



Women empowerment Sub theme: Judicial Activism in Women related problems in India

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Abstract

Indian Societies, except some parts of Kerala as well as some of the tribal society, are Patriarchal Society. Therefore it is obvious that everything is seen mainly through the perspective of men and thus it is not seldom but almost always that women have been aggrieved sections of the society with almost all the policies which were male centric and considered as weaker sections of the Society. The need of women empowerment lies due to the structure of Indian society which is patriarchal.

Though the same has never been a true state of affair, and is also apparent from perusal of present anatomy of society where in every field Women are not only equally participating with that of men but are ahead and leading from front and setting examples which even men would love to follow. Therefore if anyone is thinking otherwise then it can be said about him/her is that he/she is living in oblivious world and thus required to be come out in real world.

Keywords: tribal, patriarchal, women empowerment

Introduction

From ancient to modern period, women's condition, socially, politically and economically, has not remained same and it kept changing with times. In ancient India when India only was probably having direct democracy, in the two main forum i.e. SABHA and SAMITI, women were having equal status with men; in early Vedic period they were very educated and there are references of women astute such as Maitrayi, Apapla, Gargi etc. in our ancient texts. There were no Parda pratha in the Ancient India and women were participating in these forums with equal right. It is beyond doubt that if the thing would have not changed thereupon; there would not be any need for discussion on women empowerment at all.

The situation of women gradually deteriorated in last phase of ancient period and worsened in Medieval India, particularly with the start of Sultanate Period, which started since 1206. The condition of women was remained worst in Mogul Period as well, where all the decision making powers were vested with men. All kinds of discriminatory practices started in this era such as child marriage, devadashi pratha, nagar vadhu system, sati pratha etc. Women's socio-political rights were curtailed and they were made fully dependent upon the male members of family. Their right to education, right to work and right to decide for themselves were taken away.

In British Rule, the situation of women was no good, however, due to emergence of modern/western educated humanist like Raja Ram Mohan Roy, Harvilas Sharda and other enlightened like Ram Krishna Paramhans, Swami Vivekanand, Iswar Chand Vidyasagar, Vinoba Bhave etc. the questions over liberty and equality of women were being raised. Due to which the practice of Sati and Child marriage were abolished in British Rule and Provision after Bengal Sati Regulation, 1829^[1] practice of Sati was banned throughout India in 1861 while Child Marriage Restraint Act, 1929 (Popularly known

as Sharda Act)^[2], was enacted by legislative assembly.

Judicial Activism: Women Empowerment

Though there are different rather contrary views of Judicial Activism in relation to the issue of women empowerment, some are of the opinion that Judiciary should not be involve in judicial activism and should only restrict itself to the interpretation of law enacted by the Legislature, however, the other are of the opinion it is the fundamental duty of the Judiciary to adjudge actively in the social problem being one of the pillar of the Democracy and its role should not be restricted to interpretation of laws enacted by Legislature.

1. Indian Freedom Struggle by Vipin Chandra
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While the debate has been going on for long, the Judiciary of India has been dealing in several issues and passed landmark judgments which have proven to milestone and key factor of changing the perspective of society. However, sometime it had attracted criticism and some time legislature by enacting laws overruled some of the judgments, one such being Mohd Ahmed Khan Vs. Shah Bano Beghum popularly known as Shah Bano Case^[3].

In 1932, Shah Bano, a Muslim woman, was married to Mohammed Ahmad Khan, an affluent and well-known advocate in Indore, Madhya Pradesh, and had five children from the marriage. After 14 years, Khan took a younger woman as second wife and after years of living with both wives, he threw Shah Bano, who was then aged 62 years, and her five children out. In April 1978, when Khan stopped giving her the ₹200 per month he had apparently promised, claiming that she had no means to support herself and her children, she filed a petition at a local court in Indore, against her husband under section 125 of the Code of Criminal Procedure, asking him for a maintenance amount of ₹500 for

