

ROLE OF NHRC AND JUDICIARY FOR THE PROTECTION OF HUMAN RIGHTS OF WOMEN

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India has an elaborate system of constitutional provisions and legislative safeguards to protect the rights of women. Despite the existence of constitution remedies and legislative measures , violence against women , in various forms , such as murder , torture , molestation, dowry demands , dowry death , sexual harassment , rape , sale , buying, trafficking, kidnapping and abduction of women has been consistently rising throughout the country. In such atrocious circumstances, testing and acknowledgeable existence, a dignified survival and versatile development of women in India the ratified governmental organization such as the national human right Commission (NHRC) has an active role to play. The NHRC has been performing its mandatory obligations to mitigate violence against women quite reasonably but a critical analysis of its functioning Prove the NHRC processing a variety of limitations, shortcomings and even in efficiencies, which hinder its task to alleviate violence against women. The NHRC is sturdily required to be equipped with more and actual power, required staff, and an enthusiastic approach by the government as well as the NHRC officials to minimize violence against women in India.

Violence against women

The women of all regions, age group and social standing are equally prone to one or the other form of violence against them. As a result, even being equal to men in physical capacity, mental efficiency and specialized virtues, the women as a whole remain underdeveloped due to the ever-present threat of violence against them. Violence against women ultimately impoverishes women, their families, communities and eventually the Nation's.

Meaning and definition of violence against women

Violence against women includes physical sexual, psychological, and economical abuse. It is often known as 'gender based' violence also because it evolves in part from women subordinate status in society. The

term violence against women refers to many types of harmful behavior directed at women and girls because of their sex. It is one of the most pervasive forms of Human Rights violation, denying women the equality, security, dignity, self worth, and their right to enjoy fundamental freedoms. However there is no universally accepted definition of violence against women. Some Human Rights activists prefer a broad-based definition that includes structural violence such as poverty, and unequal access to health and education. Other have argued for a more Limited definition in order not to lose or distract the actual descriptive influence of the term full stop in any case, the need to develop a specific operational definition has been realized so that Research and monitoring regarding violence against women can become more specific and have greater cross-cultural applicability.

Nature of violence against women

Violence against women is different from interpersonal violence in general. The nature, features causes and patterns of violence against men generally differ from those against women. Contrary to violence against women, the men are more likely to be victimized by a stranger for casual acquaintance. Women are more likely than man to be victimized by a family member or intimate partner. The major cause of violence against women is their subordinate gender. The Other fact is that women are often emotionally involved with, socially attached through, and financially dependent upon those males who abuse them. The roots of violence against women live in historical unequal power relations between men and women and pervasive discrimination against women in both the public and private spheres. Patriarchal disparities of power, discriminatory cultural norms and economic inequalities in society are responsible for denial of women's human rights and perpetuate violence. Violence against women is one of the key means through which male control over women's agency and sexuality in is maintained. The violence is both of a physical and psychological nature and cut through all cultures and societies. It is committed within the family setting (battering, sexual abuse of female children related violence, marital rape, female genital circumcision, and other traditional practices that have proven to be harmful to women; non- spousal violence, and violence accompanies various forms of female exploitation) ; in communities (sexual abuse, harassment, and intimidation in the workplace and educational institutional, trafficking in women and forced prostitution) as well as in society at large, in cases when the perpetrators are members of state Institutions, or because these institutions are unable to protect women, as may be the case during retention and custody and in armed conflicts. Whilst traditional forms of gender based violence centered on religion and customary laws that dominate in developing countries, in developed

countries domestic violence with women partners as perpetrators is the most frequent type of violent behavior. Police Stop all the all women are potential victims, certain groups are more exposed ethnic minority groups, female refuses and internally displaced women, migrant women, women living in rural and remote communities, destitute women, female children and elderly woman and last but not least women and girls in situations of armed conflicts.

Constitutional and legal provisions to prevent violence against women

There are several provisions in the Indian law to prevent and prohibit violence against women. Various new legislations have been brought and amendments have been made in existing laws with a view to handle the violence effectively. **ROLE OF NATIONAL HUMAN RIGHTS COMMISSION IN PROTECTING WOMEN**

NHRC was constituted under the Protection of Human Rights Act 1993. It had started its functioning in 1993. Since then, it has been continuously vigorous and vigilant to adjudicate within its limits, all complaints of Human Rights abuses throughout India. It has been acknowledged as a trustworthy institution among the victims of Human Rights violation. Besides other victims of Human Rights violations, it has gained Reliance among the women who become victims of violence against them¹. The NHRC has been formally obligated and dutiful to promote and protect human rights of all Indians including imparting discriminate relief and justice to the women throughout India who complain the commission about violence against them. The statistical data presented in its annual reports reveals that hundreds of reports regarding violence against women have been received and registered by the NHRC every year.

Case studies of the NHRC

Examining and analyzing the protective role of the NHRC case through study method is significant and suitable to be exactly acquainted with the method and approach, the NHRC receives, examines, investigates and eventually settles the cases regarding violence against women. Some illustrative cases are studied underneath from the aforesaid viewpoints².

