

The role of law in empowering women in India

Tapan Kumar Chandola

Associate Professor, Amity Law School, Amity University, Lucknow, Uttar Pradesh, India

Abstract

India, a country which is believed to be a land of *primitive civilizations*, now reels under an image where a human gender is exploited, exposed to cruelty and inhumanity, tortured in acts to the extent of calling such acts "BARBARIC" also talks, hand in hand, about the welfare of such exploited gender, it is high time to establish the facts in actuality.

A country where goddess are worshipped and posed as "WOMAN", her human face is made red with inhuman activities. Our country gave the art of living to the rests but now it seems such an art is dying in our country itself. The causes are, it seems, clear but at times, they are blurred.

Woman, in ancient period (golden age as it is called), was the pillar of civic wisdom, authority over art, morality etc and was involved with utmost respect, in all such social, economic and political activities where -by her role was majorly accepted and respected. Rights flowed naturally to her with such effect that she used to protect the rights of others in social bonding with a taste of authority. Of late, this taste of authority for a woman became a cause of concern for some segments of the society and with the passage of time, taste of Authority was turned into taste in Cruelty for her.

To peep in the past to recoshade actuality with reality, *first three time periods* or *YUG* as divided by the followers of Sanatan Dharma i.e. *Sat Yug, Treta Yug and Dwapar Yug, clearly and strongly indicate* (in such texts believed to be written in these periods like *smritis, Vedas* to name a few) the *nature and colour of respect* and high positions which women in these era, enjoyed.

Today, in the flow of *Kalyug*, and so called modern practices, the position of woman in our society is to be Re-established and Re-ensured. The role of *Judiciary and government with the help of existing laws* which in the past, was embodied in *Nripa* (king), is important as never before. Also the actions of responsible social and political bodies must be ascertained. The study/research is framed in the light of above observations in nut-shell.

Keywords: civilization, sensitization, yug, article 14 and 15, evidence, uniform civil code

Introduction

We are living in a country of contrasts where women are continuously touching the new heights and they are subject to various discriminations. Women have graced the highest positions of the President, the Prime Minister, the Speaker of People's House, the Governor of States, the Chief Minister of States and many more. The scenario is similar in the corporate sector where the women are heading many companies as CEO, Managing Director, etc. But it also a reality that even today when she has explored the space and achieved many milestones whenever a woman conceives a child and she expects and pray for a male child. What is wrong with this behaviour? A glance at the history highlights that during Vedic period the women had right to choose their life partner in "Swayamvar", there were female scholars like Gargi and Apala but today girls are killed for honour if they decide to marry the man of their choice and attacked with acid if they protest against indecent comments and assault. The legal system is still inefficient to take action against the offenders in time; therefore the ultimate sufferer is the victim only. She suffers physically, mentally as well as socially.

This still is a "YAKSHA PRASHNA" before us even after 66 years of independence of our country, that- Are women really empowered in our country? Ample of rights and protection are available under Constitution and legislations for women. The recent rape case of Delhi of a young girl "Damini" or "Nirbhaya" or with whatever name you can

call, the plight of woman will remain same. This case of December 2012 has again pushed the debate throughout country that - Are women really safe and empowered in our country? The case brought into sharp focus the glaring inadequacies of our legal system. The women still have to go through a long and complex procedure to get the justice. The biggest question is - Do we have sufficient law protecting and empowering women? Does law empower woman to get justice? Or is it the effective implementation and enforcement of existing laws needed to improve the condition of women in our country? Let us examine the existing Constitutional and legislative framework for women empowerment in our country. The foundation of women empowerment is laid down in our Constitution, it not only guarantees equality to all persons, under Article 14 as a fundamental right, but also expands on this in the subsequent Articles, to make room for affirmative action and positive discrimination. Article 14 of the Constitution provides equality before law. It embodies general principle of equality and prohibits unreasonable discrimination between persons. Whereas, Article 15 (1) prohibits gender based discrimination and Article 15 (3) softens the strictness of Article 15 (1) and permits the State to positively discriminate in favour of women to make special provisions to improve their social condition and provide political, economic and social justice. Further Article 16(1) and (2) embody the general rule that the State shall provide equal opportunities for all citizens in matters relating to

