

Role of the Judiciary in Advancing Women's Rights and Gender Equality

Shivani

LL.B., LL.M., NET

Research Scholar

Email: mrityunjai2005@gmail.com

Abstract

This paper is mainly focuses on the active role of the judiciary in advancing the women's rights and gender equality. It is quite explicit that women in our Indian society are considered to be backward. Although women represent the country at the national level in sports like boxing, wrestling, weightlifting, etc. but still considered as weak and less physically capable than men. It is not only in the field of physical strength but also, we can easily find that the for the same work a male is much more getting salary than a female. In the current scenario where females hold the positions of scientists, ias, judicial officers etc., then this will be unfair to raise a question on their intellectual capability. A mother is considered to be the first teacher of her child not only because she teaches to hold a pencil for the first time but also because of the moral values in her child. The judiciary sets the new rules through their judicial pronouncements is paving the way for abolishing gender inequality and strengthening the position of women in the society. Through this paper, the new developments in the judiciary that are being done will be elaborated.

Keywords

Vedic civilization, women, ancient, gender equality

Reference to this
paper should be made
as follows:

Received: 20.11.2024

Approved: 21.12.2024

Shivani

Role of the Judiciary
in Advancing
Women's Rights and
Gender Equality

Vol. XV, No.2
Article No.30,
pp. 298-305

Similarity Check: 20%

Online available at

[https://anubooks.com/
journal/journal-global-
values](https://anubooks.com/journal/journal-global-values)

DOI: [https://doi.org/
10.31995/
jgv.2024.v15i01.030](https://doi.org/10.31995/jgv.2024.v15i01.030)

Introduction

We all are familiar that the status of women is low as compared to men generally. In the gender development index, the status of women is lower. There are multiple legislations for women's welfare. But the reality is that although despite of availability of these laws, women are still not able to take benefit of these laws due to a lack of their literacy, legal awareness, or any other social factors and the crime rate is still rising against women day by day. But at the same time, we cannot shut one's eyes to the advancements made by the Hon'ble Supreme Court of India and occasionally the High Courts through their judicial interpretations and some sections of women are ready to gather the strength to take steps forward against the ill-treatment with the help of our legal system i.e., the courts. The Constitution of India guarantees equality under Article 14 and it provides equality to all persons irrespective of their gender. The reservations to weaker sections cannot be seen as discrimination rather it is a way or an instrument to uplift these sections which were already backward from ancient times and it is the one of the ways to upgrade them and make these presentable in the society. Not only does the Indian Constitution that provide the safeguards to the women but also at the global level, the Universal Declaration of Human Rights also promotes gender equality.

Position of Women in Ancient India

1.Under Vedic Era

The position of women in ancient India jumbled over time, but women were generally respected and had a significant role in society. They had privileges to access to education, and economic freedom and hold high status in the society. They were considered as goddess due to their sacrificial and tolerance power. Regardless of holding a reputable status they were not entitled to have a right in the property. Despite the patriarchal structure during the Vedic times, women had a preference to choose their life partner and were not forced to marry due to family pressure. She is the basic foundation to convert a brick-made house into a lively home and they make a notable contribution to bind together a family. Gargi, Maitreyi, Apala, Ghosa, Sita and Draupadi were among the admirable accomplishments of the Vedic period and inspired the today's women. The Rig Veda portrays women's status with a great deal of reverence and family was a foremost institution.

The concept of equality which is now guaranteed under article 14 of the Indian Constitution was already prevailing in the Vedic era. Caring for their young ones and domestication of animals were two well-known duties of Vedic women and they were treated as 'lucky charms' for their marital home. In the Vedic times, there was no practice of child marriage but a widow could remarry freely. The avatars

of Gods coexisted with femininity and also depicted the respectable position of a woman and the dignity attached to them. Women at that time had their own financial sources. Not only in household chores or manufacturing articles but the women of the Vedic era had a very active role in the politics. The Haritsmiriti alludes to a class of women called Brahmavadinis who continued to exist to be unmarried and spent their lives in study and rituals. In the ancient Vedic times, together the spouses lend a hand in religious rituals and sacrifices. Manu asserts that, "where women are honored, the very gods are pleased, but where they are not honored, no sacred rite even could yield rewards". If we adopt the Vedic era's traits and values in today's modern scenario, it will undeniably solve the multiple of problems and aid in intensifying a respectable society.

2. Medieval India

The medieval period's emergence was marked by the leap up of the Rajput clans. During the Muslim regime, the status of women did not hold a virtuous position and males were considered to be the blessing of the clan. Because of the purdah system, women remained deprived of public annotations and hence enclosed in a four-walled space. They were dependent on males for food, clothing and shelter.

Female childbirth was not cherished much and from the beginning. The practice of child marriage was dominant and at the very early age they were married off. Child marriage not only impacts on her mental growth but also has disastrous repercussions on their physical health as well.

Sati was the practice of burning the widows alive on the funeral pyre of their husbands. The sati system was developed into a custom and looked at as a religious ritual. This practice stipulated the deteriorating condition of women. This practice took the lives of thousands of women.