¹ <https://nhrc.nic.in/press-release/nhrccs-national-conference-human-rights-women>

² <https://nhrc.nic.in/press-release/important-cases-6>

The protection of human rights and recommend measures for their effective implementation to study treaties and other international instruments on human rights of women and make recommendations for their effective implementation undertake and promote research in the field of human rights.

All human rights are women's rights. The United Nations organizations International Covenant on civil and political rights, International Covenant on social, economic and cultural rights, Universal Declaration of Human Rights 1948, UN Convention on complete Elimination of all forms of discrimination against women (CEDAW), enshrined in Indian Constitution from Article 14 to 32 and Directive Principles of State Policy from article 36 to 51 describes the human rights of women there are several legislative provisions and social security laws are also provides provision for protection of human rights of women the National Human Rights Commission constituted under the protection of human rights act 1993 and national Commission for Women are actively working for protecting the women's rights. The guidelines of Supreme Court of India in Vishaka case has to be followed for preventing sexual harassment of working women. The national policy for women and national mission for empowerment of women and national awards for eminent women working for protection of rights of women enables women empowerment and helps for protection of their Human Rights. The greatness of a Civilization can be judged by the place given to women in the society. One of the several factors that justify the greatness of India's ancient culture is the Honorable place granted to women. The foreign influence on India cost considerable deterioration in the status of women. They were deprived of their rights of equality with men. Raja Ram Mohan Roy started a movement against this inequality and subjugation. The contract of Indian Culture with that of the British also brought improvement in the status of women III factor in the revival of women's position was the influence of Mahatma Gandhi who influenced women to participate in the Indian freedom struggle the development of women is of Paramount importance and set the pace for overall development there is a need for addressing gaps in state action for women on promoting inter-ministerial and inter sector convergence to create Gender equitable and women Centre policies and programs. The ministry of women and child development has Nodal responsibility to promote the human rights and concerns of women. We should have a vision of empowering women with human dignity and contributing as equal partners in development in an environment free from violence and discrimination. The government and society should promote social, economic and political empowerment of women through policies, programs and create awareness about their rights and

facilitate institutional and legislative support for enabling them to realize their human rights and develop their full potential of human personality. Several social reformers like Mahatma Jyoti Rao Phule, Raja Rammohan Roy, Ishwar Chandra Vidyasagar, Narayan Guru and Periyar E.V. Ramasamy have fought for the human rights of women especially right to education right to equality etc and removal of social evils like ok abolition of child marriages Sati and promotion of widow remarriage. Dr BR Ambedkar, chairman of the drafting committee of Indian constitution and first law minister of independent India has introduced Hindu code bill in Parliament for Liberty women from traditions and providing empowering them. Education, health employment and political power will empower the women and helps of protection of their human rights. 8 March is being observed as international Women's Day every year across the globe.

WOMEN COMMISSION AND WOMEN'S RIGHTS

The National Commission for Women was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 to review the Constitutional and Legal safeguards for women; recommend remedial legislative measures; facilitate redressed of grievances and to advise the Government on all policy matters affecting women³. The Commission initiated various steps to improve the status of women and worked for their economic empowerment. It organizes consultations, constituted expert committees on economic empowerment of women, conducts workshops and seminars for gender awareness and took up publicity campaign against female feticide, violence against women, in order to generate awareness in the society against these social evils and human rights of women. Women constitute almost half of the population of the world. Education for women is the best way to improve the health, nutrition and economic status of

a household that constitute a micro unit of a nation economy. The lack of woman education can be an impediment to the country's economic development. In India, women achieve far less education than men. As per the Census report 2001, the literacy rate of women is 54.16 per cent and that of men is 65.38 per cent. There has been a sincere effort to improve the education attainment of women by both government and voluntary organizations. The changes in the policies and infrastructural supports on

³ <http://ncw.nic.in/>

primary, secondary and higher education reflect the initiatives of the Government of India towards women education. The divergences in the literacy rates between sexes indicate the difference in the growth rate of literacy levels between males and females over a period of time. Another area of concern is to reduce the gap between the rural and urban female literacy. Though there has been a steady upward trend in both the rural and urban female literacy rates, it is observed that the rural female literacy is increasing much faster than that of urban.

In economics we often talk of discrimination which means denial of equality and human rights to women and the freedom to make decisions which affects their lives and results in widening disparities in the human capabilities and functioning's associated between man and woman. The add gender discrimination severely limit expansion and utilization of human capabilities in women and it has critical implications for economic growth. It is assumed that the status of women and discrimination against them are inversely related and therefore measuring women's status is equivalent to measuring gender discrimination. This issue, though, is receiving increasing academic and policy attention in the recent years, there is still a dearth of research in this area, particularly quantitative and empirical research. Until recently, it was assumed that development was gender-neutral – that both men and women could benefit equally from development, and that the benefits of developmental interventions spread evenly across society. The historical legacy of gender inequality existed in all societies across the world implies that there is no "level playing field". Gender inequalities can also have instrumental impacts through creating constraints in the achievement of a number of development goals. For example, studies have shown that gender inequality in education and access to resources may hamper the process of reduction of child mortality and lowering of fertility, which in turn impacts the expansion of education for the next generation. Gender inequality also has a negative impact on economic growth. There is now overwhelming evidence that countries that adopt specific measures to protect women's rights and increase their access to resources and schooling have less corruption and achieve faster economic growth than countries that do not.

