

# JUDICIAL ACTIVISM AND WOMEN EMPOWERMENT IN INDIA

HEENA A. SUTHAR

Teaching Faculty, Department of Business Law, Faculty of Commerce,  
The M. S. University of Baroda., Gujarat, India.  
Email: heena29suthar@gmail.com

**Abstract:** *The growth of any country mainly depends upon the social perpendicular of women. In the world's total population, women are almost half. Empowerment is one of the noteworthy features in defining the success of women. Women empowerment is the practice of shielding to them against any methods of violence and discrimination and guarantee of gender equality.*

*Currently, women empowerment has becomes the topmost area of concern because after 67 years of independence of India, virtually women empowerment is a misconception and not the realism. Women in India are lagging behind men in many reverences. Generally, women empowerment means the creation of such an environment in the society wherein they can inhale freely without any fear of coercion, maltreatment and discrimination from which they were suffering in the traditional male subjugated society.*

*In our country judiciary being an independent wing plays two major roles. First to interpret the laws and second role is judicial activism i.e. to go beyond the statutory laws and exercise the discretionary power to provide justice to the society. It is observed that judicial decisions rendered by the Indian Courts represent the vigorous role played by the judiciary to safeguard women from ill-treatment at a juncture wherever legislatures are liveried due to lack of adequate enforcement machinery. The judicial initiatives have positioned the women in a better place in society than what was earlier. Yet the woman in India has to go far to achieve cent percent empowerment.*

*This paper throws on lights on extents to which women are relatively disempowered and the role played by the judiciary in empowering them.*

**Key Words:** *Women empowerment, judiciary, gender equality, judicial activism, discrimination.*

## 1. INTRODUCTION:

The development of any nation solely depends upon the social status of women. We can't visualize the world without women. In the world's population, almost half are Women. But, from the beginning women are considered as downtrodden and marginalized masses of the population especially in a developing country like India. Our society is considered a male-dominated society.

Nowadays, women empowerment becomes a burning issue because after 67 years of independence practically women empowerment is misconception and not the realism. Today, women's life is not confined to four corners of walls. They came out of the four corners of the house and their contribution cannot be overlooked. Their contribution is parallel to men in each and every pitch i.e. from their house to space. But, still, women are socially, educationally, economically, politically and religiously victimized.

According to Kofi Annan, UN Secretary-General "violence against women takes various forms such as domestic violence, rape, trafficking in women, forced prostitution .....and honour killing, dowry-related violence, practices and traditions"<sup>1</sup>.

Women empowerment can be defined as the state in women get an opportunity to develop their potentialities to the fullest extent without any constraint and barrier. It includes construction of an atmosphere in the society where women can breathe freely and fearlessly.

The principle of gender equality is cherished by the Indian Constitution. It prohibits all types of discrimination against women. It also empowers the State to adopt steps of positive discrimination in favour of women. Nowadays, our judiciary is also playing a very vigorous, dynamic and crucial role for protecting the rights of women and ensuring justice to them.

## 2. RESEARCH QUESTION:

The researcher has formulated following research questions:

- Whether women of India are comparatively disempowered and enjoy lower status as compared to men.
- Whether Indian judiciary has made adequate efforts to empower women.

<sup>1</sup>[https://en.wikipedia.org/wiki/Violence\\_against\\_women](https://en.wikipedia.org/wiki/Violence_against_women) visited on 21/03/19

- Whether judicial initiatives have placed Indian women in a better place in the society than earlier.
- Whether there is need for more effective judicial reforms with reference to women empowerment in India.
- Whether judiciary is protector of constitutional and other legislative safeguard with regards to women.

### 3. RESEARCH METHODOLOGY:

The study is purely non-empirical and doctrinal research. It is based on secondary sources.

### 4. EXPECTED FINDINGS:

The expected findings of this research paper are as follows:

- The social status of women in India is inferior in comparison to that of males in India.
- The efforts made by Indian judiciary are adequate to empower women.
- Judicial initiatives in India have improved the social condition of Indian women than earlier.
- Judiciary is protector of constitutional and other legislative safeguard with regards to women in India.
- Judiciary has made immense contribution to strike the balance between discrimination caused to the working women and availing them of justice against such discrimination.