Jauhar was practiced by Hindu women to keep them guarded and secure their dignity from the Muslims. Here, Rajput women committed suicide with their children and valuables in the massive fire. This practice has been documented in movies, documentaries and texts.

Therefore, it is well acknowledged that these are regarded as one of the utmost problems within the course of their progression.

As we all know the medieval age was contemplated to be the "Dark Age" and the invasion of Muslims is one of the strong reasons for wrenching the position of women at that time. Indians wished to shield their women from Muslim's barbarous activities and that is why they put a cutback on the liberty of the women. The practice of polygamy was not only in Muslims but also in Hindus as well. It was started to

prevent the women from vagrancy when their husbands lost their lives in wars but in the medieval times, the object seemed to be shifted to the fulfilment of sexual pleasure only and women were treated to be a chattel of husbands. In the medieval times, the concept of dowry touched its height and became mandatory, that somewhere led to female infanticide.

After a long span, the insurgence of the Bhakti movement opened the door to women's freedom.

However the integral position of women deteriorated as compared to Vedic times and became the subject of various social evils.

3.Under Modern Period

In the modern India, with the arrival of many socio-beneficial legislations, women attained much more freedom and our Indian Constitution which guarantees equality, dignity and freedom from discrimination. In the field of education, although the dissemination of education and self-consciousness among women has led to their progress over the time but we cannot deny that there are some barriers that put obstacles to a woman for getting an education. Conservative thinking is still existing and parents are still more interested in preserving money for her wedding instead of her education. A patriarchal mindset is prevailing but society is evolving and it takes time to make a shift. Today's women who are holding good ranks, and who represent India globally in many fields are ready to fight for their rights and step out to them.

Women have achieved equality with men in parental assets. Nowadays, the percentage of cracking competition examinations females are surpassing males. It is quite appreciated that females are judged not because of their gender but on their intellectual ability. Women are able to create a balance between household life and work life. The issue of sexual harassment in the workplace is not a new concept but exists in the society. It is not only the obligation of the State to provide employment opportunities but also to ensure a safe working atmosphere. Panic button, and Nirbhaya police squad are some good steps in the direction of women's safety.

Women have legal rights that promote their interests. Women have started NGOs, self-help groups and startups to shore up other female entrepreneurs and also provide justice in case a female is not educated or has no means to reach to the court. But despite the women's growth in today's scenario, we cannot overlook the challenges are still facing by them.

- A. *Gender disparities in education*
- B. *The unhealthy atmosphere at the workplace*
- C. *Violence against women*

D. Child marriage and dowry system

E. Political under-representation

F. Cyber security threat

To deal with the above challenges, a panoramic and communal action needs to be taken. Now, there is an immediate need to update and amend the thinking of the people. The strong women of a country show the strong position of a Nation.

Women Welfare Legislations

A. Protection of Women from Domestic Violence Act, 2005- Since time immemorial, violence whether physical or mental happened and to date it has existed. Women are exposed to domestic violence by their husbands, his family members or relatives. Section 3 of the Act defines domestic violence as any act, commission, omission or conduct of a person to harm or injure or endanger the health or safety of an individual whether mentally or physically. The objectives of the Act are to protect victims, make the act punishable, take appropriate steps, enforce punishments and lay down proper standards.

B. Dowry Prohibition Act,1961- As the title itself advocates the objective of the Act is to curb the dowry practice prevailing since immemorial time. This Act also facilitates the difference between dowry and gifts.

In the case of Appasaheb and another v. State of Maharashtra, SC held that "Demand for money on account of some financial stringency or for meeting some urgent domestic expenses cannot be termed as a demand for any dowry. This Act is secular in nature and applies to all religions in India.

3. Pre- Conception and Pre-natal Diagnostic Techniques Act,1994- The main objective of enacting the Act is to ban the use of sex selection techniques before or after conception and prevent the misuse of prenatal diagnostic techniques for sex-selective abortion. The provisions of the Act rigorously prohibited the any type of communication or tests that revealed the gender of fetus. The Act also contains the penal provisions for violation of its provisions.

Some of the initiatives have been taken by the GOI for example, Beti Bachao, Beti Padhao(2015), and The National Plan of Action for Children in 2016.

Ascertainment of the gender of a fetus is not only illegal but also violates the human rights. This practice begins in the early 1990s with the advent of technological developments like ultrasound machines. Indians are slanted towards patriarchal mindset and prefer a male child. The 2003 amendment covered the technique of pre-conception sex selection within the ambit of the Act, bringing ultrasound within its ambit, empowering the central supervisory board etc. Also

article 21 cannot include the right to the selection of sex and the right to personal liberty cannot be stretched to kill the fetus before birth.

4. Sexual Harassment of Women at Workplace (prevention, prohibition and Redressal) Act, 2013-The Act aims to prevent and address the occurrence of sexual harassment of women at their place of work and provide a mechanism for redressal of complaints related to such harassment. The Act defines sexual harassment to include unwelcome acts such as physical contact and sexual advances, a demand or request for sexual favors, making sexually colored remarks, showing pornography, and any other unwelcome physical, verbal or non-verbal conduct of a sexual nature.