Composition and functions of National Commission for Women:

The Commission must consist of a minimum number of members which includes a chairperson, a member secretary, and other five members. Chairperson: The central government should nominate the

chairperson⁴.

The objective of the NCW is to represent the rights of women in India and to provide a voice for their issues and concerns. The subjects of their campaigns have included dowry, politics, religion, equal representation for women in jobs, and the exploitation of women for labor.

The major functions of the NCW Include: Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws⁵. Present reports to central government on work done towards these safeguards.

1. The commission shall perform all any of the following functions namely;:- Investigate and examine all matters relating to the safeguards provided for women under the constitution and other laws. Present to the central government, annually and at such other times as the commission may deem fit, reports upon the working of those safeguards;

Making such reports recommendations for the effective implementation of those safeguards for improving the conditions of women by the union or any state; Review, from time to time, the existing provisions of the constitution and other laws affecting women and recommend amendments there to so as to suggest remedial legislative measures to meet any lacunae, inadequacies or shortcomings in such legislations;

Take up the cases of violation of the provisions of the constitution and of other laws relating to women with the appropriate authorities;

Look into complaints and take suo-Moto notice of matters relating to:-

(a) deprivation of women's rights;

(b) non-implementation of laws enacted to provide protection to women and also to achieve the objectives of equality and development;

(c) non compliance of policy decisions guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, And take up the issues

⁴ <https://www.civilsdaily.com/national-commission-for-women-working-composition-functions/>.

⁵ <https://www.legalbites.in/national-commission-for-women-ncw/>.

arising of such matters with appropriate authorities; Call for special studies or investigations into specific problems or situations arising out of discrimination and atrocities against women and identify the constraints so as to recommend Strategies for their removal; Undertake promotional and educational research so as to suggest ways of ensuring due representation of women in all spheres and identify factors responsible for impeding their advancement, such as, lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity. Participate and advise on the planning process of socio economic development of women, Evaluate the process of the development of women under the Union and any state.

2. The central government shall cause all the reports referred to in clause B of

(1) to be laid before each house of parliament along with the memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

1. Where any such reports and any part thereof relates to any matter with which any state government is concerned, the commission shall forward a copy of touch report for part 2 such state government who shall cause it to be laid before the Legislature of the state along with the memorandum explaining the action taken or proposed to be taken on the recommendations relating to the state and the reasons for the non-acceptance, if any, of any of such recommendations.

2. The commission shall, while investigating any matter refer to in clause or sub-clause (i) of clause (f) of sub section (I) have all the powers of a Civil Court trying a suit and, in particular in respect of the following matters, namely:-

(a) Summoning and enforcing the attendance of any person from any part of India and examining him on oath;

- (b) Requiring the discovery and production of any document;
- (c) Receiving evidence on affidavits;
- (d) Requisitioning any public record or copy their off from any Court or office;

3. Issuing commissions for the examination of witnesses and documents and any other matter which may be prescribed.

ROLE OF JUDICIARY AS A CUSTODIAN/GUARDIAN OF WOMEN IN TRUE SPIRIT

Indian judiciary is very much insightful to the needs of justice. It is one of the judiciaries in the world which enjoys a high status of being fairness - responsive. However, general people feel that it should be more impartial, more susceptible regarding gender-justice. There has been an enormous change in the concept of women's right. A dialogue from Ibsen's "A Doll's House" can make it clear. Helmer tells Nora—"First and foremost, you are a wife and mother." Nora replied—"That I don't believe any more. I believe that first and foremost, I am an individual, just as much as you are." The above dialogue implies that "A woman of today demands herself to be treated as an individual, a living human being, entitled to the same dignity and status, as her male counterparts. The movement for 'Women empowerment' expanded universally under the protective umbrella of United Nation. The Universal Declaration of Human Rights reaffirms faith in the dignity and worth of human person and guarantees human rights and fundamental freedoms in the equal rights of men and women. The World Conference on Human Rights at Vienna in 1993 had declared the human rights of women and the girl child to be "inalienable, integral and indivisible part of universal human rights" The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979 becomes an important legal instrument for the protection of the equal rights of women within the structure of the United Nations. It is also called 'the International Bill of Rights for Women'. The Constitution of India has taken the primary responsibility to uplift the status of women since independence. The constitution itself contains many provisions for the protection of women. It also permits for the enactment of special laws for women. To fulfil the constitutional mandate, our legislature has been enacting many special laws to deal with the women issue specifically like Dowry Prohibition Act in 1961, the Medical Termination of Pregnancy Act,

1971, the Immoral Traffic (Prevention) Act, 1956, the Maternity Benefit Act of 1961, Indecent Representation of women (Prohibition) Act, 1986 etc. Under the personal laws, Specific provisions are contained for grant of maintenance under section 24 and 25 of the Hindu Marriage Act, 1955 and Section 18 of the Hindu Adoptions and Maintenance Act, 1956. The same provisions are also available under the Parsi Marriage and Divorce Act, 1936 and the Indian Divorce Act, 1969. Provisions have also been made in the Muslim Women (Protection of Rights and Divorce) Act, 1986 in relation to maintenance of the Muslim Women. Despite all these enactments, the true fact is that extensive violations of women's rights are still continuing. The forces of globalization, non-cooperation by the patriarchal society, greed for easy money, inadequacy of law, structural inequalities, ineffective enforcement machinery and imbalance power make the violation of women's right easy. The law cannot solve a problem instantaneously, but unquestionably it can give justice to the aggrieved, but, how? Legislature can make law, but who will implement the law?

