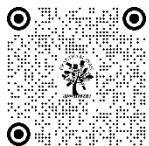


## WOMEN EMANCIPATION THROUGH LAW AND JUDICIAL DECISIONS: AN INSIGHT

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### ABSTRACT

The thinking process is pink for girls and blue for boys is the starting line of segregation which ought to be eliminated.

Human beings are born free and so does a woman believe. The constitution of India guarantees a right to equality to all citizens regardless, of their gender and prohibits discrimination on the grounds based on sex, caste, etc. It has made a special provision for women under Article 15 Clause 3 of the constitution so that their rights and interests are protected. The rationale behind this is to uphold their freedom and status as guaranteed. Recently the Supreme Court made the daughters equal co-heirs to the sons. The court interpreted section 6 of the Hindu Succession Act, 1955 to include daughters as coparceners by birth and ended the uncertainty over the correct interpretation of the section. 1 Similarly, the Supreme Court ruled that the restriction of women to enter Sabarimala Temple is gender discrimination. The Apex Court by 4:1 held that prohibiting the entry of women into the temple based on biological differences violates the right to equality under Article 14 and the right to freedom of religion conferred by Article 252 of the constitution. This research will attempt to analyse the role of the judiciary in attempting to remove the age-old discrimination against women.

**Keywords:** Woman, Judicial Interpretations, Constitution of India, Freedom, Limitations, Blue for Girls, Stereotype, Political, Social, Economic

## 1. INTRODUCTION

It is a woman who suffers nine months to bring a child into the world. She is the foundation of a home. Hence, if the very bedrock is weak the home will struggle to remain intact. It is said that if you educate a man, you educate an individual but if you educate a woman, you educate a family. At the beginning, the position of women throughout the world was no less than slaves. Infanticide, foeticide, and sati were the norm. The genders were not treated alike and were provided with the same status. Rather, women have often been fighting for their basic rights and position in society. History stands witness to various menaces existing against women in our society. One of the cruel examples is the sati system where the widow whose husband would die had to immolate herself on her husband's funeral pyre. Likewise, social evils such as child marriage and the dowry system surface, sexual harassment, Domestic violence, etc which engulf the woman ruthlessly. However, with the change of time, the thought process changed in respect of women. It was felt that women have been victims of ample discrimination by the stereotypical traditions and customs provided by society and family as well. Accordingly, during the nineteenth century, Lord William Bentick the then governor-general of India

<sup>1</sup>Vineeta Sharma vs. Rakesh Sharma 2020 SCC1

<sup>2</sup>AIR 2019 SCC

with the assistance of Raja Ram Mohan Roy (a social worker) worked to abolish social evils like the Sati practice by enacting the Bengal Sati Regulation Act of 1892 which marked a crucial step in stopping such practice. It was an utmost effort to address the social issues and to promote women's rights in Indian society during the colonial period. Starting from the time when famous poetess and political activist Sarojini Naidu (Nightingale of India) became the president of the National Congress in 1925. In an address as a member of the constituent Assembly in 1946, Sarojini Naidu argued for Indian women's emancipation. She Said.

"Woman will be your guardian angel. she will cheer you up when you are gloomy. She will be your support in desolation. She will be a light when you are in darkness. the liberty of the soul will be India's share only when a woman is free"<sup>3</sup>

In 1989, The judiciary of India took a robust stand in favour of women by appointing Miss Fatima Bheevi to be the first woman judge of the Supreme Court. This change liberated them further from societal critiques and strengthened their position in the field of law and of course left a floor open to others. Since then, subtle changes have been made for the growth, development and freedom of women in all religious, cultural, economic and political spheres.

**Women; Law and Judicial Interpretation: An Insight:** The Indian constitution declares India to be a sovereign, socialist, secular, democratic, republic in its preamble. The Constitution guarantees equality before the law or the equal protection of law under Article 14. It does not distinguish based on gender and prohibits any kind of discrimination. Moreover, article 15 of the constitution imposes a bounden duty upon the state to prohibit discrimination on the grounds only of religion, race, caste, sex, place of birth or any of them. Clause 3 of Article 15 provides that a state may not prevent itself from making a special provision for women and children.

An attempt has been made to remove the disadvantageous position of women by enacting specific & special laws in favour of women. Some of them include:

**The Hindu Marriage Act, 1956** –The Act confers women equal right to dissolve the marriage. Section 13(2) of the Act provides the grounds for a wife to seek divorce from her husband. The Act also prohibits polygamy under section 5 which says that a person shall not have two spouses at the same time without ending the first marriage instead it made monogamy a mandatory rule.

**The Hindu Succession Act, 1956**- The Act provides that any property which is possessed by a Hindu woman is considered her absolute property. She has full power to deal with it and can dispose in the manner she likes.