### 5. JUDICIAL ACTIVISM AND WOMEN EMPOWERMENT IN INDIA:

There is separation of powers between three organs of the government i.e. legislature, executive and judiciary. The function of legislature is to enact the laws and of executive to implement the laws. The judiciary is to dispense justice for the welfare of the people. Each organ is superior in its respective field and no one can interfere one another in discharging their functions. But, when legislature or executive machinery fails to discharge their functions then judiciary can intervene and discharge their functions. The judiciary by its landmark judgments has filled the gap created by the executive and Legislative machinery. This role of judiciary to fill the gap created by the legislature and executive is called judicial activism. The judicial activism is the outcome of the failure of the other two organs of the government.

According to Justice P.N. Bhagwati "The judge fills life and blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society."

Justice K. Subba Rao explains "the function of the judiciary as:

- It is a balancing wheel of the federation.
- It keeps equilibrium between fundamental rights and social justice.
- It controls the Administrative Tribunals."<sup>2</sup>

Judicial activism and women empowerment in India can be divided under following heads:

#### 5.1. SEXUAL HARASSMENT:

##### 5.1.1. Vishakha v/s State of Rajasthan<sup>3</sup>

In this case the Supreme Court has for the first time defined term 'sexual harassment' and provided detailed guidelines to the employer for prevention of sexual harassment of women at their work place. Some of the important guidelines are as follows:-

- Duty of Employer or other responsible person to prevent the commission of acts of sexual harassment, to women employees at their work places.
- Court has given definition of sexual harassment as it includes such unwelcome sexually determined behaviour as:
  - Physical contact and advances;
  - A demand or request for sexual favour;
  - Sexually coloured remarks;
  - Showing pornography;
  - Any other unwelcome physical, verbal or non-verbal conduct of sexual nature.<sup>4</sup>
- Central and State Governments are requested to enact the specific law to prevent sexual harassment.
- Court has suggested for the pattern of criminal proceeding for such type of offences.
- Need of awareness among female employees about their rights in case of sexual harassment.
- Court has advocated for disciplinary action against the offender.
- Court suggested for Complaint committee and complaint Mechanism.
- Court provided the guideline in case of third party harassment also.

<sup>2</sup><http://www.legalservicesindia.com/article/1154/Judicial-Activism-in-the-Area-of-Women-Empowerment.html> visited on 30/01/ 2019

<sup>3</sup>AIR 1997 SC 3011

<sup>4</sup>[https://en.wikipedia.org/wiki/Vishakha\\_and\\_others\\_v\\_State\\_of\\_Rajasthan](https://en.wikipedia.org/wiki/Vishakha_and_others_v_State_of_Rajasthan) visited on 20/03/2019

The legislation containing provisions on prevention of sexual harassment at work place was not enough so the Court has assumed the role of legislature and defined what sexual harassment is. It has also laid down comprehensive guideline for the employers to take preventive measures for prevention of sexual harassment of working women at their workplace. The court also requested government to make laws for prevention of sexual harassment and took a serious note of the increasing menace of sexual harassment of women at their workplace.

### 5.1.2. Apparel Export Promotion Council v. A. K. Chopra<sup>5</sup>

The Supreme Court has held that “The sexual harassment of a female employee at the place of work is incompatible with the dignity and honour of a female and need to be eliminated and that there can be no compromise with such violation”.

In this case Supreme Court establish all aspects of gender equality including prevention of sexual harassment of women at work place. The court has defined role of court in protection of sexual harassment and right to live dignified life guaranteed by the Constitution.

## 5.2. DOWRY:

### 5.2.1. Shobha Rani v/s Madhukar<sup>6</sup>

In this case the petitioner, Shobha Rani filed a petition for dissolution of her marriage on the ground of dowry demand by her in-laws. Here, the court has considered dowry demand equivalent to cruelty and granted decree for dissolution of the marriage of the petitioner. Thus, by expanding the scope of definition of term cruelty court considered dowry demand as cruelty and enabled the petitioner to obtain decree for divorce on the ground of cruelty.

## 5.3. EQUALITY:

### 5.3.1. C. B. Muthamma v/s Union of India<sup>7</sup>

In this case one of the conditions of service for female employee was that she had to give an undertaking at the time of joining the Foreign Service that if she has to get married, she would resign from the service. The condition for appointment of women was declared unconstitutional by the Supreme Court.

Right to marry is a fundamental right of every citizen under the Indian Constitution. Here, the prejudicial and discriminatory employment condition in respects of marriage of women was declared as unconstitutional and violative of article 21 and 14 of the Constitution.

### 5.3.2. Air India v/s. Nargesh Meerza,<sup>8</sup>

In this case a complaint was filed challenging discriminatory employment conditions between male and female cabin crew of Indian Airlines and Air-India as violative of Article 14 of the Constitution of India. The condition for the employment in the regulation was that the air hostesses are retired at the age of 35 years as against male employees who are retiring at the age of 58 years. Further, female employees cannot get married till the completion of four years from the joining of the service, breach of condition would results in termination of their employment. But, male employees of both the airlines companies are privileged to get married whenever they want.

