



St. Joseph's Journal of Humanities and Science

ISSN: 2347 - 5331

<http://sjctnc.edu.in/6107-2/>



Working Women in India - A Feminist Legal Perception

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ABSTRACT

In today's world, women occupies a concomitant place with men in all walks of life be it in political, economic, social, cultural etc. She has been emancipated from the role of a mere traditional house wife to the position of contemporary modern women performing multiple functions. But notwithstanding these meritorious factors, women in Indian society are still considered vulnerable and are subjected to innumerable injustices and violence's in family, profession and in society. This discrimination and subjugation has greatly been faced by the working class women. The rights of these working women have been well recognised and protected through various provisions of the Constitution of India and through certain legislative enactments and landmark judicial decisions. For this reason, this study analyses the position of the working women in Indian society with a legal perception.

Keywords: Women, Constitution, Judiciary, Rights, Dignity.

INTRODUCTION

Recently, a controversy triggered and became viral in media and across the country, when Divya.S.Iyer, a Collector from Pattanamthitta District in Kerala brought her son on an unofficial event and delivered speech keeping the child in her

arms. Comments and debates came in criticising and supporting the IAS Officer. But the core factor that came for discussion was the plight and status of working women juggled between the multiple roles of a partner, caring mother and responsible official. It gave the realisation that those times of women being reduced to four walls of a family

has gone and now it's a time where women are empowered and share an equal position with that of men both at family and at work place. But still eyebrows are being raised or rather questions unanswered on the real status of women especially with regard to status of the working women in India.

POSITION OF WOMEN IN INDIA

In India, women status has varied through different ages – from ancient times to medieval to the present era. Undergoing an evaluation through these periods, gives a better understanding of the status which Indian women faced, experienced or rather secured during these times.

In Ancient India, the patriarchal cultural society dominating the social, economic and political social order of the country considered women subordinate and unequal to men. But the Vedic periods showed a much better position of women. During this time, women's education was regarded as an important qualification for marriage and they were given the rights to marry of their own choice. Moreover, women were given the right to remarry, rights of inheritance of property etc.

After the Vedic period and coming to the medieval period, the position of women was drastically lowered both in personal and public life. They were denied education, lower marriage age were encouraged so that the chances of higher education was denied. But with the advent of the Mughals the status of women was little more raised. They took active participation in State affairs and were endowed with scholarly aptitudes and esthetical tastes.¹ But on the other side, results also shows that this period witnessed the prohibition of social movements for women, evils like child marriages, female infanticide, sati, polygamy etc. was much encouraged.

1 Examples in this respect are Nur Jahan, Chand Bibi, Ahalya Bai Holkar, Jija Bai etc.

Later during the British period, the injustices and evil practised against the women was restricted to an extent with the abolition of Sati paving the way for recognition of widow remarriage, women's education and employment. After independence, with the adoption of the Constitution of India, women were given an equal position as that of men with protective rights under Articles 14,² 15,³ 16⁴ of Fundamental Rights and Articles 39(a), (d), (e)⁵ 42,⁶ 43,⁷ 45⁸ of Directive Principles of State Policy and with the Fundamental Duties under Article 51-A(e).⁹ Apart from the Constitution, various legislations in India has been enacted specifically for ensuring equal rights and protection of women in India which includes the Maternity Benefit Act, 1961, The Dowry Prohibition Act, 1961, The Equal Remuneration Act, 1976, The Indecent Representation of Women (Prohibition) Act, 1986, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 etc.

Summarising the position of women from ancient to current times, it is understood that there were up's and down's in the women's position or status. Sometimes she was recognised

2 Article 14 of the Constitution of India provided for "Equality before law and Equal protection of laws" for all the citizens of India.

3 Article 15 of the Constitution of India states that "the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

4 Article 16 of the Constitution of India states that "there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State".

5 Article 39 of the Constitution of India directed the State to provide adequate means of livelihood, equal pay for equal work and to protect the health and strength of workers applicable to both men and women equally.

