

**A COMMENTARY ON WOMEN EMPOWERMENT IN POST  
INDEPENDENT INDIA WITH SPECIAL EMPHASIS THROUGH CASE  
LAWS**

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Law and society are closely related to each other. Law tells the nature to live social life and lead to socio-economic and technological progress and both male and female are part of that progress. Our Constitution aims at creating legal norms, social philosophy and economic values which are effected by striking synthesis, harmony and fundamental adjustments between individual rights and social interests to achieve the desired goals. Concept of equality with reasonable classification is a noble epitome in Indian legal system. Man and Woman are equal in the eye of law. Thereby Indian judiciary has independently and effectively intervenes on the issues for woman emancipation.

Art.14 of Constitution of India entails the concept of equality and prohibits unreasonable discriminations between persons. In *C.B.Mutthamma Case (1979)* the Apex Court of India challenged the validity of *Indian Foreign Service (Conduct and discipline) Act* to dogmatize and universalize man and woman in all occupations and situations and to exclude the need to pragmatic requirement for employment of sensitiveness of sex cannot be handicapped but rule of law governed where to save differentiation. Art.15 (3) lifts that rigor and permits the state to positively discriminate in favor of women to make special provisions to ameliorate their social conditions in Indian society. Gender equality is one of the basic principles of our constitution. Art. 21 covers to protect the women's right to live with dignity and personal freedom in *Bodhiswatta Gautama vs. Subhra Chakraborty (1996)* Hon'ble Justice Saghir Ahmed pioneered an entirely new and revolutionary concept and ruled out that rape is not only an offence under Indian Penal Code 1860, it is a violation of women's dignity and personal freedom. Similarly, to give meaning to Art.23, various laws were passed to prevent Immoral trafficking of young girls, women. In *Gaurav Jain vs. Union of India (1997)* the Apex Court highlighted the plights and painful conditions of prostitutes and issued prohibitory measures in relation to these matters. Fundamental Rights (Part III) cater to individual rights while Directive Principles of State Policies (Part IV) cater to social needs. Art. 39 (a), (d), (e) provided for an adequate means of livelihood and gave direction of state

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to protect health of workers including woman and equal pay for equal work. Art.40 represents women in local bodies after 73<sup>rd</sup> and 74<sup>th</sup> Amendments and mandated 1/3 reservation for woman in local governance. Art.42 incorporates an important provision for benefits of woman. Art.44 has objectives to facilitate common/uniform civil code as most of the problems arisen due to non-registration of marriages and certain unscrupulous husbands deny marriage by leaving spouses in lurk. The benefits of uniform civil code are: 1) to prevent child marriage 2) to check bigamy and polygamy 3) to help woman in exercising right to maintenance and custody of children 4) enable widows to claim inheritance. Art.44 divests religion from social relations and personal laws. Art. 51(A) (e), with the 42<sup>nd</sup> Amendment on 1976 added as fundamental duties (Part IVA) for promotion of harmony and brotherhood. Equality is not simply about reserving of sexes and comparing, nor it is simply passing laws that appear on the face of them to be gender neutral, it is all about equal treatment.

In India, marriage is a well-recognized institution and its ideals are very high irrespective multi-religious communities. In *T.Sareetha vs.T.Venkat Subbhaih (1983)* the court held that under Hindu Law, Sec.9 of Hindu Marriage Act 1955 is violative of right to privacy and human dignity. Though it has overruled and Sec.9 affords a remedy to the aggrieved husband and wife against deserting spouse. Adultery as ground for divorce u/s.13 (1) (i) of 1955 Act as if any other spouse committed the act. In *Yusuf Abdul Aziz v. State of Bombay (1954)* the validity of Sec.497 of *Indian Penal Code 1860* challenged as punishing only male participant as violative of Art.14 and Aet.15(1) of Constitution But the court mandated obvious only Art. 15(3) and upheld classification was on solely based on sex only. Later in *Sowmithri Vishnu vs. Union of India (1985)*, the court contended there is difference between married woman, unmarried woman, divorcee and a widow and in this case the man had illicit relation with married woman which has constituted the offence. The amendment and changes with the flow of society as interpreted Sec. 6 of *Hindu Majority and Guardianship Act 1956*, as decided in *Gita Hariharan vs. Reserve Bank of India Case (1999)* the mother could act as natural guardian during the lifetime of father if he is not in charge of the affair of minor. Sec.4 of *Hindu Succession Act 1956*, removed disability of a female to acquire and hold property as absolute owner and to convert limited ownership into absolute estate so that equality could be conferred on women.