The Supreme Court has granted relief to the female employees against the discriminatory employment conditions and struck down the Regulation providing for retirement of the air hostess on her first pregnancy, as unconstitutional and hence void. Here, the Supreme has upheld right of women to marry as and when she want and to be pregnant. Right to marry and to be pregnant is a fundamental right of every women.

### 5.3.3. Smt. Sowmithri Vishnu v/s Union of India & Another<sup>9</sup>

In this case husband has filed divorce petition against her wife on the ground of desertion and adultery. While his petition was pending, the husband filed a complaint against a person under section 497 of the Indian Penal Code charging him with having committed adultery with his wife. The court allowed divorce decree to the husband.

After divorce decree, a writ petition was filed by the wife, to quash the complaint filed by her divorced husband. She contended that section 497 of the Indian Penal Code is violative of rights guaranteed by the Constitution under Art. 14 i.e. right to equality and Art. 21 i.e. right to life and personal liberty. It makes an absurd classification between men and women on following points-

- It confers right to prosecute against the adulterer to the husband but, it does not confer any right to the wife to prosecute the woman with whom her husband has committed adultery.
- It does not confer any right upon the wife to prosecute her husband who has committed adultery with another woman.
- It does not deals with the cases where the husband has sexual relations with an unmarried women.

<sup>5</sup>AIR 1999 SC 625

<sup>6</sup>AIR 1988 SC 121

<sup>7</sup>AIR 1979 SC 1868

<sup>8</sup>1981 AIR 1829

<sup>9</sup>1985 AIR 1618, 1985 SCR Supl. (1) 741

In this case complaint filed by divorced husband was dismissed by the court and held that as the husband has already obtained divorce decree, no useful purpose will be served by inquiring into the allegation whether her divorced wife had adulterous relationship with the person, against whom the husband has filed a complaint under section 497. The court has given protection to woman considering her as victim of crime and said that a “wife involved in illicit relation, is the victim and not author of the crime,” and adultery is “an act which is committed by man, as it generally is.” “It is the man who is the seducer.”<sup>10</sup>

#### **5.3.4. Uttarakhand Mahila Kalyan Parishad v/s State of Uttar Pradesh**<sup>11</sup>

Female employees employed by the Education Department of Uttar Pradesh Government filed petition alleging that, though they do the same work as their male colleagues do but, they were paid a lower scale of salary than their male colleagues. Further, same opportunities in promotion were not open among female and male employees. They claimed that such treatment is gender discriminatory.

The Supreme Court accepted their claim and ruled that different treatment was not justifiable. Court struck down the discriminatory employment rules of Education Department of Uttar Pradesh Government and directed the Uttar Pradesh government to equalize the pay scales for male and female employees. Court also directed to examine the issue of promotion by an appropriate committee and to give additional promotional opportunities to the petitioners.

#### **5.3.4. Saveetha Samvedi and Another v/s Union of India**<sup>12</sup>

In this case an appeal was filed by a married daughter for the regularisation of the quarter which was allotted to her father. Her two brothers were not railway employee but she was an employee of an Indian railway. She argued that her brothers were not in a position to look after her parents, whereas she look after her parents so the quarter which was allotted to her father should be allotted to her. Her prayer was declined by the railway authority on the ground that a married daughter was not eligible for regularization of a railway quarter.

The Court passed an order of regularisation of a railway quarter in favour of married daughter. Earlier this right was available to the sons and unmarried daughters only. The Supreme Court has widened its scope and granted the right to married daughter also in order to empower her.

#### **5.3.5. Githa Hariharan v/s Reserve Bank of India**<sup>13</sup>

The Supreme Court interpreted Section 6(a) of Hindu Minority and Guardianship Act, 1956 and Section 19(b) of the Guardians and Wards Act, 1890 in such a way that father and mother get equal status as guardians of their minor child.

The Supreme Court empowers women putting them on equal footing with men on the ground of equality as regards custody and guardianship of their children.

#### **5.3.6. Municipal Corporation of Delhi v/s Female Workers**<sup>14</sup>

In this case discrimination on the ground of maternity leave between regular women workers and daily wages women employees was removed by the Supreme Court. Court observed: “just social order could be achieved only when inequalities are abolished and women.....are honoured and treated with dignity.”

Here, for empowering women employees economically and ensuring social justice the court has eliminated discriminatory provision regarding maternity leave.