**Dowry Prohibition Act, 1961**-Dowry is one of the worst social evils which has been deeply rooted since times immemorial. There have been many instances where married women either kill themselves or commit suicide due to the pressure of dowry demand. The need was felt to abolish the practice and thus in 1961 Dowry Prohibition Act was passed. The Act strictly prohibits giving, taking and abetting of dowry and declares such taking an unlawful act punishable with imprisonment for a term not less than five years and with a fine not less than fifteen thousand rupees or the amount of value of such dowry under section 3 of the Act. Further, section 4 imposes a penalty for demanding dowry. It says that if any person demands dowry, directly or indirectly from the parents, relatives or guardians of a bride or bridegroom any dowry, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years and with fine which may extend to ten thousand rupees<sup>4</sup>.

**Hindu Adoption and Maintenance Act, 1956:** Under section 8 of the Act a woman has a right to adopt a child if she is of sound mind, not a minor and is not married or if married, whose marriage has been dissolved. it means that after eighteen years of age, a woman acquires the right to adopt a child be she married or unmarried. A woman is also entitled to claim maintenance against her husband by section 18 of the Act. She will even be entitled to live separately from her husband without forfeiting her claim to maintenance if her husband is guilty of desertion, he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be harmful or injurious to live with her husband if he is suffering from a virulent form of leprosy etc. However, she will not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

**Domestic Violence Act, 2005:** Woman from every social background regardless of their gender, age caste, or religion face domestic violence. Hence, the Act has been enacted to protect the woman against domestic violence. Section 12 provides that the aggrieved person, the protection officer of that locality or any other person on behalf of the

<sup>3</sup>Address on the Emancipation of Indian Woman, 1918, by Sarojini Naidu.

<sup>4</sup>Section 3, 4 of Dowry prohibition Act 1961.

aggrieved person shall make an application to the magistrate claiming one or more reliefs under the Domestic Violence Act, 2005. The magistrate will then fix a date of hearing which must not be more than three days from the date of receiving the application. Moreover, the magistrate must aim to dispose of the application made under section 12 within sixty days from the date of its first hearing.

**Role of judiciary vis-a-vis- women issues: An insight:** Whenever the judiciary got the chance it provided its protective umbrella thereby guarding the fundamental rights of persons generally & of women specifically. In **Yousuf Abdul Aziz vs State of Bombay**<sup>5</sup>, the appellant was charged with adultery under section 497 IPC which dictates that adultery can only be committed by a man and that woman cannot be punished even as abettor. The appellant argued that section 497 IPC was violative of articles 14, and 15 of the constitution as gender discrimination. The court held that the appellant could not invoke articles 14,15 because fundamental rights can only be granted to the citizens of India, the appellant being a non-citizen his appeal was dismissed. The constitution also imposes a fundamental duty on every citizen to renounce a practice derogatory to the dignity of women<sup>6</sup>. The directive principle of the constitution lays down the principle of equal pay for equal work for both men and women and equal opportunities in respect of public employment<sup>7</sup>. Thus, the Constitution protects women against exploitation and ensures that they are been given equal rights and opportunities in all fields. Moreover, reservation of seats has been specifically made for women in panchayats and municipalities. Article 243D and Article 243T (3) provide for reservation of not less than one-third of the total number of seats in panchayats and municipalities for women to be allotted by rotation to different constituencies.

Legally Indian judiciary has adopted very stringent postures against the tyrannies and unjustice women in India suffer. it has imparted ample judgments in favour of woman for preserving their fundamental rights and freedom. In the Sabarimala Temple case <sup>8</sup>, the case was filed by the petitioners before the Supreme Court alleging that the customary rules violate the right to equality, and right to freedom of religion under articles 14, and 25 and also derogatory to the dignity of women. Rule 3 (b) of the Kerala Hindu Places of Worship Act permitted the Hindu denominations to bar entry of women into the temple from the age group between 10- 50 years. The Supreme Court accordingly on 28 September 2018 by a majority of 4:1 held the custom rules arbitrary, unreasonable and devoid of merits hence unconstitutional and violative of articles 15, 21,39A (e) of the constitution and thereby allowed a woman of all age groups to enter into the temple and exercise their fundamental right to practice of religion. Likewise in the Triple Talaq case,<sup>9</sup> the petitioner Shah Banu alleged the practice of instantaneous triple talaq or talaq-bit as unconstitutional which gave unbridled powers to one side&violating right to equality under articles 14,15, and thus is discriminatory& arbitrary practice. The court by a majority of 3:2 declared triple talaq unconstitutional. The parliament passed the **Muslim Woman (Protection of Rights on Marriage) Act, 2019** that declared instant triple talaq a criminal act and punishable with up to three years imprisonment under section 4 of the Act which says that a person who tries to divorce his wife through talaq-i-bidat shall be punishable. The wife is also entitled to receive maintenance from her husband under section 5 of the said Act. In another case of Nargesh Mirza<sup>10</sup>, the question before the court was about the constitutional validity of Air India Regulations 46 (1) (c) and 47 which provided for the termination of service of a female air hostess upon first pregnancy. The court struck down the impugned regulations, as arbitrary thereby violating article 14, 15 of the constitution. In **Vishaka vs. State of Rajasthan**<sup>11</sup>, a Public Interest Litigation was filed against the state of Rajasthan and the central government for enforcing the fundamental rights of working women under articles 14, 19 & 21 of the constitution. The petition was filed after a social worker Bhanveri Devi was brutally gang raped as revenge for conducting programmes against child marriages. The court passed several guidelines to stop sexual harassment at the workplace and those guidelines are famously known as Vishaka guidelines.