The watershed case on this issue is Vishakha and Ors. v. State of Rajasthan, in which various guidelines have been directed for the workplace. Back to 1992, Bhanwari Devi who opposed the child marriage in Rajasthan, in return she was gang-raped. The Bhanwari Devi case and Vishakha guidelines play a vital role in setting the strict rules for the protection of women in the workplace. The three key obligations were imposed on institutions to meet that standard, namely, Prohibition, Prevention and Redress.

5. Equal Remuneration Act, 1976-The Act to bring forth for equal payment of remuneration without reference to any gender discrimination. This Act aims to bring equity where equals are treated with equals and unequal with unequal. This Act aid and abets in filling the gap between unequal remuneration. This Act not only prohibits unequal remuneration but is also opposed to gender bias at the recruitment level and ensures equal treatment to both men and women.

Landmark Cases on Gender Equality

Judiciary, the guardian of our Indian society brings hope to women facing situations that undermine their dignity and various fundamental rights. Here are some cases that led to bringing justice to women by judicial interpretations:

1. Mary Roy v. State of Kerala: Mary Roy, a women's rights activist and educator challenged the case against him, which contributed watershed judgment by SC regarding children caught in a legal battle between parents. The SC ruled that when a clash going on between parents, the child who is below 5 years the custody will remain with the mother.

2. State of Tamil Nadu v. Suhas Katti: This case led to the first conviction under the Information Technology Act, 2000. The accused was humiliated due to rejection by women, and harassed her by sending defamatory and obscene messages to her on online on public platforms. The accused was convicted under the said Act.

3.Laxmi v. Union of India: in 2006, an acid attack victim, filed a petition seeking measures to regulate the sale of acid and provide adequate compensation to the victim. SCI imposed stringent regulations on the sale of acid in 2013. This decision paved the way for the legislature to introspect and impose harsher punishments for offenders committing such horrendous crimes.

4.Shayara Bano v. Union of India: In this case, the inhumane Islamic practice of triple talaq was adjudged unconstitutional by a five-judge bench. This celebrated judgment fortified the movement towards gender equality.

5.State v. Ram Singh and Ors.: The barbaric Nirbhaya incident blazed the hue and cry for need of establishment of stricter rape laws. The court was clear in stating that the crime committed by the accused was not deserving of any solicitousness as it shook the conscience of society. The Nirbhaya case verdict of death sentence being issued to perpetrators of the crime was a landmark judgment.

6.Indian Young Lawyers Association v. State of Kerala: A constitutional bench of SC, headed by CJI Dipak Misra, lifted the age-old ban on entry of women between the ages of 10-50 inside Sabarimala temple. Devotion and faith must not be subject to gender discrimination. This decision advances the gender justice and equality in the most remarkable manner.

7.Vineeta Sharma v. Rakesh Sharma: As a consequence of this judgment, the daughters now have equal share in coparcenary property. Although it is a well-appreciated decision, since it takes 15 years to come with such significant modifications in the legal position, it is foreshadowed that it will probably bring in a much-needed change in the daughter's social and economic status. SC has paved its path by tackling the last hurdle and now the encumbrance on subordinate courts to take the initiative for bringing reformation at the grassroots level.

Conclusion

We can conclude that women not only in India but globally face the situation of gender discrimination whether in the field of promotions or remuneration. It will be satisfactory to suggest that there should be inclusive education and young males should be targeted to positively change their thinking towards girls and women. The government should take more measures to generate and spread awareness. Although the status of women in India has much improved but there is still a long way to go. The CEDAW has set yardsticks to guide on what the laws around the workplace. It should be kept in mind that gender equality is a form of human rights transgression. In today's framework what we need is not a profusion of laws but effective implementation of existing laws. There is a call for speedy justice and to

draw out blockages in the process of trial for fair justice. To achieve gender equality, we need to work from grassroots level. Achieving absolute gender equality is a hard nut to crack in India but we ought to take baby steps to cover this whole journey.

References

1. Sharma, R.S. [2011], Economic History of Early India, Viva Books, ISBN: 97881130910123
2. Tripathi, L.K. [1988]. Position and Status of Women in Ancient India. Volume-I, Banaras Hindu University, Varanasi
3. Status of women in Medieval India. [n.d.] from Patna university.ac.in
4. <https://timesofindia.indiatimes.com>
5. Protection of Women from Domestic Violence Act, 2005
6. Dowry Prohibition Act, 1961
7. Pre-conception and Pre-natal Diagnostic Techniques Act, 1994
8. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
9. Equal Remuneration Act, 1976
10. Mary Roy v. State of Kerala [1986] AIR 1011
11. State of Tamil Nadu v. Suhas Katti, CC NO. 4680 of 2004
12. Laxmi v. UOI [2014]4 SCC 42
13. Shayara Bano v. UOI AIR [2017] SC 4609
14. State v. Ram Singh AIR SC [2595]
15. Indian Young Lawyers Association v. State of Kerala AIR ONLINE [2018] SC 243
16. Vineeta Sharma v. Rakesh Sharma AIR [2020] SC 3717