ROLE OF JUDICIARY IN PROTECTING WOMEN RIGHTS

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ABSTRACT

The Millennium Development Goals (MDGs) were the eight universal improvement objectives for the year 2015 that had been set up in the Millennium Summit of the United Nations in which the third target is to promote gender equality and empower women; these objectives are a long way from being acknowledged in a nation like India. In fact, frequently women in India are underprivileged of their fundamental right i.e., the fundamental right of dignity also, leave alone the question of gender parity. In 21st century one of the most important concerns is to empower women. However, practically women empowerment is still a mirage of reality, we see in our everyday life how women are victimized of various social evils.

Women empowerment is a crucial tool to expand women’s potential to have resources and to make deliberate and strategic life choices. Empowerment of women is especially basic during the time spent upliftment of social and political status of women, the customarily deprived, in the society. Empowerment is the way toward guarding them against all types of violence & viciousness. The study is based on the secondary resources the study uncovers that Indian women’s are relatively eunuch zed and they enjoy somewhat down status than that of men. Regardless of numerous efforts undertaken by Government. It is discovered that acknowledgment of unequal gender standards by women are still prevailing in the society. The study finishes up by a perception that access to Education, Employment and Change in Social Structure are just the empowering variables to Women Empowerment

In this backdrop the current paper attempts to analyze the role of judiciary in protecting women rights India and highlights the Role of Supreme Court in interpreting International instruments for Women empowerment, Role of Supreme Court in Protecting Victims of Crimes and issues and challenges of women empowerment. The article attempts to scuffle with the few challenges faced by the women in India like the female feticide, refusal of inheritance rights, dowry, sale and

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trafficking of girls etc. The objective of the paper is to progress the techniques of empowering women uniformly like the men.

**Keywords:** Women Empowerment, Problems, Socio-economic status, Empowerment, Challenges.

**INTRODUCTION**

The Indian judiciary, during the recent past has been overburdened with huge number of cases relating crime against women with dowry and its disastrous repercussion as major issue relating to human rights of women. Therefore, keeping in view the alarming increase in domestic violence cases, the sorry plight of the tortured and harassed women at the hand of either their husband in-laws or her parental home, the Indian judiciary has adopted very stringent postures towards such cases, pronouncing firm judgment against the guilty and dispense justice to the aggrieved party because in our country, women have more regard and dignity and when a women suffers any domestic violence, it is supposed that there is no morality or status of like. The Supreme Court in *Chandra Prakash Kewal Chand Jain V. State of Maharashtra*\(^2\), gave his views; expressing their sentiments as follows: "When the respect of womanhood in our country is, on the decline, unfortunately. In our country, standard of decency and morality in public life is now the same as in other countries of the world, so the decency and morality in public life can be promoted and protected if only the courts deal strictly with those who violates the societal norms". The Indian judiciary lead by the Supreme Court of India has exhibited a welcome judicial activism towards the domestic violence against women. Domestic violence includes the wife battering, cruelty whether mental or physical dowry-death, rape and adultery etc. In *Ram Narayan Gupta V. Ramaswami Gupta*\(^3\), the Supreme Court made an important observation that domestic violence are committed in a fit fury due to sexual jealousy. Women are ill-treated, frequently beaten showing intense and extreme indignation to social feelings. From the day of our independence the Indian judiciary, along with the legislature of India, is trying to improve the condition of women. The judiciary interpreted the various legal provisions meant for the protection of women in such a way as to be most beneficial to our women

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\(^2\) AIR 1990 SC 658.

\(^3\) AIR 1988 SC 2268.
The Indian Constitution guarantees to all Indian women equality under Article 14. No discrimination by the state under Article 15(1), Equality of opportunity under Article 16 and equal pay for equal work under Article 39(d), protects dignity of women under Article 51(A)(e) and it also provides provisions for the securing humane conditions of work and for women under maternity relief under Article 42.

OBJECTIVES OF THE STUDY

1. To analyze the role of judiciary in protecting women rights India
2. To highlights the Role of Supreme Court in interpreting International instruments for Women empowerment,
3. To Analyze the Role of Supreme Court in Protecting Victims of Crimes and issues and challenges of women empowerment.

