



## **JUDICIAL RESPONSE IN PROTECTING WOMEN RIGHTS IN INDIA: A CRITICAL STUDY**

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### **ABSTRACT**

Women's Rights in India are a key strategy for increasing their capacity to access resources and make informed decisions about their lives. Women's empowerment is especially important during the period spent improving the social and political standing of women, the historically oppressed, in society. The best method to protect kids from all forms of violence and viciousness is via empowerment. The study, which is based on secondary sources, reveals that Indian women are relatively uneducated and have a lower status than men. Despite all the efforts the government has made. It is found that women still acknowledge that there are unequal gender standards in the culture. The study concludes with the idea that access to education, employment, and changes in social structures are the only factors that empower women.

In light of this context, the current paper makes an effort to analyze the judiciary's role in defending women's rights in India and emphasizes the Supreme Court's role in interpreting international instruments for women's empowerment, its role in protecting crime victims, and problems and challenges related to women's empowerment. The article makes an effort to address a few issues that Indian women confront, such as female feticide, the denial of inheritance rights, dowries, the sale and trafficking of females, etc. The paper's goal is to advance methods for giving women the same level of influence as males.

***KEYWORDS: Women's Rights, Women's Empowerment, Judiciary, Violence***

### **1. INTRODUCTION**

Women have been victimized and discriminated against by men in countless ways from the beginning of time. Women have endured numerous humiliations, indignities, and forms of



harassment with fortitude and tenacity. This was especially true for Indian women, who had cultivated tolerance and flexibility via their upbringing, temperament, and culture. Women require protection from the horrors committed by men since they are physically weaker than men<sup>1</sup>.

In the past, women's issues were disregarded. These issues have only recently started to be discussed in public. As a result, the issue of women came to the attention of the legislatures and the judiciary. As was shown in the preceding chapter, India's legislature made a number of substantial efforts to curtail crimes like dowry murder, cruelty, bride burning, rape, and domestic abuse. Additionally, the judiciary began taking these offenses more seriously than before<sup>2</sup>.

The Indian courts, particularly the Supreme Court, have occasionally issued important rulings for the safety and welfare of women. The law established by these Courts is like a breath of fresh air, giving comfort to the ladies. As a result, the constitutional courts did not hesitate to go beyond the precise bounds of the law and establish what some critics and observers believe to be legislation.

### **1.1 ROLE OF SUPREME COURT IN INTERPRETING INTERNATIONAL INSTRUMENTS FOR WOMEN RIGHTS**

The Honorable Supreme Court has never been hesitant to follow international law's gender-justice standards when such standards do not contradict with domestic law. After taking into account international legal instruments, the National Commission for Women, the Human Rights Act, and the National Human Rights Commission were created. In actuality, all of these commissions are operating within the bounds of the Constitution. And when creating and enforcing the law pertaining to women in Indian society, these guidelines are also taken into consideration. The international human rights groups are respected in India. These groups are free to travel wherever in India. Indian women are afforded full legal protection under such a broad remit of international and national law. According to the report of the His Lordship Justice J. S. Verma Committee, crimes against women are primarily the result of government and police failings. According to the

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<sup>1</sup> Prof. (Dr.) G. Rajasekharan Nair, "Gender Justice under Indian Criminal Justice System", (Eastern Law House, New Delhi, 2011) P.258

<sup>2</sup> Ibid.



justifications for the Criminal Law (Amendment) Act, 2013, which went into effect on April 3, 2013, the report included the need to review the AFSPA in conflict areas (such as Manipur and other places), the most severe punishment for rape as life imprisonment and not capital punishment, clear ambiguity over control of Delhi Police, etc. The amendments made to the Act in relation to the Ordinance regarding offenses include acid assaults, sexual harassment, voyeurism, stalking, human trafficking, and rape. Rape is typically seen as both a serious sex crime and a kind of assault. The social and human rights of women are referred to as their legal rights. The Declaration of Sentiments was one of the earliest statements in favor of women's rights. The rights to bodily autonomy and integrity, the right to vote (suffrage), the right to hold public office, the right to work, the right to fair pay or equivalent pay, the right to claim property, the right to education, the right to serve in the military or be enlisted, the right to enter into lawful contracts, and the right to have conjugal, parental, and religious rights are just a few of the issues that are typically associated with ideas of women's rights.