6 Article 42 of the Constitution of India directed the State to make provision for securing just and humane conditions of work and maternity relief.

7 Article 43 of the Constitution of India directed the State to secure by suitable legislation a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities for all.

8 Article 45 of the Constitution of India directed the State to provide free and compulsory education for all children until they complete the age of fourteen years.

9 Article 51-A (e) of the Fundamental Duties provides for renouncing practices derogatory to the dignity of women.

and respected well and in some period her rights were absolutely denied. In the present scenario, women play the role of both as a home maker and bread winner of her family. Here a viable question arises, whether exercising both these roles raised the status of women from vulnerable to dignified?

POSITION OF WORKING WOMEN IN INDIA

Even though women employment is considered as an essential way of women empowerment, in Indian society in majority of cases women are permitted to work due to family circumstances. It is not out of their own wishes or choices. Studies shows that compared to non-working women, working women struggles and faces much challenges and violence's. The National Family Health Survey II, 1998 shows that 'working women in urban areas face more violence as compared to the rural counterparts, which may be because of their being economically active and relatively better informed about their rights which on one hand, threatened by male dominance and on the other, may result in better reporting of incidences of domestic violence although it is extremely difficult to sift the independent contribution of these outcome.¹⁰ Also the International Clinical Epidemiologists Network 2000 observed that more educated and better employed women faces more violence'.¹¹

It is found out that in a patriarchal sworn Indian society, though women are independent financially, they are not given right over their incomes. Before marriage, their financial matters are handled by their father and after marriage by their husband, even though they are well educated to take their monetary decisions. Due

to children's responsibility, fear of torture, fear of stigmatisation from family and society if opting for divorce, women suffers and stamps to be vulnerable.

In the professional field also, women are facing challenges and many hardships. Statistics shows that in India only 18.6% of working- age participate in the labour force, three times lower than men according to the Periodic Labour survey (PLFS) 2020.¹² According to World Bank, Indian Women's participation in the formal economy is amongst the lowest in the world.¹³ This shows that even though awareness and recognition of women's education is enhanced, women participation in the proper economy is turning down. The Economic Survey 2018, shows that Indian women typically earn low wages working in highly insecure jobs and India has the largest gender-gap in median earnings of full-time employees in 2015. About 88% of women working in industries and 71% in services are informal.¹⁴

Reports also show that there has been a rise in the number of cases of sexual harassment at work places. According to a data analysis given by Anti- Sexual Harassment Advisory Comply.com based company annual reports, the total number of sexual harassment complaints at workplaces has been increased by 27% in 2022 compared to 2021.¹⁵ In a report given by the National Crime Records Bureau (NCRB) under Section 509 of the IPC,¹⁶ it was stated that the total number of cases registered under this category during 2014, 2015 and 2016 were 57,119 and 142 respectively.¹⁷ In a survey conducted by Indian Bar Association in

¹² <https://www.livemint.com> – "The Curious Case of Indian Working Women"

¹³ Ibid

¹⁴ Ibid

¹⁵ Referred in <https://www.forbesindia.com> – "Rise in Sexual Harassment Cases in India's Top Companies shows dichotomy

¹⁶ Section 509 of the IPC deals with 'insult to the modesty of women at office premises'.

¹⁷ Referred in <https://www.thestatesman.com> – "Sexual harassment at workplace: NCW data shows upward trend".

¹⁰ Ankita Bhadury, Prof. Ashim Kumar Mukherjee, The Status of Indian Working Women in Present Era", International Journal of Science, Technology & Management, Volume No 04, Special Issue No. 01, March 2015, at p.1614. Available at www.ijstm.com

¹¹ Ibid

2017 among 6047 respondents that 70% women did not reported of their sexual harassment by superiors because they feared the repercussions.¹⁸ Hence all these above discussed situations, hardships and challenges affirmed by reports and surveys establishes the fact that though women has been uplifted from being a mere home maker to working women ensuring financial stability her position domestically as well as officially is still subjected to vulnerability, threats and challenges.