employment or appointment to any office under the State. There shall be no discrimination on the grounds of religion, race, caste, sex, and place of birth, residence or any of them in providing employment. The other favourable provisions are contained under Articles 23, 29, 38, 39 and 44 which the courts seek as guiding force to deliver the justice in favour of women. It is evident from various judicial explanations and elaborations in the judgments of the *Supreme Court of India* ^[1] as well as the Indian High Courts that Article 14 guarantees the „substantial“ equality as opposed to „formal“ equality. Though Article 14 permits reasonable classification, yet classification based on sex is not permissible. In *AIR India v. Nergesh Meerza* ^[2] the Apex Court held that retirement of air hostesses on first pregnancy is unconstitutional being violative of Articles 14 and 16 of the Constitution. It was considered that such a provision was callous, cruel and an insult to Indian womanhood. In *Mackinnon Mackenzie and Co. Ltd. v. Andrey D' Casta* ⁽³⁾ it was held that unequal remuneration to lady stenographers and male stenographers was discriminatory and any settlement in that regard did not save the situation. In *Madhu Kishwar v. State of Bihar* ^[4], the Chotanagpur Tenancy Act, 1908 was challenged on the ground that the Act denied the right to succession to scheduled tribe women to the tenancy lands and hence, it violates Articles 14, 15 and 21 of the Constitution. The Supreme Court, by admitting the petition, quashed the discriminatory provisions of the Act and paved a way for tribal women to entitle their rights to tenancy lands along with men. In *Dattatraya v. State of Bombay*, ^[5] the Supreme Court held that the State can establish educational institutions for women only. Again in *Yusuf Abdul Aziz v. State of Bombay*, ^[6] Section 497 of the Indian Penal Code held by the Supreme Court to be valid since the classification was not based on the ground of sex alone. The Court upheld the Section 497 of the IPC as valid by relying upon the mandate of Article 15 (3) of the Constitution. In *Miss C. B. Muthamma, IFS v. Union of India and others* ^[7], the Hon“ble Supreme Court held that *the Rules* ^[8] are in defiance of Article 14, 16 and 21 and Krishna Iyer, J. pronounced: “That, our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-a-vis half of India“s humanity, viz; our women, is a sad reflection on the distance between the Constitution in the book and the law in action.” Article 19(1) (g) of the Constitution guarantees that all citizens have the right to practise any profession or to carry on any occupation or trade or business. The right under Article 19(1) (g) must be exercised consistently with human dignity. Therefore, sexual harassment in the exercise of this right at the work place amounts to its violation. In the case of *Delhi Domestic Working Women’s Forum v. Union of India* ^[9] relating to rape and violence of working women, the Court called for protection to the victims and provision of appropriate legal representation and assistance to the complainants of sexual assault cases at the police station and in Courts. To realize the concept of „gender equality“, the Supreme Court has laid down exhaustive guidelines in the case of *Vishaka v. State of Rajasthan* ^[10] to prevent sexual harassment of working women at their workplace. The judicial decisions from time to time have played a vital role towards the recognition of affirmative right to basic necessities of life under Article 21.

In the case of *State of Maharashtra v. Madhukar Narayan Mandikar* ^[11], the Supreme Court has held that even a

woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. This article has also been invoked for the upliftment of and dignified life for the prostitutes. Apart from Constitutional commitments there exists a plentiful legislation protecting and favouring women. There are women specific laws like:

- The Immoral Traffic (Prevention) Act, 1956
 - The Dowry Prohibition Act, 1961 (28 of 1961) (Amended in 1986)
 - The Indecent Representation of Women (Prohibition) Act, 1986
 - The Commission of Sati (Prevention) Act, 1987 (3 of 1988)
 - Protection of Women from Domestic Violence Act, 2005
- The other laws called women related laws because they bear the provisions relating to women either by making provision protecting or favouring women or punishing atrocities on women. The important of them are:
- The Indian Penal Code, 1860
 - The Indian Evidence Act, 1872
 - The Indian Christian Marriage Act, 1872 (15 of 1872)
 - The Guardians and Wards Act, 1890
 - The Employees Compensation Act, 1923
 - The Trade Unions Act 1926
 - The Child Marriage Restraint Act, 1929 (19 of 1929)
 - The Payments of Wages Act, 1936
 - The Payments of Wages (Procedure) Act, 1937
 - The Muslim Personal Law (Shariat) Application Act, 1937
 - Employers Liabilities Act 1938
 - The Minimum Wages Act, 1948
 - The Medical Termination of Pregnancy Act, 1971 (34 of 1971)
 - Code of Criminal Procedure, 1973
 - The Equal Remuneration Act, 1976
 - The Family Courts Act, 1984
 - The Pre-Natal Diagnostic Techniques (Regulation and Prevention of misuse) Act 1994 and many more.

The most important of these legislative provisions is the crimes identified under the Indian Penal Code, 1860 like: (i) Rape u/s 376 (ii) Kidnapping & Abduction for different purposes u/s 363 to 373 (iii) Homicide for Dowry, Dowry Deaths or their attempts u/s 302/304-B (iv) Torture, both mental and physical u/s 498-A (v) Molestation u/s 354 (vi) Sexual Harassment u/s 509 If only the framing of new and number of laws reflect the better conditions of women then surely our women are in a very good condition. But if the effectiveness of laws speaks about the state and fate of women then I doubt that we are in a comfortable position. The fact is that even today centuries after the enforcement of Penal Code very few rape victims get justice and still fewer among the offenders get convicted. It is a reality that the stigma attached to the rape victim stops her from reporting the crime or makes her delay in reporting the crime. The victim needs the critical support from society and the community and NGOs. Thousands of rape cases are being reported the police are filing every year but only a small percentage in courts. The courts are doing their part of duty to interpret the laws in tune with the soul and intention of our Constitution and in many cases amplifying them in favour of women as needed by society.

The Apex Court asked the Union Government towards securing a uniform civil code for the citizen of India in *Sarla Mudgal v. Union of India* ^[12].