The Indian Constitution envisions an impartial judiciary. The executive branch and judicial branch are separated in terms of authority. The judiciary, which determines the legitimacy of executive activities and the constitutional significance of laws, need to exist independently. According to Lord Bryce, a government's judicial system's effectiveness and independence are the best indicators of its quality. The Indian Constitution includes numerous clauses that guarantee the independence of the judiciary.

More than 19,000 rapes, 7500 dowry murders, 32000 killings, and 36500 molestation are among the worst wrongdoings against women and girl children that were reported in India in 2006. Everyone is aware of the figures, the rape and murder rates, the violence that hinders economic growth, and the threats to society. Rather than counting crimes, a mindset to lower crime is required. Since there is no regulation of guns or speech, no one can assert that they are defending the area and its inhabitants. The phrase "Culprits are our boys" does not allow any side, whether in uniform or civilian clothes, the authority to commit crimes against defenseless women and young girls. The fact that their heinous crimes against women are going unpunished gave these forces more confidence. According to the National Crime Records Bureau's most current statistics, there have



been about two lakh incidences of violence reported. It is common knowledge that when major complaints go unanswered or are badly handled, the attitude of the authorities, notably the police, is frequently contaminated by oppressive and discriminatory social views as well as simple greed and corruption. Crimes against women can only be reduced when investigations are free, impartial, and quick, and when the conviction rate increases in cases where women are the victims of various forms of abuse. In order to fight against any attempt at a cover-up in this matter, the press is crucial.

## **2. OBJECTIVES OF THE STUDY**

1. To assess the judiciary's contribution to India's protection of women's rights
2. To draw attention to the Supreme Court's role in interpreting international laws promoting women's empowerment.

## **3. RESEARCH METHODOLOGY**

Essentially, this essay is analytical and descriptive in nature. This essay aims to study the judiciary's protection of women's rights in India and emphasizes the Supreme Court's role in interpreting international treaties for women's empowerment, its protection of crime victims, and concerns and obstacles related to women's empowerment. The article makes an effort to address a few issues that Indian women confront, such as female feticide, the denial of inheritance rights, dowries, the sale and trafficking of females, etc. The paper's goal is to advance methods for empowering women in a manner that is consistent with that of males.

## **4. DISCUSSION**

### **4.1 ROLE OF COURT IN PROTECTING VICTIMS OF CRIMES**

The *Shah Bano Case*<sup>1</sup>, in which the Supreme Court overturned the personal law and brought Muslim women under the purview of Section 125 Cr.p.c., is one instance of how the Supreme Court established liberal judicial trends for the protection of women by rendering favorable decisions not

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<sup>1</sup> AIR 1981 SC 1829



only in cases involving constitutional issues but also in cases involving customary laws. In a same manner, the Supreme Court ruled that the triple talaq is an invalid talaq in the *Shamim Ara Case*. Such judicial interpretations provide the idea of women's liberty additional dimensions and give women opportunity to grow and develop on their own terms. The Supreme Court ruled in *State of Maharashtra and Others v. Madhukar Narayan Mardikar*<sup>1</sup> that even a woman of easy virtue is entitled to privacy and that no one may invade her privacy whenever he pleases. As a result, her testimony cannot be disregarded simply because she is a woman of easy virtue. In doing so, the Supreme Court dispelled the widespread misconception that a lady of easy virtue lacks individuality. The Indian judicial system is doing a commendable job of adapting the law to the changing needs of society whenever and wherever it has the chance, as demonstrated in the case of *Githa Hariharan v. Reserve Bank of India*<sup>2</sup>, where Section 6(a) of the Hindu Minority and Guardianship Act, 1956, and Section 19(b) of the Guardians and Wards Act, 1890, were interpreted to grant father and mother equal status as a minor's guardians.

The Supreme Court of India took on this duty in *Cehat and Ors. V. Union of India*<sup>3</sup>, where it oversaw the application of the Pre Natal Diagnostic Techniques Act and offered a number of helpful instructions. The topic of sex selection and sex-selective abortion was brought to light by this petition, and as a result, both government and non-governmental organizations have undertaken numerous initiatives on the subject.