herself and her children. On November 1978 her husband gave an irrevocable talaq (divorce) to her which was his prerogative under Islamic law and took up the defense that hence Shah Bano had ceased to be his wife and therefore he was under no obligation to provide maintenance for her as except prescribed under the Islamic law which was in total ₹5,400. Matter went upto Apex Court and Mohd. Ahmed Khan filed a petition to appeal before the Supreme Court claiming that Shah Bano is not his responsibility anymore because Mr. Khan had a second marriage which is also permitted under Islamic Law. This was a landmark judgment in securing the rights of Muslim women on the maintenance field where it was held that Section 125 of the code is truly secular in character. It was enacted to provide quick and summary remedy to the class of persons who are unable to maintain themselves. The rights conferred by Section 125 can be exercised irrespective of Personal Law of the Parties. In this case Husband Liabilities to provide maintenance doesn't get limited into the foundation of time period of Iddat but as long as the wife is unable to maintain herself or remarried even though Iddat period is over.

The then Congress government, panicky in an election year, gave into the pressure of Muslim orthodoxy and enacted a law "*The Muslim Women (Protection of Rights on Divorce) Act 1986*" with its most controversial aspect being the right to maintenance for the period of Iddat after the divorce, and shifting the onus of maintaining her to her relatives or the Wakf Board. It was seen as discriminatory as it denied right to basic maintenance available to non-Muslim women under secular law.

Danial Latifi & Anr v. Union of India ^[4]: In this case the constitutional validity of *The Muslim Women (Protection of Rights on Divorce) Act 1986* was challenged before the Apex Court. The Supreme Court tried to maintain a balancing act, attempting to uphold Muslim women's rights without addressing the constitutionality of gender and religious discrimination in personal law. Court reiterated the validity of the Shah Bano judgment. The Muslim Personal Law Board, an intervenor, questioned the authority of the court to interpret religious texts.

The Court concluded that the Act does not, in fact, preclude maintenance for divorced Muslim women, and that Muslim men must pay spousal support until such time as the divorced wife remarries. However the Court held that if the Act accorded Muslim divorcees unequal rights to spousal support compared with the provisions of the secular law under section 125 of the Criminal Procedure Code, then the law would in fact, be unconstitutional. Further the Supreme Court construed the statutory provision in such a manner that it does not fall foul of articles 14 and 15 of the Constitution of India. The provision in question is Section 3(1) (a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986 which states that "a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband". The Court held this provision means that reasonable and fair provision and maintenance is not limited for the iddat period (as evidenced by the use of word "within" and not "for"). It extends for the entire life of the divorced wife until she remarries.

Vaddeboyina Tulsamma Vs. Vaddeboyina Shesha Reddy ^[5]:

The Apex Court in this case highlighted the Hindu Women's Right to maintenance as a tangible right against property which flows from spiritual relationship between the husband and wife. It was held that Section 14 (1) of Hindu Succession Act, 1956 must be liberally construed in favour of the women so as to advance the object of the Act. This section makes Hindu women a full owner of a property instead of limited ownership.

Mrs. Mary Roy etc. Vs. State of Kerala ^[6]: The Apex Court in this case held that Christian Women are entitled to have an equal share in their father's property. Till then Christian Women in Kerala were governed by the provisions under the Travancore-Kochi Christian Succession Act, 1916, under which a Christian daughter can inherit only one fourth of the share of the sons in her father's property. Thus Christian women were brought into the ambit of Indian Succession Act, 1921 by this judgment.

Dr. Upendra Baxi & Ors. Vs. State of U. P. ^[7]: The Apex Court directed to improve the condition of the Government protective Homes for girls and instructed better administration of protective homes such as proper ventilation, mosquito nets and cooking gass provisions and further directed that no woman or girl is detained in the protective Home without due authority and process of law.

Delhi Domestic Working Women's Forum Vs. Union of India ^[8]: The Supreme Court in the case of Sexual Assault, pointed out the defects of the existing system while dealing with rape victims, issued 8 broad parameter while assisting victims of rape. Which include that the Police should be under a duty to inform the victim of her right to representation before any questions were asked of her and that the police report should state that the victim was so informed. The advocate should be appointed by the court upon the application by the police. In order to ensure efficiency, advocates would be authorized to act at the police station before leave of the court was sought or obtained. The Apex court also mandated anonymity of the victim along with formation of a Criminal Injuries Compensation Board.

