the-counter acid sales to people over 18. But Prasun criticizes the authorities, arguing that they have failed to implement the rules governing the sale of acid in the country.

Role of judiciary in upholding special provisions for women in criminal law:

Regina v. Kiranjit Ahluwalia In September, 1992 Kiranjit Ahluwalia made news after she was released after serving three and a half years of a mandatory life sentence for murdering her husband, Deepak, whom she had drenched in petrol while he was sleeping and set alight. Her retaliation followed 10 years of systematic abuse, but what caused her to flip on that fateful evening was that he had pressed a hot iron against her, the scars of which she still bears. Kiranjit was released by Appeal Court judges on ground of "diminished responsibility".

Judicial approach in recognizing women guardianship rights:

With the establishment of National and State Human Right Commissions and National Commission for Women, gender issues are receiving greater attention. In *Air India V Nargesh Mirza*, the Supreme Court struck down the provision of rules which stipulated termination of service of an air hostess on her first pregnancy as it arbitrary and abhorrent to the notions of a civilized society. In *Pratibha Ranu V Suraj Kumar* the Supreme Court held that the stridhan property of a 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. Another landmark judgement was given by the Apex Court in the case of *Gita Hariharan V Reserve Bank of India*[4], 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.

Judiciary presumed live-in-relationship for long term as deemed marriage:

A two-judge bench of Justices MY Eqbal and Amitava Roy, said in the case of couples living together marriage would be until proven otherwise. The bench reportedly said, "It is well settled that the law presumes in favour of marriage and against concubinage, when a man and woman have cohabited continuously for a long time. However, the presumption can be rebutted by leading unimpeachable evidence. A heavy burden lies on a party who seeks to deprive the relationship of legal origin." The order came in response to a property dispute where a family contested that their grandfather was not legally wedded to a woman he had lived with for 20 years and that she was his mistress, despite living in the joint family with them. In *Dhannulal and ors. v. Ganeshram and ors*[34], it was held that continuous cohabitation of a couple together that is, 'live-in relationship' would raise the presumption of marriage unless otherwise proven. In this matter, the woman had been living with a man as his wife for around 20 years until his death in the same house with the respondent-relatives who alleged that she was only a mistress and not the legally wedded wife. The woman clearly failed to prove that she was the legally wedded wife of deceased but, the bench still held that she was eligible to inherit the property.

Role of judiciary in recognizing women's rights in the context of maternity benefit in case of surrogacy:

P Geetha v. Kerala Livestock Development Board Ltd, the petitioner, who became a mother through surrogate procedure, was not granted maternity leave by the Respondents on the ground that birth of the child was not under normal circumstances. The High Court held that while granting maternity leave, women could not be discriminated merely because the baby was obtained through surrogacy.

Judiciary conferring property rights on women par with men:

The courts have played a vital role in making this amendment effective by interpreting it liberally and bringing in the concept of notional partition, without it being expressly mentioned in the amended section. In *Gurupad vs. Hirbai*, Supreme Court observed that ignoring a woman's right to get a share at the time of notional partition essentially means that: 'One unwittingly permits one's imagination to boggle under the oppression of the reality that there was in fact no

partition between the plaintiff's husband and his sons. The fiction created by Explanation has to be given its full and due effect.' In *M. Yogendra and Ors. vs. Leelamma N. and Ors*, the Supreme Court held that 'The Act indisputably would prevail over the Hindu Law. We may notice that the Parliament, with a view to confer right upon the female heirs, even in relation to the joint family property, enacted Hindu Succession Act, 2005. Further in *G. Sekar vs. Geetha and Ors.*, the Supreme Court held that: 'It is, therefore, evident that the Parliament intended to achieve the goal of removal of discrimination not only by Section 6 of the Act but also by conferring an absolute right in a female heir to ask for a partition in a dwelling house wholly occupied by a joint family as provided for in terms of Section 23 of the Act.'

Role of Judiciary in safeguarding rape victim:

The fast-tracked trial of eight men accused in the brutal gang rape and murder of an eight-year old Muslim girl began Monday in India, as outrage over sexual crime spread yet again across the country. In a court in Indian Kashmir town of Kathua, where the premeditated crime was allegedly committed in January, the accused pleaded not guilty and asked to undergo chemical lie-detector tests. It was a brief first day in the trial. The court requested copies of the police charges to be shared with the suspects' legal teams, and said the trial would resume on April 28. India launched fast-track courts and a tougher rape law that included the death penalty after a gruesome assault on a student in a Delhi bus shocked the country in 2012, but crime statistics indicate the situation has got worse, not better, since then. The data was collated by Reuters amid mounting public anger over crimes against women after two horrific cases in recent months that has, once again, cast a harsh light on systemic problems plaguing the country's police and courts.

6. Conclusion

At long last one can state that in India there are such a large number of laws by lawmaking bodies, runs by manager and legal declarations and all the more significantly individual and in addition aggregate women's associations consistent bears for women insurance and strengthening yet too little equity to her on account of absence of ignorance, un-enthusiasm among women and individuals in the public eye. It is the need of great importance to have mindful and enabled women. An engaged women ensures her as well as secure individuals around her. Thus, the time has come to end quiet; women's should battle for her place in this

male ruled society. It ought to be beginning from family itself. The attitude and the male centric perspectives that have overwhelmed Indian individual's outlook since ages ought to be change then just the genuine products of law will be delighted in by women.

“Women will work out their own destinies—much better, too, than men can ever do for them. All the mischief to men undertook to shape the destiny of women” – Swami Vivekananda.

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