In a case involving gifts and real estate, *R. Ruppayee V. Raja Gounde*<sup>4</sup>, the Supreme Court ruled that fathers may give their daughters appropriate amounts of inherited immovable property.

A female Hindu who was in possession of the property on the day the Hindu Succession Act of 1956 came into effect may only become an absolute owner if she was a limited owner, according to the Supreme Court's ruling in the case of *Kalawatibai V. Soiryabai* on the widow's title to property.

<sup>1</sup> AIR 1991 SC 207.

<sup>2</sup> AIR 1999 SC 1149

<sup>3</sup> (2003) 8 SCC 412.

<sup>4</sup> AIR 2004 SC 1284

Whether a limited owner or not, the legislature did not intend to grant the benefit of estate expansion to any or all Hindu women.

In India, the modern legal system has translated a number of fundamental human rights for women in light of the fundamental freedoms guaranteed by Part III of the Constitution. These fundamental liberties go much beyond the American Bill of Rights. The Apex Judiciary has established some unusual standards for establishing the correspondence between women's human rights and sexual orientation in a series of instances. The Hon'ble Supreme Court of India upheld the dignity of women in *Rupan Deal Bajaj v. K.P.S. Gill*, and the Hon'ble A.P. High Court noted in *T. Saritha v. Thnkata Subbaiath* that Section 9 of the Hindu Marriage Act of 1955 was invalidated because it violated the right to security and human nobility guaranteed by Article 21 of our Constitution.

The Hon'ble Punjab and Haryana Court held in the case of *Ranghubans Saudagor Singh v. State of Punjab* that discrimination on the basis of sex alone is prohibited by the Constitution, but that when the peculiarities of sex are taken into account along with a number of other factors and consideration from a reasonable nexus with the object of classification, the constitutional prohibition under Articles 15 and 16(2) cannot be attracted.

The validity of the Indian Airline's and Air India's service rules requiring an Air Hostess to retire from service at the age of 35 or upon marriage, whichever occurred earlier, or if she got married within four years of confirmation, or upon first pregnancy, was overturned and held to be arbitrary, as is stated in *Air India v. Nargesh Mirza*.

In the case of *Lalitha Sundari v. R. Kethar Nathan*, it was decided that the female heirs of the trustees should fill the two openings on the family trust's Education Committee. The scheme court, which operated as the hiring authority, appointed two male members and noted that the female interview candidates lacked practical experience and that female descendants also included male descendants.

## 4.2 JUDICIAL APPROACH IN THE MATTERS OF EMPLOYMENT

In Miss C.B. Muthamma, I.F.S v. Union of India<sup>1</sup>, In Air India v. Nergesh Meerza and other<sup>2</sup>, In A.N. Rajamma v. State of Kerala<sup>3</sup>, the Court upholding the principle of equality of status put the female employees at par with male employees and struck down the various rules as unconstitutional.

In Vijay Lakshmi v. Punjab University<sup>4</sup>, court held that appointment of lady Principal in Women's college or a lady teacher therein, cannot be held to be violative of Articles 14 and 16 of the Constitution, because classification is reasonable and it has a nexus with the object to be achieved. More over it is a precautionary, preventive and protective measure based on public morals and particularly in view of the young age of the girl students to be taught.

In a plethora of cases such as Peoples Union for Democratic Rights v. Union of India<sup>5</sup>, Randhir Singh v. Union of India<sup>6</sup>, Sanjit Roy v. State of Rajasthan<sup>7</sup>, Uttarakhand Mahila Kalyan Parishad v. State of Uttar Pradesh<sup>8</sup> and Mackinnon Mackenzie and Co. Ltd. v. Andrey D' Costa<sup>9</sup> etc cases Judiciary has played an active role in enforcing and strengthening the constitutional goal of "equal pay for equal work" enshrined in Article 39(a), which implicit in Article 14 and 16 of the Constitution. The court has brought the equal remuneration within the contours of fundamental right of equality.