RESEARCH METHODOLOGY

This paper is basically descriptive and analytical in nature. In this paper an attempt has been taken to analyze the role of judiciary in protecting women rights India and highlights the Role of Supreme Court in interpreting International instruments for Women empowerment, Role of Supreme Court in Protecting Victims of Crimes and issues and challenges of women empowerment. The article attempts to scuffle with the few challenges faced by the women in India like the female feticide, refusal of inheritance rights, dowry, sale and trafficking of girls etc. The objective of the paper is to progress the techniques of empowering women uniformly like the men.

ROLE OF JUDICIARY FOR PROVIDING EQUAL STATUS TO WOMEN

As it is a general rule that legislature makes law, executive implements law and judiciary interprets law but in recent former judiciary which has acquired a new dimension or feature, But now law is not more interpreter or a passive viewer but law is now active player, due to the change in law it has arisen many debates but it new role has become advantage for women, the new law has many decisions and rules or guidelines in favor of women which is a great contribution to women empowerment , At present, when the two wings of government i.e, the legislative and judiciary have failed to exercise their part in making and implementing law, the judiciary is acting itself as
the keeper of constitutional affirmation, besides the judiciary is working in accordance or consonance with the international conventions or international treaties.

In the landmark case of *Randhir Singh V. Union of India*⁴, the apex Court opine that the principle of equal work is not a fundamental right but it is certainly a constitutional goal. Article39 (d) of the Constitution states "that there is equal pay for equal work for both men and women." Similarly, in *Grihakalyan V. Union of India*⁵ it was held that the denial of equal pay for equal work becomes irrational classification within the meaning of article 14 of the constitution. In *Air India V. Nargesh Meerza*⁶, the Court held that the termination of service on pregnancy was unreasonable and arbitrary, therefore violative of article 14.

*Vishakha V. State of Rajasthan*, the petitioner, a non-governmental organization (NGO) was working for gender equality, Vishaka the petitioner filed a writ petition seeking the validating of the fundamental rights of working women under Article 21 of the Indian constitution. The immediate reason for the filing petition was the gang rape of a saathin (a social worker involved in women’s development programmes) from Rajasthan in year 1992. The assault was an act of revenge as the saathin had interceded to prevent a child marriage. Supreme Court of India provided a landmark judgment on the area of sexual harassment against women.

In case of *Noor Saba Khatoon v. Mohd. Quasim*, the Hon’ble Court held that we have opted for a secular republic, secularism under the law means that the state does not owe loyalty to any particular religion and there is no state religion. That as well, The Hon’ble High court of Calcutta under the Muslim Women (Protection on Divorce) Act, 1986 extended the iddat period till such time the woman re-marries, to allow Muslim women a maintenance allowance beyond the customary iddat period of about three and a half months.

In *Deelip Singh V. State of Bihar*, The Honorable Court held that If a consent is given to a women by a man to make her believe of marrying her, the man’s promise to marry women would fall

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⁴ AIR 1982 SC 879.
⁵ (1991) 1 SCC 619.
⁶ AIR 1981 SC 1829
within the expression ‘without her consent’ under the consultation of clause (ii) to section 375, Indian Penal Code, only if it is established that from the very initiation the man never really intended to marry her and the promise was a mere hoax. At the point when a prosecutrix had taken a cognizant choice to partake in the sexual demonstration just on being awed by the charged’s guarantee to wed her and then he denounced’s guarantee was truth from its origin with the aim to seduce her to sexual act, Clause (ii) to section 375 Indian penal code. it is not attracted but and it is established. In such a situation where the man made a promise with women of marrying her then the accused would be liable for breach of promise to marry for the breach of promise he will be liable for damages under civil law. False promise to marry will not ipso facto make a person liable for rape if the prosecutrix is over 16 years old and impliedly agreed to the demonstration or act.

Madhukar Narayan Mardikar V. State of Maharashtra, The Honorable Maharashtra High Court observes that since Banubi is an unchaste woman it would be extremely unsafe to allow the fortune and career of a Government official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy with another person. She was honest enough to admit the dark side of her life. Even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, simply in light of the fact that she is a women of simple ethicalness and virture, her proof can't be tossed over the edge.

