



Judicial approaches on women empowerment

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Abstract

In India, feminine glory was at its zenith in the vedic period which has been marked as a portal when our founding fathers enshrined not only the noble principles of equality, liberty and social justice but also provided for benign discrimination, in favour of women. To achieve this constitutional goal, our judiciary has done respectable services, which deserves its credibility

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1. Introduction

The status of women in India is a mirror image of their counter-parts in other parts of the world and has swindled from prominence to insignificance on account of social, cultural and political developments from ancient to modern era. The woman was made to suffocate and yearn for identity in the system, where her personality was de-personified to anonymity. Be it the health, nutritional, educational social, political and economic aspect of life, the woman had to compromise and take a back seat. The system was developed which created unfair and unequal distribution of the necessities of life amongst the sexes. Efforts have always been made to bring about a change in the society and its norms especially in addressing the cause of women. These efforts resulted in challenging the age-old discriminatory practices and in recognizing the women as a human being worthy of equal share in the development.

The Framers of the Constitution were aware of the sociology of the problem of the emancipation of the female sex. They realized that equality was important for the development of the nation. It was evident that in order to eliminate inequality and to provide opportunities for the exercise of human rights it was necessary to promote education and economic interests of women^[1].

2. Constitutional Concommitment

The principle of equality was adopted in the Constitution^[2] with special protective clauses for women^[3] in addition to fundamental promise of Liberty. Equality and maintenance of Dignity of an individual^[4]. The equality was all pervasive even in the matters of employment^[5].

The contours of right of existence and procedural propriety were duly recognised^[6] in addition to prohibition of trafficking in human beings^[7]. It is ardent duty of the State to eliminate the inequalities in status, facilities and opportunities^[8] and provide equal means of livelihood^[9] as well as equal pay for equal work^[10]. Necessary protection is to be accorded by the State against economic exploitation as well as of health and strength of women^[11]. The people are expected to renounce the practices derogatory to the dignity of women^[12]. Necessary participation in the political life is ensured^[13] at panchayat^[14] and municipal^[15] levels for women under the provisions of the Constitution.

3. Participatory Sexual Act

Adultery as an offence totally insulate a woman from criminal liability and holds the male responsible for it on the premise that the woman is only the victim and not the perpetrator of crime. Section 497 of I.P.C. is thus often challenged as violative of equality provision. In *Yousuf Abdul Aziz v. State of Bombay*^[16] the same question arose. The court opined that Constitution provides for specific protection to females and sex is a sound classification. Similar stance was taken in *V Revathi v. Union of India*^[17], wherein the court opined that the aggrieved husband whose wife has been disloyal to him has no right to prosecute his wife, in as much as by the very definition of the offence, only the man can commit it, not a woman. The philosophy underlying the scheme of these provisions appears to be that as between the husband and the wife social good will be promoted by permitting them to 'make up' or 'break up' the matrimonial tie rather than to drag each other to the criminal court. Similarly in *S. Vishnu v. Union of India*^[18] the court opined that the contemplation of the law evidently is that the wife, who is involved in an illicit relationship with another man, is a victim and not the author of the crime. The offence of adultery is an offence against the sanctity of the matrimonial home, generally committed by the man.

4. Protective Discrimination Benefit

The Constitution provides reservations to women and the same benefits are available to the women of exploited class. But in *Valsamma Paul v. Cochin University*^[19], the court denied the benefit of reservation to a lady of upper caste who married a man of lower caste on the ground that the female had an opportunity of having the advantageous life in the life. Similar stance was taken by the apex court in *Meera Kanwaria v. Sunita*^[20], wherein the court opined that an upper caste female marrying a lower caste male can not avail the benefit of reservation as such recognition testaments to the fraud on the Constitution. In *K.S. Jayashree v State of Kerala* the petitioner was denied the admission in the MBBS course as the family income of the petitioner was higher than the caste and income criterion specified by the government to claim the benefit of reservation under Article 15(4). The Supreme Court while dismissing the petition opined that the determination of social backwardness does not depend solely on caste, though it is one of the relevant test. Social backwardness is in the ultimate

analysis the result of poverty which is aggravated by the considerations of the caste.