## 4.3 PREVENTION OF SEXUAL ABUSE AT WORK PLACES

In Vishaka v. State of Rajasthan<sup>10</sup>, Supreme Court had framed guidelines and norms for protection of working women at work place, and it held that it is the duty of the employer to protect women

<sup>1</sup> (1979) 4 SCC 260

<sup>2</sup> (1981) 4 SCC 335

<sup>3</sup> 1983 Lab.I.C. 1388

<sup>4</sup> AIR 2003 SC 3331

<sup>5</sup> AIR 1982 SC 1473

<sup>6</sup> AIR 1982 SC 879

<sup>7</sup> AIR 1983 SC 328

<sup>8</sup> AIR 1992 SC 1695

<sup>9</sup> 1987 AIR 1281

<sup>10</sup> AIR 1997 SC 3011



from sexual abuse, which are later parliament, recognized and enacted Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

#### **4.4 HUMANITARIAN APPROACH OF THE JUDICIARY TOWARDS SEX-WORKERS AND SEXUALLY ABUSED WOMEN**

In *Budhadev Karmaskar v. State of West Bengal*<sup>1</sup>, Court held that generally, our society views prostitutes as women of low character but, refuse to look at their situation from their perspective. The bench in this case must be appreciated not just for recognizing their right under Article 21 and directing the state and central governments to act for their welfare but also, to understand their perspective and impoverished situation. Not only this, but the bench acted quite actively and gave the directions to Central and State government to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India.

#### **4.5 JUDICIAL ROLE IN STOP ACID ATTACKS, REGULATE AND RESTRICT THE SALE OF ACID**

In *Laxmi v. Union of India*<sup>2</sup> On account of increase in number of acid attacks on women in the past few years, Supreme Court in order to curb these gave directions to Home Secretary, Ministry of Home Affairs associating the Secretary, Ministry of Chemical & Fertilizers to convene a meeting of the Chief Secretaries/concerned Secretaries of the State Governments and the Administrators of the Union Territories to curb and restrict the sale of acid throughout the country.

#### **4.6 ROLE OF JUDICIARY IN UPHOLDING SPECIAL PROVISIONS FOR WOMEN IN CRIMINAL LAW**

In *Yusuf Abdul Aziz v. State of Bombay*<sup>3</sup>, Supreme Court held that under section 497 of IPC man only be punished for offence of adultery and woman will be exempted though she may be equally guilty as an abettor was valid. It is reasonable classification under Article 14 and it was saved by

<sup>1</sup> JT 2011 (8) SC 289, 2011 (8) SCALE 155, 2011 (4) UJ 2675 (SC)

<sup>2</sup> (2014) 4 SCC 427

<sup>3</sup> AIR 1954 SC 321.



virtue of Art. 15(3). In a *Sowmithri Vihnu v. Union of India*<sup>1</sup>, the court held 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. In *Revathi v. Union of India*<sup>2</sup>, the court held that that Section 497 of the Indian Penal Code is so designed that a husband cannot prosecute the wife for defiling the sanctity of the matrimonial tie by committing adultery. Thus the law permits neither the husband of the offending wife to prosecute his wife nor does the law permit the wife to prosecute the offending husband for being disloyal to her. Thus both the husband and the wife are disabled from striking each other with the weapon of criminal law.

#### **4.7 ROLE OF JUDICIARY IN SAFEGUARDING RAPE VICTIM**

In *Delhi Domestic Working women's Forum v. Union of India*<sup>3</sup>, in *Bodhisathwa Gautam v. Subhra Chakraborty*<sup>4</sup>, and in *Chairman, Railway Board v. Chandrima Das*<sup>5</sup>, etc cases court held that women also have the right to life and liberty; they also have the right to be respected and reacted as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honorable and peaceful life. Rape is a crime against basic human rights and is also violative of the victim's most cherished of the fundamental rights, normally, the right to life and privacy contained in constitution under Art. 21 and court had provided compensation to rape victims.

