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Gender Equality Aiming Women Empowerment: Judges Made Law A Lighthouse

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The Indian society has been traditionally patriarchal in its character, dominated by male-sponsored socio-cultural-political affairs and activities. The women who are otherwise integral part of family, community and society, have stood sidelined for their individual and participatory rights. The advancement of time has not ensured progress of class of women to avail them the equal place in the societal structures. The ideal of gender equality, which a democratic society empowered by Constitutional values would always cherish, has eluded in country's collective walk.

The women individually and as a class wield high degree of strength, efficiency and intellectual power. It is a poignant observation by the Apex Court, '…self sacrifice and self denial are their nobility and fortitude and yet they have been subjected all inequities, indignities, inequality and discrimination', in *Madhu Kishwar v. State of Bihar*[1].

Global Ideal

The equal status and equal opportunities to women is a worldwide advocated socio-natural virtue, especially in progressive democracies. The Convention for Elimination of all Forms of Discrimination Against Women (CEDAW) was ratified by the United Nations Organisation on 18.12.1979. The Government of India ratified it on 19.06.1993 as an active participant to reiterate that the discrimination against women violates the principles of equality of rights. It is an obstacle to the participation on equal terms with men in political, social, economical and cultural life of country. It hampers the growth of the society in general and negates the full development of potentiality of the women. The CEDAW is regarded as Bill of Rights for Women. Article 1 of CEDAW conceptualizes the aspects and facets in the area of inequality to women to be remedied by the society on the country concerned.

United Nations General Secretary Kofi Annan said, 'Gender equality is more than a goal in itself. It is a perception for meeting the challenge of reducing poverty, promoting sustainable development and building good governance'.

[1] (1996) 5 SCC 125.

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Idea of Women Equality

The concept of gender equality and women equality in particular is an ideal to be pursued. It presupposes empowerment of women in the various areas of life and societal affairs to allow them to play key role in their own development and for overall progress of the society on the social, educational, economic, legal and political fronts. Gender equality is the gender justice. The process of availing this gender justice is the Constitutional and legal journey by eliminating all forms of discrimination which may be based on gender biased factors and considerations. Indeed, women empowerment, gender equality and gender justice are just not legal aspects, but they are social goals to be achieved. The process lies in availing the class of women the rights, opportunities and participatory avenues in different spheres. It also lies in ensuring the women the accessibility to the infrastructure and support systems.

John Steward Mill stated in 'Subjugation of Women' that the subordination of one set to another ought to be replaced by principle of perfect equality, admitting no power or privilege on one side, nor disability on the other.

Constitutional Canvass

The fundamental right of equality before law and the equal protection of law encapsulated in Article 14 of the Constitution preaches gender equality. Article 15(1) ensures that discrimination is prohibited on the basis of caste, class, creed, race, sex, etc. Article 15(3) is also a fundamental right which enjoins the state to make special law in relation to class of women to promote their welfare. Article 16 is the another bedrock for non-discrimination which prohibits discrimination in the public employment mandating equal treatment of women in jobs and job conditions.

Article 39A in part IV of the Constitution, dealing with the directive principles of state policy says that the State shall guide its policies towards securing equality for all citizens, both men and women. The women have the right to adequate means of livelihood, equal pay for equal work and equal treatment with men in the matters of health. The fundamental rights and the directive principles of state policy are two wheels of one chariot and the courts would read and apply the directive principles while interpreting and expanding the fundamental rights. The rights on several fronts have been accorded to the women imbibing the philosophy of gender equality and gender neutrality, blending the fundamental rights and directive principles.

The other Articles in our Constitution from which the principles of gender equality with reference to women, would emanate and could be professed, are Articles 15(2), 42, 46, 47 and 51A, the last of which is fundamental duties. The 73rd and 74th Constitutional Amendments guarantee political rights of participation to the women at the grassroots level democratic institutions like Panchayats and

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Municipalities, to further the idea of gender non-discrimination, and socio-political empowerment.

The various decisions of the Supreme Court on the subject of equality and equal status to women, have the rich intake of all these considerations.

Daughter In Family

It was said by one of the greatest Germans – 'the Eternal Feminine draws us upwards'.

Although it is acknowledged in a Sanskrit saying that the Goddess resides at the place where the woman gets respect, and even as since the Rig Vedic times, the women and daughters hold special position in the family in terms of performance of ceremonies, and the educational rights were also extended in the progressive segments of the society, the daughters were not permitted to hold any possession of property, nor the daughters would get share from her father's property. They were not able to ask the share from their brothers. The ice is now broken by the Apex Court. The inequality in the inheritance rights, has now been cured by ensuring gender equality in this sphere.

The path-breaking law laid down by the Supreme Court in ensuring equality of status and in balancing of rights for the female member in the coparcenery of Hindu family governed under the Mitakshara Law, was in a more recent decision in *Vineeta Sharma v. Rakesh Sharma and others*[2]. Dealing with provision of Section 6 of the Hindu Succession Act, 1956, substituted by Hindu Succession (Amendment) Act, 2005, with effect from 09.09.2005, the Supreme Court extended right for the daughter in the coparcenary property under Section 6 of the Act.

The Apex Court stated that the coparcenary right is by birth. It is not to be the requirement that the coparcener father was alive on the date of commencing into force of the amendment. The daughter born before the date of enforcement of the 2005 Amendment Act will have now the same rights as daughter born on or after the amendment. If the daughter is alive on the date of enforcement of 2005 Amendment, she becomes a coparcener with effect from the date of amendment, irrespective of whether she was born before the said amendment with a right to seek partition.

