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Women's Rights under Indian Law

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Abstract

Indian law in India treats women in two different ways i.e. firstly, on paper, and second one is the Constitution, laws and through court judgments it protects them. In real life, the women still face abuse and compromise in homes and police stations also still in the society. This article looks at how the law has improved for women and where problems remain. It begins with Articles 14 and 15(3) of the Constitution, and the court decisions that struck down unfair rules like forcing air hostesses to retire on marriage or pregnancy. It then explains how Vishaka v. State of Rajasthan led to the law against sexual harassment at work. On violence at home, it discusses the Domestic Violence Act, 2005 and the wide meaning of “shared household,” while noting that justice often comes late. The article also covers the Bharatiya Nyaya Sanhita, 2023, as in the Landmark case of Independent Thought v. Union of India, and the ongoing debate on marital rape of adult wives and still in India it is an exception. It looks at women's property and personal rights through the Hindu Succession (Amendment) Act, 2005, such as in the case of Vineeta Sharma, and Shayara Bano. It concludes that the law has improved a lot, but enforcement and issues like marital rape still need attention and need to be changed.

Keywords: Women's rights, Article 14, Domestic violence, Sexual harassment, Hindu Succession

Introduction

In India the Law talks about women in two ways firstly, the codified laws i.e. Constitution of India along with the judgments and the second one is the police station, the households where the women have been seen compromising and facing several tortures. This distinction it self shows what are the challenges were faced by the women. Over the past decay, the shift of legal

position for has been shifted and played the transformative way and approach where the dignity and respect have been granted in India under several laws through amendments.

The Constitutional base

As per our Indian Constitution, Article 14 states that Equality before law and the equal protection of the laws are guaranteed to every person¹. Article 15(3), has special provisions for women and children, i.e. is the constitutional framework.² The Supreme Court has read this provision it is not as an exception that carved out of equality but as an enabling provision allowing the State to correct historical disadvantage of this provision.³ Also in part IV of the Constitution that is the Directive Principles the Hon'ble Supreme Court through their decision has enforced several time, i.e. equal means of livelihood, equal pay and maternity relief.⁴ In India earlier these provision has the discrimination regarding the air hostesses to retire on marriage or first pregnancy that were struck down as arbitrary and violation of fundamental rights.⁵

The enforcement of laws at Workplace

One of the landmark cases, where the Hon'ble Supreme Court led to the guidelines on sexual harassment at work place, also to full fill the gap the of this legislation the few international duties and obligation were there during the absence of domestic laws in India.⁶ The Hon'ble Court has analysed during this case i.e. Vishaka v. State of Rajasthan⁷ there is a serious gap in the Constitution so after the guidelines passed in this case after this parliament has enacted the law, i.e. statue.⁸

Violence happens within the Home

The Protection of Women from Domestic Violence Act, 2005 had played an important development under Indian Law. The Law has played an affirmative role i.e. Section 3 of the Act has wider scope the criteria include physical, sexual, verbal and emotional abuse and

¹ INDIA CONST. art. 14.

²INDIA CONST. art. 15, cl. 3.

³ Government of Andhra Pradesh v. P.B. Vijayakumar, (1995) 4 SCC 520 (India).

⁴ INDIA CONST. art. 39, cls. (a), (d); INDIA CONST. art. 42.

⁵ Air India v. Nergesh Meerza, (1981) 4 SCC 335 (India).

⁶ Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India).

⁷ Vishaka v. State of Rajasthan, (1997) 6 SCC 241 (India).

⁸ The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, No. 14 of 2013, INDIA CODE (2013).

economic abuse.⁹ In the landmark case where the Hon'ble Supreme Court¹⁰ has explained the broader interpretation of the term "shared household" and held that the house include the belonging to or any taken on a rent by the spouse or a household in which he had his right, any title or interest, including any premises that belongs to his relatives where the parties had earlier lived there as a part of their domestic relationships.¹¹ A legal remedy is available in practical sense but they cannot obtain this within the reasonable time period.

Criminal Law and Corporeal integrity

The criminal law has the codified law i.e. offences against women under Bharatiya Nyaya Sanhita, 2023 (BNS), which came into force on 1st July 2024.¹² The BNS recognises several offences affecting women, including provisions concerning of rape and other sexual offences, stalking, cruelty and acid-related violence. The modern criminal law has played the transformative approach followed the Justice Verma Committee process and the Criminal Law (Amendment) Act, 2013, these reforms give legal effect regarding the sexual offences and duties of the public authorities.¹³

The Hon'ble Supreme Court has observed the case of Independent Thought v. Union of India¹⁴, where the court read marital rape is an exception under the Indian Penal Code i.e. the spouse having the sexual intercourse with the wife i.e. minor below 18 years of the age will lead to constitute rape. However, we are still lacking with the serious matter related to marital rape involving the adult wives this serious issue needs to get change and led to debate regarding the consent and equality with in the marriage.

Property, Marriage and other Economic Rights

The Hindu Succession (Amendment) Act, 2005 had major changes for the Hindu women by considering daughters as coparceners in a Hindu joint family that rights were already given to sons.¹⁵ In the case of Vineeta Sharma v. Rakesh Sharma, where these changes were clearer where the Hon'ble Supreme Court held that the daughters are should acquire the coparcenary right from the birth itself.

⁹ The Protection of Women from Domestic Violence Act, No. 43 of 2005, § 3, INDIA CODE (2005).

¹⁰ Satish Chander Ahuja v. Sneha Ahuja, (2021) 1 SCC 414 (India).

¹¹ Satish Chander Ahuja v. Sneha Ahuja, (2021) 1 SCC 414 (India).

¹² The Bharatiya Nyaya Sanhita, No. 45 of 2023, INDIA CODE (2023) (enforced from 1 July 2024).

¹³ The Criminal Law (Amendment) Act, No. 13 of 2013, INDIA CODE (2013).

¹⁴ Independent Thought v. Union of India, (2017) 10 SCC 800 (India).

¹⁵ The Hindu Succession (Amendment) Act, No. 39 of 2005, INDIA CODE (2005).

In Indian Personal law has also led to reformative action the Supreme Court in the case of Shayara Bano v. Union of India¹⁶, the Hon'ble Court has struck down the practice of instant pounce of the triple talaq.

Conclusion

In India the laws that concerns about the women's right has played transformative role through the amendments, by the landmark judgments came from the Supreme Court and through our law makers i.e. parliament for instance the enactment of Protection of Women from Domestic Violence Act, 2005, the POSH Act, 2013, the Hindu Succession (Amendment) Act, 2005 and the Maternity Benefit (Amendment) Act, 2017 that shows how the law makers has full fill the gap through enforcement of such laws.

¹⁶ Shayara Bano v. Union of India, (2017) 9 SCC 1 (India).