Apart from judicial determination concerning reservations in public employment, the judiciary has struck a death knell to discriminatory provisions in the service rules against the females. In *C.B.Muthamma v. Union of India* ^[21], the validity of Indian Foreign Service Rules was challenged which provides that the females in Indian foreign service should take the permission of the government before the marriage and any married woman can be made to resign on the satisfaction of the government that her domestic commitments are likely to come in the way of her official duties.

In *S.R.Venkataraman v. Union of India* ^[22], the female was compulsorily retired from the service on account of an adverse entry in the service record. She contended that the retirement was arbitrary as the proper assessment of her service record has not been made. The court opined that when a public body is prompted by a mistaken belief or influenced by extraneous matters in the exercise of the powers in a manner not warranted by law or to arrive at a contradictory conclusion, it shall be an abuse of the powers.

In *Air India v. Nargesh Meerza* ^[23], the court struck down the discriminatory provisions in the service rules which provided that an airhostess can continue in service up to the age of 35 and the same could be terminated if she contracts a marriage within four years of initial service or on the first pregnancy. Though the court opined that the right to equality does not warrant adoption of a technical, pedantic or doctrinaire approach and there can be classification on the basis of marriage. Yet it disapproved the powers vested in the managing director concerning the extension of retiring age in the absence of guiding principles. The court accorded its disapproval to the argument about the attractiveness of the air-hostesses as based on pure speculation and an artificial understanding of the fairer sex.

The court has come to the rescue of the non-regular female employees in providing them the maternity benefit which was being paid to the regular female employees. The court opined that there is no justification in denying the maternity benefits to the casual or daily wagers ^[24]. on the question of indecent of females the court has taken the stance that there is nothing wrong in cabaret dance in hotels provided such a performance is not indecent ^[25]. The court has always taken a serious view of the indecent depiction of females in publications ^[26]. The court has expressed its non-satisfaction over the law concerning sexual harassment when it gave direction to the government to implement guidelines concerning sexual harassment ^[27]. The court emphasized that it is the duty of the employer to prevent the commission of the acts of sexual harassment and to initiate disciplinary proceeding against the guilty. The court has opined that the contents of the fundamental rights guaranteed in the Constitution are of sufficient amplitude to encompass all facets of gender equality including preventing sexual harassment.

5. Conclusion

Thus the Indian judiciary has done commendable service in protecting and preserving the rights of the females as well as sensitizing the society concerning the rights of the half of the human population. The Indian judiciary has struck at the injustices perpetuating in the Indian system against the women and tried to maintain the balance. The judiciary has removed

the inequalities and has left no stone unturned to ensure the dignified life to the women-folk.

6. Reference

1. Mamata Rao 'Law Relating to Women & Children', EBC Lucknow. 2008.
2. Article 14
3. Article 15(3).
4. Preamble of Indian Constitution
5. Article 16.
6. Article 21.
7. Article 23.
8. Article 38(2).
9. Article 39(a).
10. Article 39(d).
11. Article 39(e).
12. Article 51-A(g).
13. Article 325.
14. Article 243D.
15. Article 243T.
16. AIR 1954 SC 321.
17. AIR 1988 SC 836.
18. AIR 1985 SC 1618.
19. AIR 1996 SC 1011.
20. AIR 2006 SC 597.
21. AIR 1979 SC 1868.
22. AIR 1979 SC 49.
23. AIR 1981 SC 1829.
24. Municipal Corporation of Delhi v. Female Worker, AIR. 2000. 1274.
25. Mohammed PK. State of Kerala, 1984 Cr. L.J.795.
26. Somnath PK. State of Kerala, 1990 Cr.L.J.542.
27. Vishakha v. State of Rajasthan, AIR 1997 SC 3011.