### **5.4 MAINTENANCE AND ALIMONY:**

#### **5.4.1. Mohd. Ahmed Khan v/s Shah Bano Begum**<sup>15</sup>

The honourable Supreme Court has given significant judgement and first time in the history Muslim women get maintenance under section 125 of the Criminal Procedure Code apart from their personal laws. Muslim women for the first time empowered by the judiciary to claim maintenance under the Criminal Procedure Code. The Court held that a Muslim divorced woman who is not able to maintain herself is entitled to get maintenance from her former husband till she gets remarried.

### **5.5. RIGHT TO PRIVACY**

#### **5.5.1. Madhukar Narayan Mardikar v/s State of Maharashtra**<sup>16</sup>

The court observed that “since an unchaste woman is entitled to right to privacy and no one can assault her privacy as and when he likes. Unchaste woman is also entitled to claim protection of law equally with rest of the citizens of the country. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.”

<sup>10</sup><https://indiankanoon.org/doc/449750/> visited on 18/03/2019

<sup>11</sup>AIR 1992 SC 1695

<sup>12</sup>1996 SCC (2)380

<sup>13</sup>AIR 1999 SC 1149

<sup>14</sup>AIR 2000 SC 1274, 1281

<sup>15</sup>AIR 1985 SC 945

<sup>16</sup>AIR 1991 SC 207, (1991) 1 SCC 57,

Constitutional safeguards cannot be denied to woman because she is an unchaste women. In this case the court has first time held that right to privacy and right to equality are also available to woman of an easy virtue.

## 5.6. RIGHT TO PROPERTY:

### 5.6.1. Prathibha Rani v/s Suraj Kumar<sup>17</sup>

It was held that 'stridhan' property of a married woman cannot be calculated as a joint property of both the husband and wife. The Hindu married woman is an absolute owner of her 'stridhan' property. She can deal with such property in the manner as she likes.

The court observed that entrustment of the stridhan property to the husband by her wife is just like something which she keeps in a bank and can withdraw whenever she likes without any hindrance. The court upheld women's right to her stridhan property and declared her as an absolute owner of it.

## 5.7. SERVICE AND RESERVATION:

### 5.7.1. Government of Andhra Pradesh v/s P. B. Vijay Kumar<sup>18</sup>

In this case the issue of reservation for women in State services was upheld under Article 15 and 16 of the Indian Constitution by the court. Court observed that women of this country have been socially and economically handicapped if they are not provided with reservation in the government services.

In order to empower women economically court has made positive discrimination in favour of women and advocated for reservation of women in State services.

## 5.8. RAPE CASES:

### 5.8.1. Delhi Domestic Working Women's Forum v/s Union of India<sup>19</sup>

The Supreme Court suggested the formulation of a segment for granting compensation to rape victims at the time of convicting the person found guilty of rape. The Court directed to award compensation to the victims of rape by taking into consideration the agony, pain and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape.

### 5.8. 2. The Chairman, Railway Board & Others v/s Mrs. Chandrima Das & Others<sup>20</sup>

This is a case of gang-rape upon a Bangladeshi national by the employees of the Indian Railway in a room at Yatri niwas at Howrah railway station. Indian judiciary given a landmark judgement and also considered sympathetic look towards a woman who is not Indian citizen and provided justice beyond the boundaries of Nation. Supreme Court awarded a compensation of Rupees 10 lakhs to the victim who was a foreign national. This can be taken as a revolutionary change for the woman empowerment.

### 5.8. 3. Bodhisattwa Gautam v/s Subhra Chakraborty<sup>21</sup>

In this case Bodhisattwa Gautam dishonestly procured sexual intercourse with the complainant, Subhra Chakraborty. So, she became pregnant so and hence she created pressure to marry upon the accused. The accused has given false assurance of marriage and fraudulently gone through a certain marriage ceremony with the complainant by putting vermilion on her forehead he accepted her as his wife. Later on the accused refused to recognise her as his wife. The Supreme Court ordered the accused to pay Rupees 1000 per month as an interim compensation to the victim of rape during the pendency of the criminal case.

Here, the court has allowed interim compensation to the victim who became pregnant as a result of rape, during pendency of complaint.

### 5.8.4. Nirbhaya Rape case:

In Delhi a girl aged 23 was tortured, beaten and gang raped in a public bus in which she was travelling on 16<sup>th</sup> December, 2012. Committee headed by chief Justice of India J.S Verma, was constituted to recommend improvements in the prevailing criminal laws for providing speedy trial and to increase punishment for offenders who are accused of committing sexual assault against women.