Here, the judiciary has to play its role. The courts can interpret law in such a way so that it can meet the changing circumstances to give justice to the masses by applying the principle of equity, justice and good conscience. And to achieve that end, it can go beyond the mere legality. The judges have a two separate task to play. Firstly, it is the judiciary who analyses law for the sake of justice and implements them in proper place for the progress of society. Secondly, a judge must be compassionate while administering law otherwise the object of the legislations may be disturbed. In the words of Justice V. R. Krishna Iyer, "Case-law, creative, imaginative and gender-friendly, has its logic and limitation. Judges cannot make law but only interpret it and decide specific cases and controversies within defined bounds although in that process they do make law interstitially. But legislation is essentially a wider function covering vaster spaces and free to weave fabrics of fundamental mutation. So it is substantive codification, radical in transformation of the social order, that we need, an avant-garde operation Parliament must perform. Magnificently as the judiciary has acted, they have not and could not usurp legislative functions." Innovatory judgments of the Indian judiciary clearly reflect the fact that judges are the precursors of women movement against gender inequalities in society. The provisions of laws enacted by the legislature obtain their true significance in the hands of judiciary. While administering justice, it has to understand the Constitutional as well as the legislative intent, and at the same time adhere to the several aspects of social, economic and political life of a woman. It has adopted many devices like judicial review, judicial activism, social action litigation etc. to give justice to the weaker sections of society. All the weaponry of

judiciary has been facilitating to make the constitutional scheme of protective discrimination in favour of women meaningful.

Role of Judiciary for Providing Equal Status to Women

One of the vital ways to keep human rights safe is by preserving the prevailing role of the judiciary. Standards developed by the judiciary have a significant beneficial effect of making the lives of people better and the accomplishment of the government's goals easier. In addition, these standards may ensure a better understanding of the relationship between the people and their government, on the one hand, and among the members of the international community, on the other. Moreover, major countries, such as the US & UK have a great responsibility, by virtue of their international weight and technological advancement, to help promote human rights. The major countries should play an active role, especially in situations where the people of the South Asian countries are willing to contribute to the development of human rights and to show that they have serious intentions to spread peace and stability. One of the vital ways to keep human rights safe is by preserving the prevailing role of the judiciary. Standards developed by the judiciary have a significant beneficial effect of making the lives of people better and the accomplishment of the government's goals easier. In addition, these standards may ensure a better understanding of the relationship between the people and their government, on the one hand, and among the members of the international community, on the other.

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Human Rights – Two simple words but when put together they constitute the very foundation of our existence. Human Rights are commonly understood as “inalienable fundamental rights to which a person is inherently entitled simply because she or he is a human being”.

India being a diverse country with its multicultural, multi-ethnic and multi-religious population, the protection of human rights is the *sine qua non* for peaceful existence. It is indeed impossible to give an inclusive definition of Human Rights owing to its vast nature, however, the legislators have tried their hands in defining Human Rights as “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India” under the Human Rights Act, 1993.

It is implicit from the definition that Human rights are omnipresent in all legislations in our country and it

is the duty of the Judges to read between the lines and enforce these rights for the betterment of the society. In precise, our judgments should be articulated in such a manner to accommodate human rights whenever it is required.

Active Role of Judiciary:

Of course, all legal rights are human rights but it is unfortunate that all human rights have not become legal rights as on date. This is because the law follows the action, as a consequence, it is not possible to codify all probable laws in anticipation for protection of human rights, and this is when the due procedure of law or the principle of natural justice plays an active role in protecting the rights of the people when there is no legislation available.

As I have mentioned earlier, the magnificence of human rights is that it is all pervading; the trick lies in the successful execution of the same. Fundamentally, the basic motive of all the three wings of the democratic government, namely, the executive, the legislative, and the Judiciary revolves around the protection of human rights. They strive together and separately to uphold the human rights of the people in the country.

The Judiciary with no doubt has played a vital role in protection of Human rights over the decades. Some of the most unpleasant violation of human rights like Sati, Child Marriage, Honor Killings, Slavery, Child labour etc., have been abolished wholly owing to widespread awareness and strict implementation measures taken by the Judiciary.

Barriers

Working towards the protection of human rights ought to be the paramount goal of any Court of the country. I sense some barriers which I believe are to be set aside.

- Avoidance of the legal system due to economic reasons or fear.
- Excessive number of laws.
- Expensive legal procedures.