In the landmark case of **Joseph Shine**<sup>12</sup>, the constitutional validity of section 497 IPC was challenged as unconstitutional which deals with the offence of adultery under section 497 IPC and section 198 Cr.P.C which provided that no person other than the husband of a person accused of adultery would be deemed to be aggrieved of an offence

<sup>5</sup>AIR 1954

<sup>6</sup>Article 51A (e) of the constitution of India.

<sup>7</sup>Article 39 d and article 16 of the constitution of India.

<sup>8</sup>India Young Lawyers' Association vs. State of Kerala AIR 2019 SCC

<sup>9</sup>Shayra Banu vs. Union of India 2017

<sup>10</sup>Air India vs. Nargesh Meerza AIR 1981

<sup>11</sup>AIR 1997 SC 3011

<sup>12</sup>Joseph Shine vs. Union of India 2018 SCC,204-206

under section 497 IPC. The Supreme Court struck down section 497 in as much as it infringes Articles 14, 15 and 21 of the Constitution. The five-judge bench unanimously held that the law was archaic, arbitrary and an infringement upon the autonomy, dignity and privacy of women.

Despite the efforts of removing age-old disparity and disadvantaged position of women still certain areas of serious concern where women face challenges and discrimination and struggle for their existence;

**Female Infanticide and Foeticide:** Washington-based think **Tank Per Research** revealed that at least 9 million girls were missing in India between 2009 and 2019 as a consequence of female infanticide. It has been revealed that preference of son over daughter is a major reason for female infanticide, dowry demand serves an additional factor to it. Besides, Female foeticide is in practice despite legislative prohibition by the Pre-Conception and Pre-Natal Diagnostic Act 1994.

**Literacy Status of Females:** Accordingly per the 2011 census, the literacy rate at all India levels is 72.98% and the literacy rate for females and males is 64.63% and 80.9% respectively. In 2011 among the States/UTs, the male and female literacy was highest in Kerala (male 96.1% female 92.1%) and lowest in Bihar male 71.2% and female 51.5%. Speaking of Jammu and Kashmir, the literacy rate in 2001 was (43.0 among females and 66.6 in males). Then in 2011, it reached 56.4 in females and 76.8 in males.

**Health and Sanitation** – Rural slums specifically are deprived of proper health care and sanitation. Deaths take place owing to what are considered trivial diseases. Due to the lack of toilets around 600 million are forced to defecate in open places causing diseases like cholera most significantly it exposes women to rape and harassment incidents in the 2014 Bidoun Gang rape case, and the murder of two girls reported in the Katra village of Uttar Pradesh. The two girls at evening had gone for open defecation and did not return<sup>13</sup>.

Another significant issue is the lack of menstrual hygiene in adolescent girls which makes them susceptible to reproductive tract infection and diseases like cervical cancer, infertility and ectopic pregnancy. It is estimated that merely 12% of women in India use sanitary pads. A story published in **the Times of India** disclosed that 40% of rural girls in Bihar still use cloth during menstruation. These are all serious issues which are yet a challenge to the government.

## 2. CONCLUSION

Indeed, the judiciary is playing a pivotal role in removing the age-old disparities associated with women through its judicial decisions. Without exaggeration, it can be said that the position of women in India has radically changed since independence. The drafters of the Indian constitution were well aware of the atrocities women in India had to face and thereby made protective provisions like Article 15 (3) to guard their person, dignity and status. The constitution also imposes a duty upon its citizens to renounce the practice derogatory to the dignity of women. Under the criminal law, stringent provisions have been made for offences like rape, sexual harassment and other offences against women. With the rise of acid cases, the Criminal Law Amendment Act, of 2013 inserted Section 326(A)(B) to enhance the punishment for acid attacks. The government is taking huge initiatives to bring change and to improve the social, political and economic conditions of women. But there is still a long way to go. The judiciary has played a key role and acted as a guarantor and protector of the fundamental rights of women.

Prospects for women's emancipation require a continued commitment to legal reforms and strategies addressing these challenges. As society evolves, so must the law. Ongoing research and advocacy are essential to strengthen the legal foundations of gender equality. By acknowledging the achievements and confronting the challenges, we can work towards a future where women enjoy full and equal rights in all aspects of life.

## CONFLICT OF INTERESTS

None.

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None.

<sup>13</sup>Kuldeep Kishore Sharma vs. State of U P and others

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