#### **5. CONCLUSION**

Women's issues are important topics of debate on both a national and international scale. However, the current gap in policy development and implementation has not altered the conditions at the local level. Because women's demands are varied and complex, the judiciary and legislature each have their own limitations "There is a significant disconnect between the existence of legal rights and their practical enjoyment or use. The large gap between Indian women's legal status and their actual

<sup>1</sup> AIR 1985 SC 1618

<sup>2</sup> AIR 1988 SC 835

<sup>3</sup> (1995) 1 SCC 14

<sup>4</sup> (1996) 1 SCC 490

<sup>5</sup> AIR 2000 SC 988



position in life and society, as well as their failure to take use of legal rights provided to them for raising their social standing, can be attributed to their social backwardness and educational limitations. However, there are gaps in the government's implementation machinery, at least. The High Courts of India and the Honorable Supreme Court of India interpret constitutional provisions in favor of women and young girls. The courts step in to protect the rights of women and young girls whenever there is anti-women law, rule, or order issued by the government or any other agency. It serves as a last-resort aid, and thankfully, it also promotes the welfare of women and young girls. It is time to recognize that there is a shared challenge and the necessity of a shared response to this societal threat that is developing. The urgent necessity of the hour is to demonstrate a sense of shared responsibility for the acute and escalating crises of violence and criminality against women. If crime in society, particularly against women and young girls, is not eradicated, then no amount of participation in any polls will alleviate the situation. The most important thing is to fight crime. Regardless of the harm, women from all social classes are disclosing or reporting crimes like assault and rape and don't feel helpless or abandoned by their families or society like the majority of the time before. Government must act as society changes because it lacks sufficient justifications, for societal attitudes or class division, for instance. When it comes to *M.C.Mehta vs State of Tamil Nadu (1991)*, *Goodrocks Group Ltd vs Centre of West Bengal*<sup>18</sup>, *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 stressed the rights of children and said that the Indian Government must act decisively to put the guidelines established in those instances into practice for the welfare of women and children. The protection of women's rights is significantly aided by the Indian judiciary's activism on the issues of child labor welfare, child welfare and the right to education, adoption of children, sexual exploitation of children, and the rehabilitation of child prostitutes.



## REFERENCES

### BOOKS

1. Arshad Subzwari, Hindu Law, (Ancient & Codified) Kamal Publishers, New Delhi 2007.
2. A.S Anand Justice, Justice for Women - Concerns & Expressions, Universal law publishing co. Ltd., 3rd Edition, 2008.
3. Rahman, "Religious Rights Versus Women's Rights in India: A Test Case for International Human Rights Law" (1990) 28 Columbia Journal of Transnational Law.
4. A Vindication of the Rights of Woman: with Strictures on Political and Moral Subjects (1972), Mary Wollstonecraft
5. A.S. Alterkan Sources of Hindu Dharma in its socio-religious aspect, quoted by Aradhya, B. M.

### ARTICLES

1. Aparna Bhat, "Hindu Women's Right to Maintenance", The Lawyers, June 1993.
2. Dr. M.S. Rahi, "Corruption the bane of Judicial system", AIR 2000, Journal 122.
3. D.K. Bhatt, "Human Rights and status of women", AIR 2000, Journal 79.
4. Farah Baria, "Partition Rights of Female Heirs", The Lawyers, 1988, India Today, 1997.
5. Hemlatha Devi V., "Constitution- women and socio-economic Justice", Lawyer's, April, 1982.
6. J.N. Bhat, "Gender Equality: Turmoil or Triumph", AIR 1998 Journal 81.
7. Krishna Iyer Justice, "Justice to Women: The Constitutional Mirages and Legal Potentialities", The Academy Law Review, 1983.
8. Kirti Singh Law, Violence and Women in India, Study supported by UNIFEM and UNICEF.
9. Margaet Kalakdina, "The upbringing of a Girl", printed in Indian Women, Devaki Jain (ed).
10. Madhu Kishwar, "Gandhi on women", 1985, Economic and political weekly, vol. XX, No.40, Oct. 5, 1988.



11. “Making Human Rights Norms Measure up to Women’s Need”, Lawyer’s collective, February, 1997.

## **WEBSITES**

[www.censusofindia.in](http://www.censusofindia.in)

[www.bombayhighcourt.nic](http://www.bombayhighcourt.nic).

[www.indiankanoon.com](http://www.indiankanoon.com)

[www.legalserviceindia.com](http://www.legalserviceindia.com)

[www.lawcommissionofindia.com](http://www.lawcommissionofindia.com)

[www.ncw.nic.in](http://www.ncw.nic.in)

[www.nhrc.in](http://www.nhrc.in)