- Inadequate Legal Aid Systems.
- Inadequate information about laws, the rights arising out of them and the prevailing practices.
- Failure of legal systems to provide remedies which are preventive, just, on discriminatory and adequate.
- Lack of public participation in reform movements.

However, PIL is a delicate instrument which ought to be used with utmost care. For PILs to become really effective, PIL should not be allowed to become a routine affair which is not taken seriously by the Bench and most importantly by the masses. PIL is just one way of protecting human rights. It certainly isn't the only way. Various other legal systems and procedure have to work simultaneously to enable the attainment of the ultimate objective which is to ensure that everyone's human rights are safeguarded.

Some instances:

The Supreme Court in *Hussainara Khatoon and others vs. Home Secretary State of Bihar AIR 1979 SC 1360* expressed anguish at the “travesty of justice” on account of under-trial prisoners spending extended time in custody due to unrealistically excessive conditions of bail imposed by the magistracy or the police and issued requisite corrective guidelines, holding that “the procedure established by law” for depriving a person of life or personal liberty (Article 21) also should be “reasonable, fair and just”.

In *Prem Shankar Shukla vs. Delhi Administration (1980) 3 SCC 526* the Supreme Court found the practice of using handcuffs and fetters on prisoners violating the guarantee of basic human dignity, which is part of the constitutional culture in India and thus not standing the test of equality before law (Article 14), fundamental freedoms (Article 19) and the right to life and personal liberty (Article 21). It observed that “to bind a man hand-and-foot”, fetter his limbs with hoops of steel; shuffle him along in the streets, and to stand him for hours in the courts, is to torture him, defile his dignity, vulgarise society, and foul the soul of our constitutional culture”. Strongly denouncing handcuffing of prisoners as a matter of routine, the Supreme Court said that to “manacle a man is more than to mortify him, it is to dehumanize him, and therefore to violate his personhood....”. The rule thus laid down was reiterated in the case of *Citizens for Democracy v s. State of Assam & Ors. (1995)3 SCC 743*.

In *Icchu Devi Choraria v s. Union of India* (1980) 4 SCC 531 the court declared that personal liberty is a most precious possession and that life without it would not be worth living. Terming it as its duty to uphold the right to personal liberty, the court condemned detention of suspects without trial observing that “the power of preventive detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil”. In Smt. *Nilabati Behera @ Lalita Behera v s. State of Orissa & Ors.* (1993) 2 SCC 746 the Supreme Court asserted the jurisdiction of the judiciary as “protector of civil liberties” under the obligation “to repair damage caused by officers of the State to fundamental rights of the citizens”, holding the State responsible to pay compensation to the near and dear ones of a person who has been deprived of life by their wrongful action, reading into Article 21 the “duty of care” which could not be denied to anyone.

For this purpose, the court referred to Article 9 (5) of the International Covenant on Civil and Political Rights, 1966 which lays down that “anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation”. In *Joginder Kumar v s. State of UP and Others* (1994) 4 SCC 260 the court ruled that “the law of arrest is one of balancing individual rights, liberties and privileges on the one hand and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties of the single individual and those of individuals collectively.....”. In *Delhi Domestic Working Women's Forum vs. Union of India & Others* (1995) 1 SCC 14 the Court asserted that “speedy trial is one of the essential requisites of law” and that expeditious investigations and trial only could give meaning to the guarantee of “equal protection of law” under Article 21 of the Constitution. In *People's Union for Civil Liberties [PUCL] v s. Union of India and another* AIR 1997 SC 568 the dicta in Article 17 of the International Covenant on Civil and Political Rights, 1966 was treated as part of the domestic law prohibiting “arbitrary interference with privacy, family, home or correspondence” and stipulating that everyone has the right to protection of the law against such intrusions. In *D .K. Basu v s. State of West Bengal*, AIR 1997 SC 610 the Court found custodial torture “a naked violation of human dignity” and ruled that law does not permit the use of third degree methods or torture on an accused person since “actions of the State must be right, just and fair, torture for extracting any kind of confession would neither be right nor just nor fair”. In *Vishaka & Ors. v s. State of Rajasthan & Ors.*, (1997) 6 SCC 241 Supreme Court said that “gender equality includes protection from sexual harassment and right to work with dignity, which is a universally recognized basic human right. The common minimum requirement of this right has received global acceptance. In the

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absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity in Articles 14, 15, 19(1)(g) and 21 of the Constitution and the safeguards against sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose.... in the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly, guidelines and norms are hereby laid down for strict observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 for enforcement of the fundamental rights and it is further emphasized that this would be treated as the law declared by the Supreme Court under Article 141 of the Constitution.”

The aforesaid cases are only few examples from numerous judgments concerning human rights. Playing a pro-active role in the matters involving environment, the judiciary in India has read the right to life enshrined in Article 21 as inclusive of right to clean environment. It has mandated to protect and improve the environment as found in a series of legislative enactments and held the State duty bound to ensure sustainable development where common natural resources were properties held by the Government in trusteeship for the free and unimpeded use of the general public as also for the future generation. The Court has consistently expressed concern about impact of pollution on ecology in present and in future and the obligation of the State to anticipate, prevent and attach the causes of environmental degradation and the responsibility of the State to secure the health of the people, improve public health and protect and improve the environment.