Vishakha & Ors. Vs. State of Rajasthan ^[9]: The Hon'ble Supreme Court issued Guidelines to prevent sexual harassment against women in work places and mandated that a Committee in this concerned in all organizations whether private of Government. All complaint of sexual harassment by any women employee would be directed to this committee.

Centre for enquiry into Health and Allied Themes (CEHAT) Vs. Union of India ^[10]: The Hon'ble Supreme Court in this case issued Guidelines to prevent female feticide.

Sakshi Vs. Union of India ^[11]: Hon'ble Supreme Court in this case passed directions which must be adhered to while conducting trial of child sexual abuse or rape.

Seema Vs. Ashwani Kumar ^[12]: The Supreme Court in this case directed the state and central government that marriage of all persons who are citizens of India belonging to various religious denominations should be made compulsorily registrable in their respective states where such marriage has been solemnized. The Central Government complying with the judgment amended the Registration of Births and Deaths Act, 1969 to provide for the regulation of registration of births and deaths and for the matters connected therewith.

Lata Singh Vs. State of U. P. ^[13]: Dealing with the matter of

inter caste marriage, the Apex court held that subject to the age bar any woman or man is free to marry anyone she/he likes or live with anyone she/he likes. It has directed the administration and police authorities throughout the country to ensure that if any boy or girl who is major enters into an inter caste or interreligious marriage with a woman or man who is major, the couple are not to be harassed or subjected to threats and violence.

D. Velusamy Vs. D. Patchaiammal ^[14]: The Apex Court in this case held that Live-in relationships will also come under Domestic Violence Act, 2005.

ABC Vs. The State (NCT Delhi) ^[15] The Supreme Court ruled that an unwed mother in India can become the sole legal guardian of a child without the consent of the father, and she is no longer required to disclose the father's name.

Krishna Bhattacharjee vs. Sarathi Choudhury and Anr ^[16] The Supreme Court ruled that a woman can claim her stridhan back from her husband and his family members even if they are not divorced. In other words, a woman can claim her stridhan even after separation from her husband.

Sujata Sharma v. Manu Gupta ^[17]: The Delhi High Court has ruled the eldest female member of a family can be its Karta, a position which was only reserved for the eldest male. In other words, women can now be the legal head of their households. The Hon'ble High court held that "If a male member of a Hindu Undivided Family, by virtue of his being the first born eldest, can be a Karta, so can a female member,".

Indian Hotel & Restaurant Association & Anr. Vs. State of Maharashtra & Anr. ^[18]: The Supreme Court ruled that dance bars in Maharashtra would remain open, and stayed the law which banned dance performances in bars, hotels and restaurants in Maharashtra, rendering thousands of women unemployed.

Union of India & Ors. Vs. Lt. Cdr. Annie Nagraja & Ors. ^[19]: Hearing appeal arising out of the Delhi High Court ruling for women to be granted permanent commission in the Navy, ensuring that women naval officers enjoyed rights similar to their counterparts in the Army and the Air Force.

State of M. P. Vs. Madanlal ^[20]: The Supreme Court has ruled that there can be no mediation and no compromise can be reached with the culprit in cases of rape or attempt to rape.

Conclusion

Judicial Activism have been criticized by renowned people in India right from the judgment passed by Hon'ble Mr. Justice P. N. Bhagwati who has been bestowed with the title of founder of Judicial Activism. Perusal of orders as well as Judgment it sometime appears to be true also. But we should not be oblivious that if legislature and/or Executive does not perform upto their expectation, then it is Judiciary who has to act even if it is labeled as Judicial Activism, it is the case in Women Empowerment where the Government had been only acting upon a judgment passed by Court. Be that as it may, Judicial Activism had played a pivotal role in the path of women empowerment in India.

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