



HUMAN RIGHT OF WORKING WOMAN UNDER THE INDIAN CONSTITUTION

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INTRODUCTION

One of the Indian greatest poets, Rabindranath Tagore, rightly said those women are engulfing in a pain and inequality of the situation more than half a century ago, thus:

“O Lord why have you not given
Woman the right to conquer her destiny?
Why does she have to wait head bowed?
By the roadside,
Waiting with tired patience,
Hoping for a miracle in the morrow.”¹

Indian mythology has to woman stereotypes which are equal worth studying- Sita, the female in the incomparable Ramayana and draupadi, the heroine of Mahabharata the immortal classic. Sita the example of female asset and submission, the complement and unquestioning follower of her husband precepts is oft quoted as the representative as Hindu wife. Draupadi, though decorated for her virtues is not considered Sita equal. She was the challenger of women's rights, the oppose of injustice to women and their individuality, the single- minded motivator behind the Kurukshetra war and the determined promoter for the dissolution of evil as she saw it in the Kauravas. But always her aims were colored by the blow delivered to womanhood as personified in her. She can be considered the Women Rights.

The men and women who run the System also need to be trained, motivated and finally made accountable. This is essential in a democracy, which requires both transparency and accountability from such public servants. It is difficult to expect the laws and procedures to make up for the deficiencies of the human element and vice-versa. There is nothing that woman cannot do so. A proper balance is to be maintain by woman .A lot of woman have proved it by doing both. Today woman enter into any profession. This has been made possible by some woman who has ventured to break the gender bias and have set themselves as models. They have proved themselves so successful that March 8th is international woman day, a day celebrate the historical achievement of woman. The status and position of woman in society is the best way to understand civilization. It is also said that woman's rights are human rights. In the word of supreme court of Canada's justice L' hereof Dube.

“Human rights are yardsticks against which all people must measure their conduct and that of their government and public official, and against which the global community as a whole must measure its progress.”

¹ Woman Rights- Violation and protection measures for women development and empowerment. (Universal-Publication-2002).

Today with sensitive awareness and public support more and more women are expressing their anger against human rights for women. Men and women are equally entitled for equal pay for equal work. If women are not getting equal pay for equal work then they shall file a complaint before the observation officer in the labour office.² Also women workers are having the right for a special leave at the time of pregnancy, after pregnancy or abortion according to the law for 12 weeks out of which a maximum of 6 weeks shall be before the date of her expected delivery.³ Within a week women are entitled for a one-day leave without cutting in remuneration from their payment. Women cannot be equal to men because they are different, even better in some ways. Their needs are different, not on par with men. Trying to achieve criteria of parity with men are not ideals for women. In present society a woman should exercise an awareness of her rights with caution according to the law.

FOLLOWING ARE INDIAN CONSTITUTION PROVIDED IMPORTANT ARTICLES IN RELATION WITH WOMEN

Article 14- Equality before law - The state shall not deny to any person equality before the law or equal protection of the laws within the territory of India.

Article 15- Prohibition of discrimination on the grounds of religion, race, caste, Sex or place of birth.

Article 15(3) - Nothing in this article shall prevent the state from making any special provision for women and children.

Article 16- Equality of opportunity in the matter of public employment.⁴

Article 21- Protection of life and personal liberty.

Article 23- Prohibition of traffic in human beings and forced labour.

Article 39 A- Equal justice and free legal aid.

Article 42- Provision for just and humane conditions of work and maternity relief.

Section 125- Cr.P.C- Order for Maintenance of wives, Children and Parents.

Sec.354 of I.P.C- Punishment for an assault or criminal force on a woman with intention to outrage her modesty. The punishment given is of two years.