JUDICIAL INTERCESSIONS

Interpreting constitutional provisions and various legislations relating to women, the Indian Judiciary has played a pivotal role in enhancing and protecting the dignity and rights of women generally and working women specifically. Through many landmark decisions the Apex Court has recognised and protected the rights of working women. The first among them is the case of *C.B.Muthamma v. Union of India*,¹⁹ in which the Supreme Court held that the service conditions in foreign services requiring female employees to obtain Government permission before marriage and denying married women a right to be employed were struck down as discriminatory.²⁰ In another case of *Radha Charan v. State*,²¹ a rule of Orissa State Judicial Service Rules, 1963 disqualifying women from being appointed As District Judges, In yet another much discussed case of *Air India v. Nargesh Mirza*,²² the Apex Court while observing the service conditions of Air Hostess held that depriving the Air Hostess from service due to pregnancy are discriminatory

under Articles 14,15 and 16 of the Constitution.²³

Thereafter, in 1997, in the milestone case of *Visakha v. State of Rajasthan*,²⁴ while specifying the guidelines relating to the prevention of sexual harassment against women at work places, the Court ensuring gender equality necessitated the prevention of sexual harassment of working women in all work places through judicial process, to fill the vacuum in existing legislation.²⁵ Subsequently, in *Mackinnon Mackenzie v. Andrey D'Costa*,²⁶ with respect to the similar nature of work done by both men and women, the Court stated that "in deciding whether the work is the same or broadly similar and whether any differences are of practical importance, the Authority should take an equally broad approach"²⁷, interpreting Equal Remuneration Act, 1976. The last not the least, recently the Honourable Supreme Court in *The Secretary, Ministry of Defence v. Babita Puniya And Others*,²⁸ a much applauded judgement held that women are eligible for permanent commission in commanding roles of the defence forces. This made them equal to their male colleagues in terms of promotion, pensions, and more.²⁹

Hence, through all the above said land mark decisions, the Court has indisputably recognised and protected the dignity and equal rights of women along with men which has been denied throughout centuries.

CONCLUSION

Summarising the study, it is hereby submitted that though women has equal human rights with men has been subjected to negligence and

18 Referred in www.business-standard.com – "70% working women do not report workplace sexual harassment in India"

19 AIR 1979 SCC 1868

20 Refer, Dr.N.K. Chakrabarti & Dr. Shachi Chakrabarty, "Gender Justice", Calcutta University LL.B Honours Curriculum Development Programme, Vol.II, Published by R.CambraY&Co. Private Ltd, 2006, at p.202.

21 AIR 1969 Ori 273

22 (1981) SCC 335

23 Ibid at p.18. Available at <https://main.sci.gov.in>

24 (1997) 6 SCC 241

25 Ibid at p.1. Available at <https://main.sci.gov.in>. Similar view was taken by the Court in Apparel Exports Promotion Council v. A.K.Chopra,(1999)1 SCC759.

26 (1987)2SCC 469

27 Ibid at p.10. Available at <https://main.sci.gov.in>

28 Civil Appeal No.1210 of 2020

29 <https://www.hindustantimes.com> – 'Upholding women's rights: When the Supreme Court got it right'.

subordination from primordial to present times. Despite the fact that women have been empowered in certain respects, their status in society remains the same as dependant and vulnerable or rather made dependant and vulnerable by the customary male dominated patriarchal society. Even though the women oriented legislative enactments and judicial decisions has well acknowledged the rights of women, the question still remains as to the applicability and effectiveness of these legislations and decisions in the wake of increasing crimes against women especially working women domestically and at work places. Hence, it is humbly suggested that there is still necessity to transform these rights into effective action by making it available to women especially working women all support from family, institution and society undeniably. Otherwise, the mereaccessibility of these rights ensured through legislations and judicial decisions will be like eyes without sight.

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