ROLE OF COURT IN PROTECTING VICTIMS OF CRIMES

The Supreme Court created liberal judicial trends for protection of women giving favorable decisions not in constitutional matters but in case of customary laws also, such an example is Shah Bano Case where the apex Court set aside the personal law and bring the Muslim women under the purview of Section 125 Cr.p.c. Similarly in Shamim Ara Case, the Supreme Court declared that the triple talaq is not a valid talaq. Such interpretations by the judiciary provides new

7 AIR 1985 SC 945
dimensions to the concept of women liberty and provides a room for growth and individual development of the women. In *State Of Maharashtra And Another V. Madhukar Narayan Mardikar*\(^8\), the decision of the supreme Court that even a woman with easy virtue is entitled to privacy and no one can invade her privacy as and when he likes, therefore her evidence cannot be overthrown merely because she is a woman of easy virtue, here the apex Court consider her "a free human being with an independent will", and breaks the traditional myth that a lady of easy virtue does not have individuality. The effort of Indian judiciary is commendable, whenever and wherever it gets a chance it interprets the law according to the changing needs of the society as done by it in the case of *GithaHariharan V. Reserve Bank of India*\(^9\) where Section 6(a) of Hindu Minority and Guardianship Act, 1956 and Section 19(b) of the Guardians and Wards Act, 1890 interpreted in such a way that father and mother get equal status as guardians of a minor.

In *Cehat and Ors. V. Union of India*\(^10\), the Supreme Court of India played such role and monitored the implementation of the Pre Natal Diagnostic Techniques Act and issued several beneficial directives. This petition put the issue of sex selection and sex selective abortion on fore front and as a consequence many activities have been taken up by the government and non-governmental agencies on this issue.

The Supreme Court in *R. Ruppayee V. Raja Gounde*\(^11\) case dealing with the gift related property held that the father can gift the ancestral immovable property within a reasonable limits in favour of his daughter.

In case of *Kalawatibai V. Soiryabai* the Supreme Court in the matter of widow's right to property held that a female Hindu possessing the property on the date of the Hindu Succession Act of 1956 came into force, could become absolute owner only if she was a limited owner. The legislature did not intend to extend the benefit of enlargement of estate to any or every female Hindu irrespective of whether she was a limited owner or not

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\(^8\) AIR 1991 SC 207.
\(^9\) AIR 1999 SC 1149
\(^11\) AIR 2004 SC 1284
The zenith legal in India has translated various essential human privileges of women in the light of key rights ensured in Part III of the Constitution. These principal rights gone much past the American Bill of Rights. In a progression of cases the Apex Judiciary has set some exceptional standard of stating the sexual orientation correspondence and Human Rights of women. The pride of women was maintain by the Hon'ble Supreme court of India on account of *Rupan Deal Bajaj v. K.P.S. Gill*, As is pointed by the Hon'ble the A.P. High Court in *T. Saritha v. Thnkata Subbaiath*, the guideline of reasonableness to wedding matters and negated Section 9 of the Hindu Marriage Act, 1955 discovered abusing the privilege to security and human nobility ensured under Article 21 of our Constitution.

In the case of *Ranghubans Saudagor Singh v. State of Punjab*, the Hon’ble Punjab and Haryana Court held what is forbidden under the Constitution is discrimination on’ the ground of sex alone, but when the peculiarities of sex added to a variety of other factors and consideration from a reasonable nexus with the object of classification than the Constitutional bar under Articles 15 and 16(2) cannot be attracted.

As is observed in *Air India v. Nargesh Mirza*, the validity of the Indian Airline’s and Air India’s service rules providing that an Air Hostess had to retire from service at the age of 35 or on marriage-whichever was earlier, or if she got married within four years of confirmation or on first pregnancy was struck down and held to be arbitrary.

In case of *Lalitha Sundari v. R. Kethar Nathan*, it was observed that two vacancies in the Education Committee of a family trust were to be filled from the female descendants of the trustees. The scheme court which was the appointing authority, appointing two male members and observed that female descendants include male descendants and females who appeared in the interview lack practical experience.
ROLE OF SUPREME COURT IN INTERPRETING INTERNATIONAL INSTRUMENTS FOR WOMEN RIGHTS

The Hon’ble Supreme Court never hesitated to adopt the international standard of gender-justice if the provisions of international law do not come in conflict with the national law. National Commission for Women, Human Right Act and National Human Rights Commission were shaped subsequent to considering instruments of international law. And as a matter fact all these commissions are working within the Constitutional limits. And these recommendations are also taken into account while making and implementing the law concerning for women in Indian society. In India, a due regard is given to the international human rights organizations. These organizations have freedom to visit any place in India. Under such a large umbrella of international and national law a complete legal protection is given to Indian women. His Lordship Justice J S Verma Committee’s report indicated that failures on the part of the Government and Police were the root cause behind crimes against women. The report incorporated the need to review AFSPA in conflict areas (like manipur etc), most extreme punishment for rape as life imprisonment and not capital punishment, clear equivocalness over control of Delhi Police etc according to the reasons.