Yes, it is true that Judiciary has done a tremendous job in the past by actively involving in safeguarding the human rights in process of delivering justice. But the future is far more challenging with the new **social innovations like Surrogacy, Cyber Terrorism, etc..;** which does not have a concrete law as on date and the scope of violation of human rights are far more severe than anticipated; therefore it is only with due conviction and determination by the subordinate judicial officers these challenges can be overcome in an orderly manner.

Enabling provision:

The intervention by the courts for issues involving the economic, social and cultural rights definitely created a positive implication.

I can say with pride that some very important developments have occurred wholly due to the initial efforts taken by the Judiciary, like · Many of the recent changes in law and policy relating to education in general, and primary education in particular, are owed to the decision in *Unnikrishnan P.J vs. State of A.P. and others (1993 4 SCC 111)*

PIL cases concerning environmental issues have enabled the Court to develop and apply the ‘polluter pays principle’, the precautionary principles, and the principle of restitution.

The role of court is diverse in nature, sometimes it is required to become the arbitrator too. The PIL case brought before the Supreme Court in 1994 by the Narmada Bachao Andolan (NBA), a mass-based organization representing those affected by the large-scale project involving the construction of over 3,000 large and small dams across the Narmada river flowing through Madhya Pradesh, Maharashtra and Gujarat, provided the site for a contest of what the Court perceived as competing public interests: the right of the inhabitants of the water-starved regions of Gujarat and Rajasthan to water for drinking and irrigation on the one hand and the rights to shelter and livelihood of over 41,000 families comprising tribals, small farmers, and fishing communities facing displacement on the other. In its decision in 2000, the Court was unanimous that the Sardar Sarovar Project (SSP) did not require re- examination either on the ground of its cost-effectiveness or in regard to the aspect of seismic activity. The area of justifiability was confined to the rehabilitation of those displaced by this Project. By a majority of two to one, the Court struck out the plea that the SSP had violated the fundamental rights of the tribals because it expected that: ‘At the rehabilitation sites they will have more, and better, amenities than those enjoyed in their tribal hamlets. The gradual assimilation in the mainstream of society will lead to betterment and progresses. The Court acknowledged that in deciding to construct the dam ‘conflicting rights had to be considered.

If for one set of people namely those of Gujarat, there was only one solution, namely construction of a dam, the same would have an adverse effect on another set of people whose houses and agriculture would be submerged in water’.

However, ‘when a decision is taken by the Government after due consideration and full application of mind, the court is not to sit in appeal over such decision’. Even while it was aware that displacement of

the tribal population ‘would undoubtedly disconnect them from the past, culture, custom and traditions’, the Court explained it away on the utilitarian logic that such displacement ‘becomes necessary to harvest a river for the larger good’.

Henceforth, it is no doubt that in 21st century the courts ranging from the subordinate courts to the highest court of the country requires the judges to play an active role in resolving the issue. The adversarial legal system is changing more towards the inquisitorial legal system, due to the complexity of the issues involved.

For example, in a hypothetical situation, if the issue of cyber terrorism is brought before the court of law, is it possible for the Judges to decide the matter like any other regular criminal cases. The reply would definitely be in negative, owing to the reason it might result in gross violation of rights. I stated this example to demonstrate that law is not mathematics; rather a logical conclusion arrived in the light of the substantive law.

Hence, it requires immense knowledge and active participation of the judges for the justice to be delivered.

Vanguard Role of District judiciary:

The District judiciary renders an active role in dispense of justice, they have a massive duty to protect the constitutional rights of the citizens. Barring few limitations, the District Judicial Officers are in charge of all matters including application and interpretation of constitutional provisions like Articles 14, 19, 21 etc.

It is after the appreciation of work done by the District judicial officers, that the legislators enacted the Human rights Act, 1993. One of the main objectives of the Human Rights Act, 1993 is to establish the Human Rights Courts at every district level. Section 30 of the Act enables the State Government to specify for each district, a Court of Sessions to be a Human Rights Court after the due concurrence with the Chief Justice of the respective High Courts. The motive behind the provision is to provide speedy trial of offences arising out of violation of human rights. The creation of Human Rights Courts at the district level has a great potential to protect and realize human rights at the grassroots level. On 9th September 2011, the West Bengal government was the first to set up Human Rights’ Courts in all 19 districts of the

State to ensure speedy disposal of cases concerning human rights. These courts functions from the district headquarters and it is under the District Sessions Judge. Separate public prosecutors are being appointed in each District Human Rights Court, as provided by the section 31 of the Protection of Human Rights

Act, 1993. More and more Session Courts must be specified as the Human Rights Courts for achieving the full benefits from the act.