1. THE WEAKENING OF PROTECTION OF WOMEN'S RIGHTS-

The women's movements ignore offences against women, struggles and suggestions. These suggestions include the drafting of a law on sexual assault in the place of work, a law to deal with child sexual abuse, criminalizing marital rape and decriminalizing homosexuality.⁵ The women's movements have also been demanding a law to regulate the conduct of trials of cases of Working Class Women and violation of human rights. My point is how we make the country safer for women. How do we prevent criminal molestation of women? And that depends upon how we are treating women in society. I know that we would always like them to be subject to men. This is the basic problem of crimes against

² According to Equal Remuneration Act-1976

³ Maternity Benefit Act-1961.

⁴ 'Ineligible for Post of Senior Tutor in the school of nursing Case', Walter Alfred Baid, Sister Tutor (Nursing) Irwin Hospital V. Union of India. (AIR.1976Del 302), 'Special Allowance to Woman's Case', Shamsheer Singh V. State of Punjab (AIR 1970 P&H 372).

⁵ Ram Ahuja, Criminology. (Rawat Publishers & Distributors. Pub year-2000).
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working women rights violation. Sexual harassment of working woman amount to violation of the right guaranteed by article 14, 15 and 23(equality and dignity) the court issued detailed direction of the subject; in cases Vishakha V. State of Rajasthan.⁶ The court held that, it is the duty of the employer or other responsible person in work places or other institution, whether public or private, to prevent sexual harassment of working woman.

Reasoning that the amendment is required to enable easier forgiveness of the husband and return of the woman to the matrimonial home and to protect the husband's job ignores the pressure under which women are placed in this situation. Observes, "*For the Indian woman marriage is a sacred bond and she tries her best not to break it (she is willing to suffer insults and harassment in silence). As this offence is non-bailable and non-compoundable it makes reconciliation and returning to marital home almost impossible*".

COMPROMISE IN CASES OF WORKING WOMEN VIOLENCE RELATION OF HUMAN RIGHTS-

While the prevalence of compromise in cases of human rights violence in relation of women India is overwhelming, this is perhaps due to the absence of choice for women trying to escape violent situations. Inevitably, a large percentage of women who approach the state or even non-governmental organizations for help are sent back into continuing violent situations following a process of "*Mediation*" between husband and wife in which the woman is at a severe disadvantage because of the patriarchal nature of the process.

2-F.I.R UNDER

FALSE INVESTIGATION

December 2000 In Rajasthan and Uttar Pradesh were concerned to hear of a large number of cases of violence against women, which after the filing of a First Information Report (F.I.R) were subsequently logged as, found "*False*" after investigation. In fact, government officials explained that it usually meant that the victim had reached a compromise with the perpetrator of violence, witnesses had turned hostile or there were other reasons for withdrawing the complaint. The Rajasthan government indicated that 30% of all cases of crimes against working women in the state had been found to be "*False*" after investigation.

VIOLENCE OF HUMAN RIGHTS OF WORKING WOMAN-

The law on violence of human rights on woman (as it now stands) does have a strong, though limited, deterrent value. It is extremely important that the issue of working woman violence be brought into the public from the private sphere by stressing its criminal content instead of projecting it as an exclusively working matter. Report note that the Government of India being a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁷ is obliged to respond with legitimate and significant legal strategies to fight working woman violence of human rights.

3. THE CRIMINALIZATION OF POVERTY, THE POOR AND LEGAL AID-

The criminalization of poverty coupled with the complete inability of the working woman to negotiate the criminal justice for human rights is a major human rights crisis. Once

⁶ AIR 1997 SC 3011.

⁷India ratified CEDAW in July 1993, thereby committing itself to amend or repeal laws inconsistent with the Convention and to ensure that discriminatory practices against women are brought to an end.

the working woman enter the criminal justice system the severe crisis in India's legal aid system ensures that they stay in their despite the right to legal aid enshrined in Article 39A of the Constitution. Even though the judiciary has read the right to legal aid as forming part of the fundamental right to life and used Article 39A to define its scope and content,⁸ the access to quality legal aid has by and large remained a pipe dream for the poor and marginalized who enter the Offences against working women in relation of violation of human rights in large numbers.