The Criminal Law (Amendment) Act, 2013 came into drive from 3 April 2013. The changes made in the Act in comparison with the Ordinance in respect of the offences such as Acid attacks, Sexual harassment, Voyeurism, Stalking, Trafficking of person, and Rape. Rape is generally considered a serious sex crime as well as a civil assault. The Legal rights of women refer to the social and human rights of women. One of the first women’s rights women’s rights declarations was the Declaration of Sentiments. Issues ordinarily connected with ideas of women's rights incorporate, however are not restricted to, the right to bodily autonomy and integrity, Right to vote (suffrage), Right to hold public office, Right to work, right to fair pay or equivalent pay, Right to claim property, Right to education, Right to serve in the military or be recruited, Right to go into lawful contract and Right to have conjugal, parental and religious rights.

Indian Constitution foresees an independent judiciary. There is a separation of powers between the executive and judiciary. The judiciary, which interprets the constitutional meaning of law and legality of executive actions, should have a separate existence. Lord Bryce said that there is no better test of the excellence of a government than the efficiency and independence of its judicial system. Indian constitution incorporated many provisions to ensure the independence of judiciary.
In countries like India, more than 19,000 rapes, 7500 dowry deaths, 32,000 homicides and 36,500 molestation are the rough wrongdoings announced in India in 2006 against women and girl children. Everyone knows the statistics, the murder rates, rapes, the violence that burdens economic development, and threats to society. Instead of counting crimes, attitude to reduce crime is needed. No person can claim to be protecting the place and population as there is no control on gun and tongue. “Culprits are our guys,” this word doesn’t give right to any side, whether in uniform or civvies to commit crime against innocent women and girl children. What emboldened these elements is that their horrendous acts of crime against women, are being ignored. About two lakh cases of violence have been registered by the National Crime Records Bureau, according to its recent data. It is well known that discriminatory and oppressive social attitudes, not to mention plain greed and corruption, infect the attitude of the authorities, and especially the police, in many cases when serious complaints go uninvestigated or are poorly investigated. Only when investigation is free, fair, and speedy and only when the conviction rate improves in cases where women are the targets of various forms of violence can crimes against women be brought down. The press has a key role to play in working against any cover-up in this area.

CONCLUSION

The Hon’ble Supreme Court of India and the High court’s interpret Constitutional provision in favor of women and girl children. Whenever there is an anti-women legislation, rule or order of the Government or any other agency then the Courts comes into picture to rescue the rights of women and girl children. It is the helper of the last resort and fortunately, it is also working for the welfare of the women and girl children. It is time to understand that there is a common challenge and urgency of a common response to this growing menace in society. The need of the hour is to give an expression of shared responsibility to the shared sense of crisis and an acute and growing concern over the violence and criminality affecting women. No amount of participation in any polls would help the matters if the crime in society, particularly against women and girl children, is not eliminated. Fighting crime is more important than anything else. Regardless of the injury women over all classes are revealing or reporting crimes, for example, assault and rape and don’t feel powerless or relinquished by family or society just like the prevalent case before. Society is changing and government is compelled to make a move as it has come up short on reasons, for
example, society's mindset or class partition. In the cases of *M.C.Mehta vs State of Tamil Nadu (1991)*, *Goodrocks Group Ltd vs Centre of West Bengal*18, *Lakshmi Kant Pandey vs Union of India*, *Sheela Barse vs Union of India*, *Unni Krishnana J.P vs Union of India* (2011), the Hon’ble Apex Court emphasized on the rights of child and that The Indian Government has to take effective steps for implementation of the principles laid down in those cases for welfare of Women and children. Child Labor Welfare, Child welfare and right to Education, Adoption of child, Sexual Exploitation of children, Rehabilitation of child prostitutes are challenges before us and the activism of Indian Judiciary as to this subject matter is a signal contribution for protection of women rights.
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