In the present era, the human rights refer to more than mere existence with dignity. The International Institute of Human Rights in Strasbourg divides the human rights into three generations. *First-generation human rights* are fundamentally civil and political in nature, as well as strongly individualistic in nature; *the Second-generation human rights* are basically economic, social and cultural in nature, they guarantee different members of the citizenry with equal conditions and treatment; *the Third-generation human rights* refers to the right to self-determination and right to development. As a consequence with the expansion of scope of human rights, the ambit of safeguarding the rights also increases, as a result, the judiciary should toil more to prevent the violation of human rights. Judiciary is the only organ which can translate these rights into reality; which is not possible without the help of the judicial officers of the respective courts.

The Indian judiciary is playing a role incomparable in the history of judiciaries of the world. It must, therefore, prove itself worthy of the trust and confidence which the public reposes in it. The judiciary must not limit its activity to the traditional role of deciding dispute between two parties, but must also contribute to the progress of the nation and creation of a social order where all citizens are provided with the basic economic necessities of a civilized life, viz. employment, housing, medical care, education etc. as this alone will win for it the respect of the people of the country.

I from the bottom of my heart congratulate the Academy's effort to organise such regional conferences which certainly creates a forum for the judicial officers to develop a national dialogue of emerging challenges and also to contribute towards the excellence of the judicial system. With conviction, I can say that with such conferences and training programmes organised more frequently; it will facilitate in achieving our challenges at ease. The major countries should play an active role, especially in situations where the people of the Middle East are willing to contribute to the development of human rights and to show that they have serious intentions to spread peace and stability.

In the landmark case of **Randhir Singh V. Union of India**⁶, the apex Court opines that the principle of equal work is not a fundamental right but it is certainly a constitutional goal. Article 39 (d) of the Constitution states "that there is equal pay for equal work for

⁶ AIR 1982 SC 879.

both men and women." Similarly, in **Grihakalyan V. Union of India**⁷ it was held that the denial of equal pay for equal work becomes irrational classification within the meaning of article 14 of the constitution. In **Air India V. Nargesh Meerza**⁸, the Court held that the termination of service on pregnancy was unreasonable and arbitrary, therefore violative of article 14. **Vishakha V. State of Rajasthan**, the petitioner, a non-governmental organization(NGO) was working for gender equality, vishaka the petitioner filed a writ petition seeking the validating of the fundamental rights of working women under Article 21 of the Indian constitution. Supreme Court of India provided a landmark judgment on the area of sexual harassment against women. In case of **Noor Saba Khatoon v. Mohd. Quasim**, the Hon'ble Court held that we have opted for a secular republic, secularism under the law means that the state does not owe loyalty to any particular religion and there is no state religion. That as well, The Hon'ble High court of Calcutta under the Muslim Women (Protection on Divorce) Act, 1986 extended the iddat period till such time the woman remarries, to allow Muslim women a maintenance allowance beyond the customary iddat period of about three and a half months In **Deelip Singh V. State of Bihar**, The Honorable Court held that If a consent is given to a women by a man to make her believe of marrying her, the man's promise to marry women would fall within the expression 'without her consent' under the consultation of clause (ii) to section 375, Indian Penal Code, only if it is established that from the very initiation the man never really intended to marry her and the promise was a mere hoax. **Madhukar Narayan Mardikar V. State of Maharashtra**, The Honorable Maharashtra High Court observes that since Banubi is an unchaste woman it would be extremely unsafe to allow the fortune and career of a Government official to be put in jeopardy upon the uncorroborated version of such a woman who makes no secret of her illicit intimacy

⁷ (1991) 1 SCC 619.

⁸ AIR 1981 SC 1829

with another person. Therefore, simply in light of the fact that she is a woman of simple ethicalness and virtue, her proof can't be tossed over the edge⁹.

The Supreme Court created liberal judicial trends for protection of women giving favorable decisions not in constitutional matters but in case of customary laws also, such an example is **Shah Bano Case**¹⁰ where the apex Court set aside the personal law and bring the Muslim women under the purview of Section 125 Cr.P.C. Similarly in **Shamim Ara** Case, the Supreme Court declared that the triple talaq is not a valid talaq. Such interpretations by the judiciary provide new dimensions to the concept of women liberty and provide a room for growth and individual development of the women. In **State of Maharashtra and another V. Madhukar Narayan Mardikar**¹¹, the decision of the supreme Court that even a woman with easy virtue is entitled to privacy and no one can invade her privacy as and when he likes, therefore her evidence cannot be overthrown merely because she is a woman of easy virtue, here the apex Court consider her "a free human being with an independent will", and breaks the traditional myth that a lady of easy virtue does not have individuality. The effort of Indian judiciary is commendable, whenever and wherever it gets a chance it interprets the law according to the changing needs of the society as done by it in the case of **Githa Hariharan V. Reserve Bank of India**¹² where Section 6(a) of Hindu Minority and Guardianship Act, 1956 and Section 19(b) of the Guardians and Wards Act, 1890 interpreted in such a way that father and mother get equal status as guardians of a minor. In **Cehat and Ors. V. Union of India**¹³, the Supreme Court of India played such role and monitored the implementation of the Pre Natal Diagnostic Techniques Act and issued several beneficial directives. This petition put the issue of sex selection and sex selective abortion on fore front and as a consequence many activities have been taken up by the government and non-governmental agencies on this issue. The Supreme

⁹ Mohd Abdul Yousuf: Role of Judiciary In Protecting Women Rights Journal on Contemporary Issues of Law [JCIL] Vol.3 Issue 12. <http://jcil.lsnydicate.com/wp-content/uploads/2018/01/Mohd.-Abdul-Yousuf-1.pdf>

¹⁰ AIR 1985 SC 945

¹¹ AIR 1991 SC 207.