Under Muslim Law, the judiciary has taken initiative in case of injustices done to woman in personal laws. In *Shah Bano vs. Md.Ahmad Khan (1985)* the Supreme Court voiced its

concerns pertaining the liability of woman husband to maintain his divorced wife, beyond Iddat period, if she is incapable to maintain herself. The *obiter* of this historic case rocked the Muslim community in India leading to enactment of *Muslim Women's (Protection of Rights on Divorce) Act 1939*.

Social justice means to attain the socio-economic objectives. The jurisprudence of industrialization has demonstrated the vital roles as instrument of social justice. *Equal Remuneration Act 1976* passed with objectives of equal pay for equal work both man and woman and provided there will be no discrimination against recruitment of woman and promotes opportunity for them. *Maternity Benefit Act 1961* provides protection to women workers maternity leave, extra leave for child infancy adequate attention to their safety and health of woman during pregnancy and lactation. *Factories Act 1948* makes detailed provisions regarding health, safety and welfare of employment of women. Sec.25 of *Beedi and Cigar Workers (Condition and Employment) Act 1966* laid down no woman shall be required to industrial premises except between 6 a.m. and 7 a.m. and to ensure safety of woman.

Atrocities towards woman are a burning issue under law of crimes. Under sec.375 of *Indian Penal Code 1860*, rape constitutes an offence against body and *Criminal Law Amendment Act 1983* introduces several sections to stop sexual abuse of women in custody, care and control by various categories of person. In famous *Mathura Rape Case (1979)*, in absence of injuries the Supreme Court reversed the decision of Bombay High Court and acquitted accused, this made a great hue and cry in whole nation as one of the reasons for Mathura Trail was unchastely of woman and thereby a fight began for the protection of woman alleged to be of unchaste woman. Responding to voice of women activists the Supreme Court decisions on *State of Maharashtra vs. Madhukar.N. Mardikar (1990)* held that even a prostitute has a right to privacy and she is entitled to protect her personally if there is an attempt to violate it against her wish. Criminal Law Amendment 1983 made for combating the evils of custodial rape, marital rape, rape on pregnant woman and young girls under 12 years and gang rape and a minimum punishment for ten years imprisonment has been prescribed .

Woman empowerment is essential as dignity of woman vests on spirit of harmony to maintain the decorum of society. A state runs in the healthiest way with its citizens irrespective of man and woman. Modesty is an attribute which female possesses right from her birth. But when an act is done or in presence of a woman clearly suggestive of sex

according to common notions of mankind covered within Sec.354 of Indian penal Code 1860. Law relating to obscenity and indecent representation of woman through advertisements, publications, writings and paintings. To respect woman is ultimate motto for development of healthy society. But Indian patriarchal society has long desire for birth of male child and thereby leads to indiscriminate abortion of female fetus. Though to prevent such illegal acts Secs.312-318 of *Indian Penal Code* 1860 deal with the causing of miscarriage with or without consent. To prevent such unethical activities *Medical Termination of Pregnancy Act* 1971 came into force with the objectives to terminate pregnancy by registered medical practitioners where it involves high risk to the life of pregnant woman and there is grave injury to her medical health and there is substantial risk of child in her womb and if it is born there will be physical or mental abnormalities. Similarly *Female Foeticide Act* 1994 is a regulation of the use of pre-natal diagnostic technique for detecting genetic disorder and prevention of misuse of such techniques for the purpose leading to female foeticides. The Supreme Court in *CEHAT vs. Union of India* (2003 ) expressed concern to stop illegal sex determination and directed all state to confiscate ultra-sound equipments from clinic that are being run without licenses.