The committee made recommendations on laws related to rape, sexual harassment, trafficking in human being, child sexual exploitation, medical investigation of victims, police reforms etc. The significant recommendations of the Committee are:

- Punishment for Rape and for other sexual offences
- Registering complaints and medical examination
- Registration of Marriages
- Amendments to the Criminal Procedure Code
- Bill of Rights for women

<sup>17</sup>AIR 1985 SC 628

<sup>18</sup>AIR 1995 SC 1648

<sup>19</sup>(1995) 1 SCC 14

<sup>20</sup>AIR2000SC988,2000CriLJ1473

<sup>21</sup>1996 AIR 922, 1996 SCC (1) 490



- Police reforms
- Role of the judiciary
- Review of the Armed Forces Special Powers Act.<sup>22</sup>

## 6. CONCLUSION:

The contribution of women for the development of their family, society and nation cannot be unnoticed. Still in India women are considered as subjugated and downgraded. Indian women are relatively disempowered in social and economic area. They enjoy lower status than that of men. There are certain social and economic constraints in their path. Women are still victims of tyranny at the hands of men. But, women also have some rights like other human beings. They have the right to be respected and to live dignified and peaceful life as enjoyed by men.

Our legislatures have taken sincere efforts to bring women to live dignified life in the society. But, by passage of time such legislations are lagging behind. When laws are not enough or remains silent on particular issue judiciary has assumed the powers of legislatures and deals with the matters in order to dispense justice to the women. Indian judiciary has taken very obliged steps while dealing with the issues relating to women. The judiciary had extended helping hands to women, when the legislature had denied.

Landmark decisions delivered by the judiciary at present evident that judges cannot be accused of gender inequalities. They have shown the requisite sensitivity expected from them. The role of judiciary for protecting rights and dignity of the women is noteworthy. They have placed Indian women in a better place in the society than earlier. At present the social, economic, educational and political status of women are far better than earlier. Yet the woman in India has to go far to achieve cent percent empowerment.

## 7. SUGGESTIONS:

It is suggested that –

- The literacy rate amongst women more particularly in tribal areas of India is very low. On account of illiteracy, these women are not able to access justice easily. So there is need to educate women in such areas so that they can access to justice.
- Sometime, women are not aware of their legal rights and remedy available in case of violation of such rights. Workshop on rights of women and what kind of remedy available in case of violation of these rights are need to be organized.
- Women are economically disadvantaged so there is need to organise legal aid camps which will help them to access justice.
- Financial aids are required to be given to represent women in court, to appoint legal advisor and to seek justice.
- Sensitise public about women's issues to ensure that women enjoys equality of status as compared to men.
- Lok adalat should be organised frequently for speedy disposal of cases especially pertaining to women.
- Self defence training programme should be organised especially for women so that they can protect themselves against some offences like sexual harassment, rape, etc.
- Sometimes it is found that women themselves considered that they are idols of sacrament and they are inferior to male and on the name of sacrament they have to suffer a lot. They have to improve their thinking ability and raise voice for their rights and seek remedy in case of violation of their rights.

## REFERENCES:

### Books:

1. Anjani Kant (2001), Women and the Law, A.P.H. Publishing Corporation, New Delhi
2. Dr. J. N. Pandey (2013), Constitutional Law of India, Central Law Agency.
3. G. B. Reddy(2017), Women and the Law, Gogia Law Agency,ISBN-10-8189804669
4. P. M. Bakshi(2018), Constitution of India, Universal Law Publishing.
5. S. P. Sathe (2001), Judicial Activism in India, Oxford University Press.
6. S. R. Myneni(2011) ,Women and law, Asia Law House, ISBN-10-9381113661

### Webliography:

1. <https://indiankanoon.org/>
2. <https://www.un.org/>
3. <https://en.wikipedia.org/wiki/>
4. [www.airinfotech.in/article3.html](http://www.airinfotech.in/article3.html)
5. [www.ebc-india.com/lawyer/articles/](http://www.ebc-india.com/lawyer/articles/)
6. [www.lawctopus.com/](http://www.lawctopus.com/)
7. [www.legalservicesindia.com](http://www.legalservicesindia.com)
8. [www.shodhganga.inflibnet.ac.in](http://www.shodhganga.inflibnet.ac.in)

<sup>22</sup>[https://en.wikipedia.org/wiki/2012\\_Delhi\\_gang\\_rape](https://en.wikipedia.org/wiki/2012_Delhi_gang_rape) visited on 10/03/2019