¹² AIR 1999 SC 1149

¹³ (2003) 8 SCC 412.

Court in **R. Ruppayee V. Raja Gounde**¹⁴ case dealing with the gift related property held that the father can gift the ancestral immovable property within reasonable limits in favor of his daughter. In case of **Kalawatibai V. Soiryabai** the Supreme Court in the matter of widow's right to property held that a female Hindu possessing the property on the date of the Hindu Succession Act of 1956 came into force, could become absolute owner only if she was a limited owner. The pride of women was maintain by the Hon'ble Supreme court of India on account of **Rupan Deal Bajaj v. K.P.S. Gill**, As is pointed by the Hon'ble the A.P. High Court in **T. Saritha v. Thnkata Subbaitath**, the guideline of reasonableness to wedding matters and negated Section 9 of the Hindu Marriage Act, 1955 discovered abusing the privilege to security and human nobility ensured under Article 21 of our Constitution. In the case of **Ranghubans Saudagor Singh v. State of Punjab**, the Hon'ble Punjab and Haryana Court held what is forbidden under the Constitution is discrimination on' the ground of sex alone, but when the peculiarities of sex added to a variety of other factors and consideration from a reasonable nexus with the object of classification than the Constitutional bar under Articles 15 and 16(2) cannot be attracted. As is observed in **Air India v. Nargesh Mirza**, the validity of the Indian Airline's and Air India's service rules providing that an Air Hostess had to retire from service at the age of 35 or on marriage- whichever was earlier, or if she got married within four years of confirmation or on first pregnancy was struck down and held to be arbitrary. In case of **Lalitha Sundari v. R. Kethar Nathan**, it was observed that two vacancies in the Education Committee of a family trust were to be filled from the female descendants of the trustees. The scheme court which was the appointing authority, appointing two male members and observed that female descendants include male descendants and females who appeared in the interview lack practical experience.

¹⁴ (2003) 8 SCC 412.

Role of Supreme Court in Interpreting International Instruments for Women Rights

The Hon'ble Supreme Court never hesitated to adopt the international standard of gender-justice if the provisions of international law do not come in conflict with the national law. The judiciary, which interprets the constitutional meaning of law and legality of executive actions, should have a separate existence. Lord Bryce said that there is no better test of the excellence of a government than the efficiency and independence of its judicial system. Indian constitution incorporated many provisions to ensure the independence of judiciary¹⁵.

In country like India more than 19,000 rapes, 7500 dowry deaths, 32000 homicides and 36500 molestation are the rough wrongdoings announced in India in 2006 against women and girl children. Everyone knows the statistics, the murder rates, rapes, the violence that burdens economic development, and threats to society. Instead of counting crimes, attitude to reduce crime is needed. No person can claim to be protecting the place and population as there is no control on gun and tongue. "Culprits are our guys," this word doesn't give right to any side, whether in uniform or civvies to commit crime against innocent women and girl children. What emboldened these elements is that their horrendous acts of crime against women are being ignored. About two lakh cases of violence have been registered by the National Crime Records Bureau, according to its recent data. It is well known that discriminatory and oppressive social attitudes, not to mention plain greed and corruption, infect the attitude of the authorities, and especially the police, in many cases when serious complaints go uninvestigated or are poorly investigated. Only when investigation is free, fair, and speedy and only when the conviction rate improves in cases where women are the targets of various forms of violence can crimes against women be brought down. The press has a key role to play in working against any cover-up in this area⁷⁵⁴.

Conclusion

The Hon'ble Supreme Court of India and the High court's interpret Constitutional provision in favor of women and girl children. Whenever there is an anti-women legislation, rule or order of the Government or any other agency then the Courts comes into picture to rescue the rights of women and girl children. It is the helper of the last resort and fortunately, it is also working for the welfare of the women and girl

¹⁵ Mohd Abdul Yousuf: Role of Judiciary In Protecting Women Rights Journal on Contemporary Issues of Law [JCIL] Vol.3 Issue 12. <http://jcil.lsnydicate.com/wp-content/uploads/2018/01/Mohd.->

children. It is time to understand that there is a common challenge and urgency of a common response to this growing menace in society. The need of the hour is to give an expression of shared responsibility to the shared sense of crisis and an acute and growing concern over the violence and criminality affecting women⁷⁵⁵. No amount of participation in any polls would help the matters if the crime in society, particularly against women and girl children, is not eliminated. Fighting crime is more important than anything else. Regardless of the injury women over all classes are revealing or reporting crimes, for example, assault and rape and don't feel powerless or relinquished by family or society just like the prevalent case before. Society is changing and government is compelled to make a move as it has come up short on reasons, for example, society's mindset or class partition.