In *Gita Hariharan v. Reserve Bank of India* ^[13] the Supreme Court has held that under certain circumstances, even when the father is alive mother can act as a natural guardian.

In *Ganduri Koteswaramma v. Chakiri Yanadi(14)* a Hindu woman or girl will have equal property rights along with other male relatives for any partition made in intestate succession. Sometimes the Apex Court has gone beyond legislature to deliver the justice for example in *Danial Latifi v. Union of India* ^[15] the Court has ruled that a Muslim divorced woman has right to maintenance even after iddat period. Thus, it is the enforcement and implementation of the law, which is critical. One of the major obstacles to justice in a rape case is the poor quality of police investigations. The reason for this must be attributed to gender bias, corruption and the general inefficiency of the police. Despite constitutional safeguards, women are still treated as second- class citizens. In an attempt to reduce discriminatory provisions in the existing Hindu inheritance law, the Government introduced a bill in the Rajya Sabha in December 2004. The bill allows girls equal entitlement to ancestral property as a member of the undivided family-a provision earlier available only to the males. At present, only four States-Karnataka, Andhra Pradesh, Tamil Nadu and Maharashtra give daughters, including married daughters, an equal share in the father's ancestral property. Not that there is a dearth of laws protecting women or empowering them, but the tragic truth is that the laws are rendered ineffective in society that fails to accord women equal status. Laws, however effective they could be, provide a poor defense against a society that still looks down upon women as second-class citizens. In *Union of India V/s Dharampal* ^[16], apex court upheld the judgement of Punjab and Haryana High Court, which commuted the death sentence into life because more than twenty years had elapsed before the death sentence could have been executed. It can be clearly observed that although the courts have been the doing their best but the delay in justice delivery system due to various obvious reasons, discourages people to approach judicial system where it takes life long struggle to get justice which renders them insolvent mentally, physically and socially. Moreover, it is not every common man's cup of tea to pursue his battle for justice to the higher Courts if they are deprived of justice at lower courts. This infuses the diffidence and distrust against laws and as well as the system. Therefore increasing the number of judges, filling up the vacancies and to speed up the process of justice by cutting down adjournments ruthlessly and ensuring prosecution of cases of crimes against women on a day to day basis may improve the conditions. Moreover for the time-bound disposal of such cases the maximum time limit should be provided through amendment in Cr.P.C. As the victim primarily approaches the police for redressal of the crime committed against her therefore the police needs to deal with such victim very sensitively. Since the police have a very harsh and rash image before public therefore the police personnel need to be sensitised to women's issues. Police should be given special training in handling sensitive cases. They must be made fully aware of the laws. They must respond to every complaint concerning issues relating to women made even over telephone. They must react expeditiously. At least one special cell should be created at

the district level for ensuring better registration and progress of investigation and monitoring of crimes against women. This cell may consist of Scholars, representatives of police, prosecution machinery, judiciary and the representatives of prominent individuals of women's organizations in the Districts. Since it is not possible to all the victims, of women related crimes, to approach the higher courts if they fail to get the justice from lower court, there must be a committee consisting retired judges to review the quality of decisions delivered by the lower courts. The committee should be able to recommend to higher courts for the review where it finds gross injustice has been done to the victim by the decision. Finally, the laws never empower women or any person it is their awareness which empower them. Therefore we have sufficient laws and provisions in the books to protect and empower women, there is the need to make women aware of these provisions and to build and imbibe confidence among them so that they can claim these rights and protections whenever required. There is the need to change the mind setup also. It is not the law which will empower it is us who initiate the process of women empowerment from our home by giving both – the girl and the boy the opportunities in life and do our best to make them good human beings who know how to shoulder their responsibilities towards their parents and the society.

References

1. Mackinnon Mackenzie. Co. Ltd v. Audrey D'Costa AIR SC 1281 Government of A.P. v. P.B. Vijayakumar AIR, 1995, 1648
2. AIR 1981 SC 1829
3. AIR 1987 SC 1281
4. AIR 1996 SC 1864
5. AIR 1952 SC 181
6. AIR 1954 SC 321
7. AIR 1979 SC 1868
8. Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961 - requires a woman member of the service to obtain permission of the Government in writing before her marriage is solemnized and at any time after the marriage, a woman member of her service may be required to resign from the service, if the Government is satisfied that her family and domestic commitments are likely to come in the way of the due and efficient discharge of her duties as a member of the service. Further, and Rule 18(4) of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 also runs in the same prejudicial strain, which provides that no married woman shall be entitled as a right to be appointed to the service. The petitioner complained that under the guise of these rules, she had been harassed and was shown hostile discrimination by the Chairman, UPSC from the joining stage to the stage of promotion.
9. (1995) 1 SCC 14.
10. AIR 1997 SC 3011
11. AIR 1991 SC 207, 211
12. (1995) 3 SCC 635
13. (1999) 2 SCC 228
14. And 15 Civil Appeal of (Arising out of SLP (Civil) No. 9586, 2011, 8538.
15. Union of India v Dharampal (Supreme Court of India) Criminal Appeal NO, 2019, 804.
16. [Special Leave Petition (CRL.)], 2016, 498