LEGAL AID NEEDS UNDERDEVELOPED COMPONENT-

Legal aid is a severely underdeveloped component of the Indian legal system and in dire need of reform. It also needs to be stressed that legal aid is an issue of extreme importance not just to the working woman but also for other groups of woman those suffering by society who are vulnerable such as under trials, those in preventive detention, sex workers and the mentally ill, just to name a few.

4. DALITS WOMAN AND THE VIOLATION OF HUMAN RIGHTS – ESTABLISHED SPECIAL COURTS AND OTHER ISSUES-

There is no substantive discussion anywhere in the Malimath Committee report on the challenges faced by *dalits* in ensuring that the criminal justice system works to protect their rights.⁹ Police inaction and even direct complicity and participation in atrocities against *dalits woman* are a major human rights concern. A large number of cases of torture and custodial violence, rape and sexual abuse, forced evictions, excessive use of force are reported on a regular basis.¹⁰ In its report on caste violence, Human Rights Watch noted, "*Laws designed to ensure that Dalits enjoy equal rights and protection have seldom been enforced. Instead, police refuse to register complaints about violations of the law and rarely prosecute those responsible for abuses that range from murder and rape to exploitative labor practices and forced displacement from Dalit lands and homes.*"¹¹

NEED FOR EFFECTIVE INVESTIGATION-

In the reviewing of India's tenth to fourteenth periodic reports under the convention, the Committee on the Elimination of Racial Discrimination (CERD) called on India to ensure effective investigation, prosecution and just and adequate reparation in cases of caste discrimination.¹² The CERD Committee specifically called for steps to make it "*easier for individuals to seek from the courts just and adequate reparation or satisfaction for any damage suffered as a result of acts of racial discrimination, including acts of discrimination based on belonging to caste or a tribe.*"¹³

⁸M.H. Hoskot v. State of Maharashtra (1978) 3 SCC 544.

⁹ This despite members of the Committee attending a symposium on Criminal Justice Administration and Dalits organized in Lucknow. This has been included in the list of eight meetings in which the Committee members "*actively participated*". See Page 8 of the Report.

¹⁰ See National Campaign on Dalit Human Rights, Dalit Human Rights Violations: Atrocities against Dalits in India - National Public hearing, Volume 1, 2000; Dynamic Action Group, From the Dalits of UP to citizens of India: A Report of the public hearing held in lucknow on October 5 and 6, 2001. See generally www.dalits.org

¹¹Human Rights Watch, Broken People: Caste Violence against India's "*Untouchables*", New York, 1999, page 3.

¹²Consideration of Report by India to the Committee on the Elimination of Racial Discrimination, CERD/C/304/Add.13, September 17, 1996

¹³Ibid.

5. CONCLUSION

GENDER BIAS AND WOMEN TREAT OTHER WOMEN DIFFERENTLY-

Offences against working women in relation of violation of human rights as a problem that only women can deal with sufficiently becomes an excuse to postpone gender sensitization of male officials. It can never be a substitute for effective gender sensitization, which is needed throughout all levels of the judiciary and other institutions of the working women in relation of violation of human rights in criminal justice system. Further a significant assumption here is that women would treat other women differently. This assumption ignores women's position and the inherent role of power in any patriarchal set-up. Creating an environment through positive economic and social political for full development of women to enable them to realize their full potential.

DISCRIMINATION OF WOMAN ABOUT THEIR RIGHTS-

The extent of the failure of the working woman in relation of the violation of human rights to combat caste discrimination seems to have totally escaped the Malimath Committee. Working woman violation of human rights in areas where there are a number of trial courts, some courts should have women judges who would be assigned criminal cases relating to working women. While the concern shown by the Committee for cases relating to working women is creditable, such a move raises concern since it risks leading to women judges being limited to only hearing cases relating to women law and violation of woman rights, leading to in the criminal justice system. For tackling serious economic offences, it is necessary that our Working woman violation of human rights Laws are made compatible with laws of other Countries. Mutual legal assistance, under appropriate Conventions or Treaties or Protocols of the United Nations should be developed for exchange of information of a continuous basis.

