



Changing dimensions of status of women in light of judicial pronouncements

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Abstract

Women play a key role in strengthening the dynamism of human civilization. If we see the history then we can see that women were dignified with a respectable status in early Vedic civilization. But during the Muslim period of history women were deprived of their rights of equality with men. Afterwards it was only due to efforts of Vivekanand and under the enlightened leadership of Mahatma Gandhi that women re-asserted their equality with men. Further, after independence, Indian government passed several general as well as special laws especially constitutional provisions for protection of women to safeguard and to empower women in India and their position has been further strengthened by Indian judiciary with their landmark decisions. By this article an attempt has been made to throw light on changed position of women with judicial pronouncement.

Keywords: women, supreme court, sexual freedom

Introduction

“Women should be uplifted for the upliftment of the nation, for if a woman is uplifted, society and nation is uplifted”-Nehru

“There is no chance for the welfare of the world unless the condition of the women is improved. It is not possible for a bird to fly on one wing”- Swami Vivekananda

Women play a key role in strengthening the dynamism of human civilization. One of the best ways to understand the spirit of a civilization and to appreciate its excellences and realise its limitations is to study the history of the position and status of women in it.”^[1] Mahatma Gandhi wrote in ‘Young India’ in 1918 that “woman is the companion of man gifted with equal mental capacities. She has the right to participate in the minute details of the activities of man and she has the same right of freedom and the liberty as he.”^[2] Jawaharlal Nehru also aptly commended “In order to awaken the people, it is the women who has to be awakened first. Once she is on the move, the household moves, the village moves, the country moves and thus we build the India tomorrow”^[3].

Historical background:

Women were dignified with a respectable status in early Vedic civilization. Women’s freedom to participate in war, gymnastics, archery, horse riding, public activities, education, decision making, and in the selection of male partners has portrayed the nature of women’s status in the social canvas of the Rig Vedic period. The Rig-Vedā-Samhitā text revealed that the “goddess Durgā”; “Aditi, the goddess of freedom; and Sārasvatī the “best mother, best of rivers, best of goddesses”, Hymn XLI were worshipped with complete dedication. Sculptures representing early Vedic society have also shown that women were placed in a higher status in this society^[4].

But in the later period the position of women went on deteriorating due to Muslim influence. During the Muslim period of history they were deprived of their rights of equality with men. They were compelled to keep themselves within the four walls of

their houses with a long veil on their faces. This was definitely due to Islamic influence. In the wake of Raja Ram Mohan Roy's movement against women's subjugation to men and British influence on Indian culture and civilization the position of women had once again undergone a change. However, it was only under the enlightened leadership of Mahatma Gandhi that they re-asserted their equality with men. In response to the call of Gandhi they discarded their veil and came out of the four walls of their houses to fight the battle of freedom shoulder to shoulder with their brothers. The result is that the Indian Constitution today has given to women the equal status with men^[5].

Changes in the position of women in light of judicial pronouncements

After independence, Indian government passed several general as well as special laws especially constitutional provisions for protection of women to safeguard and to empower women in India. The rights available to woman in India can be classified into two categories, namely as constitutional rights and legal rights. The Constitution of India pledges equality of status and opportunity to men and women^[6]. Being a custodian of constitution apex court has been trying to fulfill constitutional objectives by numerous pronouncements in several cases. The Indian judiciary comprising the High Courts of the states and the Apex Court i.e. the Supreme Court have, time and again, delivered judgments and orders that uphold the rights and dignity of women in the country. The progressive judgments delivered by these courts, since Independence, have helped and, sometimes, persuaded the Indian executive and the legislature to frame laws to uphold women’s rights.

In *Miss C.B. Muthamma, I.F.S v. Union of India*,^[7]; in *Air India v. Nergesh Meerza and other*,^[8]; in *A.N. Rajamma v. State of Kerala*,^[9] the Court upholding the principle of equality of status put the female employees at par with male employees and struck down the various rules as unconstitutional. One of the most

important cases that provided for safety of women from sexual harassment at workplace was the Vishakha and others v. State of Rajasthan case.^[10] The judgment laid down that it is the duty of the employer or other responsible persons in workplaces or other institutions to prevent sexual harassment and furnish employees with mechanisms for effective resolution of such incidents. The Supreme Court also defined 'Sexual Harassment' for this purpose. Another landmark case, Laxmi v. Union of India^[11] and in 2013, the Supreme Court taking cognisance of the rise in cases of acid attacks on women, imposed strict regulations on the sale of acid as well. Mary Roy v. State of Kerala^[12]. In 1986, the Supreme Court delivered a landmark judgment that granted Syrian Christian women the right to seek an equal share in their father's property.