The increasing number of dowry death is a serious concern. *Dowry Prohibition Act* 1961 is a social legislation but implementation of the Act and rules were not effective and has not taken up to zeal by government. It is necessary to arisen conscience of the people against the demand and acceptance of dowry. Thereby, insertion of Sec. 304B as dowry death in *India Penal Code* 1860 made punishable and imprisonment not less than 07 years which may extend to imprisonment of life. Sec 498A *Indian Penal Code* 1860 reflects the anxiety to extend protection to the weaker spouse. Life of a woman in the family of the husband is sometime so intolerable and miserable that it drags towards suicide. Very recent *Domestic Violence Act* 2005 has formulated for more effective protection of the rights of woman guaranteed who are victims of violence any kind of incident within family. This Act provides protection to the wife or female live in partner house tortured and victim of domestic violence at the hands of husband or any family member.

For the protection of woman, a guideline incorporated under section 174 of Criminal Procedure Code 1973 and empowers police officers to investigate suicide cases and unnatural deaths of bride. Sec.174 (3) it is mandatory for police officer to send the dead body for post-mortem. Sec.176 makes inquiry for Magistrate into cause of death into police custody. By amending 1st Schedule to Criminal Procedure Code 1973, the offence of dowry death has

been made cognizable, non-bailable and triable by Court of Session. 84th *Law Commission Report* inserted Sec. 113B and Sec.114A *Evidence Act 1872* as appeared to have gone to the farthest limits to facilitate the punishment of guilty. The Supreme Court in *Bhagwant Singh vs. Commissioner of Police, Delhi* (1983), pointed out that young woman of education; intelligence and character do not set fire to themselves to welcome the embrace of death unless provoked by someone or situations.

As women try to fight economic disparity to man, another form of crime emerges – sexual harassment at the work place. Each case of sexual harassment leads to violation of fundamental rights and incompatible with dignity and honor of women. In *Vishakha vs. Union of India* (1997) Case, the Supreme Court laid down guidelines by focusing Art. 11 and 24 of *CEDAW 1979*, for violence against woman constitutes violation of fundamental rights and freedom of woman. The woman empowerment or gender justice is a huge concept covering various pros and cons and it is an umbrella term for harmful act that perpetrated against women's will and based on socially ascribed differences between man and woman. It cannot negate that legislative responses against gender based violence's is delayed and grossly inadequate and lacks the political commitment to address issue. But Indian judiciary tried to provide few acclamatory results in rescuing dignity of woman to an extent. In *Chandrima Das vs. Chairman, Railway Board* (2000) held that where a rape was committed by railway employee on a woman in building belonging to railways a writ petition for compensation filed by victim against government.

Society changes and law changes and status of woman have gone through various phases. Sexual Harassment of women Bill at workplace 2010 is now pending in Rajya Sabha of Indian Parliament and has still to get status of enacted law. With the famous Delhi Rape Case of 2012 December, the *Criminal Law Amendment Ordinance 2013* considered reforms to strengthen laws against sexual violence against women. It included new offences like acid attacks, sexual harassment, voyeurism, cyber-stalking and amendments in *Indian Penal Code 1860*, *Indian Evidence Act 1872* and *Criminal Procedure Code, 1973* changed the dimensions of offences relating to women.

In concluding part it can be said that women abuses can leave psychological scars, damage on health including their reproductive and sexual health and in some instances resulted to death. There is a need to alter the demographic composition of Indian's population and tackle the violence against women. Enactment of law is insufficient; laws must be adhered and

rigorously applied. Apart from various legislations, and measures and their effective implementations, it is also necessary to train and teach youth generation to be caring, supportive to their counter parts and this would help to respect and value the dignified status of woman. They should be respected by man. Their honor and dignity should never be touched and encroached. Days are not so far, where there may be emergence of situations where females will be preferred and a feeling will be inculcated in mind that she is a daughter, she is a sister, she is a life partner and she is a mother of a man.