SEPARATE CRIMINAL CODE FOR WOMEN AND VIOLATION OF HUMAN RIGHTS-

Concerns about were previously raised when the National Commission for Women (NCW) proposed a separate criminal code for women in 1995-96. This was intended to make the trial less traumatic for women, speed up the criminal judicial process, and it was expected to raise the conviction rate.¹⁴ The proposals were shelved however due to widespread objections. If our society move in the direction of the goals set by the constitution, then special temporary measures will be necessary, to transform de jure into de facto equality.

NEED OF WOMEN (MAHILA) POLICE STATIONS ESTABLISHMENTS-

Studies of all-women (*mahila*) police stations established in various parts of India illustrate the problem. Commenting on the All Women Police Stations (AWPS), one author notes, "*women's issues are not seen by police officers as hard core police work and, hence, there is a tendency to dismiss the work of the AWPS as secondary.*"¹⁵ The same report continues:

"Opportunities for training and skill development are few, and, since there is limited interface between mainstream police officials and women who work in the Mahila Police

¹⁴ Usha Ramanathan, Human Rights in India: A Mapping, IELRC Working Paper No. 2001-3

¹⁵ Nishi Sharma, 'Best Practices among Responses to Domestic Violence in Maharashtra and Madhya Pradesh' in Domestic Violence in India: A Summary Report of Three Studies, International Center for Research on Women: Washington: 1999, p. 26-38.

Thanas, exposure to other aspects of policing is minimal. This is later held against policewomen in matters of promotion. Mahila police stations appear in fact to be seen as punishment postings, outside the ambit of real police work, both by male officials and female officials."

APPOINTING INDEPENDENT PROFESSIONALS FOR WORKING WOMAN CASES-

The practice of appointing serving representatives of regulators on the Board of Directors of financial institutions is discontinued immediately to avoid conflict of interests. To ensure compliance with guidelines of Regulators, the Government may consider appointing independent professionals to represent regulators. An effective co-ordination mechanism must be introduced between the Government and Regulators to detect suspicious activities in time and take prompt action. Violations of environmental laws having serious economic and public health consequences must be dealt with effectively and expeditiously. The Committee recommends the enactment of a law to prove.

VERY LOW CONVICTION RATES

Factors such as these ensure that the conviction rates under this law are very low. Instead of strengthening the law has proposed to make it toothless, by suggesting that the offence be made compoundable and bailable. The law on Working woman under violation of human rights (as it now stands) does have a strong, though limited, deterrent value. It is extremely important that the issue of working woman can be brought into the public from the private sphere by stressing its criminal content instead of projecting it as an exclusively internal matter. The Government of India being a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) is obliged to respond with legitimate and significant legal strategies to fight working woman under violation of human rights.

LACK OF CONSULTATION WITH THE WOMEN'S MOVEMENT IN INDIA-

The recommendations of the Malimath relating to the treatment of women in criminal law demonstrate a lack of consultation with the women's movement in India and insensitivity to current national and international debates on the protection of women's human rights through law. Section 125¹⁶ of the Code provides for giving maintenance to the neglected wife, child etc. The object is to prevent starvation and vagrancy by compelling the person to perform the obligation, which he owes in respect of his wife, child, father, or mother, who is unable to support himself or her. Section 125 should be amended so as to include a woman who was living with the man as his wife for a reasonably long period. Yes this is the right time for women to choose the path to fulfill their dreams and aspirations in the 21st century.

¹⁶ Cr.P.C-1973 of Sec –125 “*Order for Maintenance of wives, Children and Parents.*”
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