In Lillu v. State of Haryana^[13], for the first time the agony and trauma of a rape victim was realised who had to go through the two-finger test to give her character certification. On the basis of various precedents, the court held that the test is a violation of the victim's right to privacy and dignity. In ABC v. The State (NCT of Delhi)^[14] the Supreme Court in a landmark judgment held that an unwed mother belonging to the Christian faith is not bound to disclose the name of the child's father. The unwed mother would have all the rights as a guardian to the child and need not take the father's consent for guardianship rights. In Shayara Bano v. Union of India^[15], the Supreme Court declared the practice of Instant Triple Talaq (talak-e-biddat) un-Islamic and against the basic tenets of Quran. The court also directed the government to bring a legislation to this effect within six months. The government introduced the Muslim Women (Protection of Rights on Marriage) Act 2019.

Now any pronouncement of talaq by a Muslim husband upon his wife, by words, either spoken or written or in electronic form or in any other manner whatsoever, shall be void and illegal. The Sabarimala Temple case^[16] is one of the most important cases that initiated the debate between Right to Equality and Right to Freedom of Religion. In Vineeta Sharma v. Rakesh Sharma^[17] (2020) where the court held that daughters would have equal coparcenary rights in Hindu Undivided Family property (HUF) by virtue of their birth and could not be excluded from inheritance, irrespective of whether they were born before the 2005 amendment to the Hindu Succession Act, 1956. The Supreme Court also held in The Secretary, Ministry of Defence v Babita Puniya and Others (2020) case^[18] that all women army officers are eligible for permanent commissions, allowing them to be in commanding roles. Women officers are now on par with their male counterparts when it comes to promotions, rank, benefits and pensions, thereby fortifying their position in the defence sector, an institution with rigid gender norms. The court also affirmed the right of a woman in exercising her sexual freedom in personal sphere with the Joseph Shine v Union of India^[19] judgement wherein the court placed its reliance on the right to privacy flowing from Article 21 and, declared Section 497 of the Indian Penal Code as unconstitutional, which gives a husband the exclusive right to prosecute his wife's lover even as similar rights were not conferred on a wife to prosecute the woman with whom her husband has committed adultery. The then Chief Justice Deepak Mishra rightly observed that Section 497 treated a married woman as nothing more than her husband's property as adultery is only an offense when it happened without the consent of the married man and the woman has no say in the

matter. Recently, on 9th February, 2021 humble Mr. Justice Vivek Thakur in Sanjeev Kumar v. State of Himachal Pradesh and others^[20] also laid down that girl or woman is not a cattle or non-living thing but a living independent soul having rights, like others, and, on attaining the age of discretion, to exercise her discretion according to her wishes. Unlike ancient western thought, wherein a female was supposed to be created by God from rib of a man for enjoyment of man, in India, a female was always considered not only equal but on higher pedestal than male since Vedic Era, except for evils of Medieval Period, which are necessarily to be eradicated in present era.

Thus, we can conclude that Indian judiciary has made several efforts to strengthen the position of women in Indian society and the judgments which have been mentioned above have paved a way to safeguard the rights of women. But the surging cases of violence against women and their continuing diminution in various areas shows that there is still dissonance between the framing of laws and their implementation on the ground. Thus, need of the hour is that women should have to come forward themselves and have to raise their voice against every atrocity happening against them. They have to break their silence and Indian legal system has also to fill the gap between policy and practice as despite existing legislation to protect women and girls, the enforcement of these laws and conviction of alleged perpetrators is weak. The gaps in these processes are widened by systemic bureaucracy and corruption. Thus, today a more concerted plan and effort is needed to fulfil this gap and ensure that all women of each area/ religion /caste and race enjoy the same access to education, employment, healthcare and decision-making processes. Last but not least the hardest challenge we have to overcome is to change the attitudes of society. Indeed, it is tough but not impossible.

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