Coparcenary Rights

> Stated the Supreme Court, ensuring coparcenary rights for the daughters,
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> "In this way, now by legal fiction, daughters are treated as coparceners. Considering the principle of coparcenary that a

[2] (2020) 9 SCC 1

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> person is conferred the rights in the Mitakshara coparcenary by birth, similarly, the daughter has been recognized and treated as a coparcener, with equal rights and liabilities as of that of a son. The expression used in Section 6 is that she becomes coparcener in the same manner as a son. By adoption also, the status of coparcener can be conferred. The concept of uncodified Hindu law of unobstructed heritage (where right is created by birth) has been given a concrete shape under the provisions of Section 6(1)(a) and 6(1)(b). Coparcener right is by birth….. Survivorship is the mode of succession, not that of the formation of a coparcenary. As the right is by birth and not by dint of inheritance, it is irrelevant that a coparcener whose daughter is conferred with the rights is alive or not. Conferral is not based on the death of a father or other coparcener."

Thus, the interpretation by the Supreme Court to the amended provisions of Hindu Succession Act, in particular Section 6(1), informed the doctrine of equality to be applied in the Hindu coparcenary treating the daughters at par with the son. Section 6(1)(a) makes the daughter by birth a coparcener 'in her own right' and 'in the same manner as the son'. The concept of unobstructed heritage contained in Section 6(1)(a) applicable to be Mithakshara coparcenary, and Section 6(1)(b) which confers the same rights on the coparcenary property 'as she would have had if she had been a son' is the reaffirmation of the cherished ideal of equality of status to women in the society.

The charity begins at home. The equal treatment in family and property matters and in respect of inheritance rights, would echo long and pervasive in the family and social fabric of Hindu society.

Horrid Practice Against Equality

The Supreme Court is against the evil of bride burning in *Ashok Kumar v. State of Rajasthan*[3], was indeed a quest for gender equality. It was an exasperation of the court towards inhumane and regressive treatment to the class of poor brides in our society. One Asha Rani was murdered. Why? Painfully, just for Rs.5,000/- for an Autorickshaw which her father and seven daughters could not afford even though he suffered the ignominy of her being beaten in his presence by her in-laws at his own house. The judgment of the High Court setting aside the order of acquittal was upheld by the Supreme Court.

Observing that the bride burning is a shame on our society, that poor never resorted and the rich do not need it,

> "Obviously because it is basically an economic problem of a class which suffers both from ego and complex. Unfortunately,

[3] AIR 1990 SC 2134

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> the high price rise and ever increasing cost of living coupled with enormous growth of consumer goods effacing difference between luxury and essential goods appear to be luring even the new generation of youth, of the best service, to be as much part of the dowry menace as their parents and the resultant evils flowing out of it."[4]

The Apex Court rightly stated that 'dowry killing was a crime of its own kind where elimination of daughter-in-law becomes immediate necessity if she or her parents are not able to satiate to read and avarice of her husband and their family members, to make the boy available, once again in the marriage market'. It was advocated that the social reformists and legal jurists have to evolve a machinery for debarring such a boy from remarriage irrespective of the fact that they would be penalised for the crime.

The social ostracism is needed to curtail increasing evil of bride burning. The matrimony should bring for woman a freedom with protection, rather than imprisoned status. The marriage must become a source of freedom-based self development and happiness.

Realm of Reproductive Rights

The victim was ascertained to be the age of 19 to 20 years. She was a mentally retarded girl. She had become pregnant as a result of an alleged rape that took place when she was an inmate at a Government run Welfare Institution in Chandigarh. After the pregnancy was medically detected, the Chandigarh Administration approached the High Court to seek approval for termination of her pregnancy, with an additional aspect that she was mentally retarded and an orphan without parent or guardian to look after her or her prospective child. The High Court directed the termination of pregnancy inspite of the fact that the expert body consisting of medical experts and a Judicial Officer rendered opinion *inter alia* that the victim had expressed her willingness to bear the child.

The Supreme Court in the context of Sections 3 and 4 of the Medical Termination of Pregnancy Act read with Article 21 of the Constitution, in terms held that personal liberty under Article 21 includes right of women to make reproductive choices. The rationale was explained. Firstly, whether it was correct to direct the termination of pregnancy without consent for the reason that the relevant provisions of the Medical Termination of Pregnancy Act clearly indicates that consent is an essential condition for performing an abortion on the women who has attained the age of majority and does not suffer from any 'mental illness'. The second aspect weighed with the Court was even if the women was mentally incapable of making informed decision, the Court could exercise *Parens Patriae* jurisdiction.

[4] Para 4

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The claim of the State that it is the guardian of the pregnant victim since she was an orphan and placed in the Welfare Institution, did not find favour with the Court. It was viewed by the Supreme Court that the claim of State to guardianship cannot be mechanically extended in order to make decision about the termination of her pregnancy and it was observed and held in paragraph 13 that the condition of the victim was described as 'mild mental retardation' and that it was different from the condition of a 'mentally ill person', which is contemplated in Section 3(4)(f) of the Medical Termination of Pregnancy Act. It was observed that, two expressions namely 'mentally ill person' and 'mental retardation' were different. Similar distinction is found in the Persons with Disabilities (Equal Opportunities from Protection of Rights and Full Participation) Act, 1995.

Right of Choice

The Supreme Court laid down seminal principles to further the concept of gender equality,

> "There is no doubt that a woman's right to make reproductive choices is also a dimension of 'personal liberty' as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman's right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman's right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods."

The court proceeded to state,

> "Women are also free to chose birth-control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman's entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children".

It was yet another decision in *X v. Principal Secretary, Health and Family Welfare Department*[5], in which the Supreme Court attaching purposive interpretation to section 3(2)(b) of the Medical Termination of Pregnancy Act, 1971, upheld the right of choice and right to live a reality, of a 25 years old victim, who was an unmarried woman becoming pregnant, as a result of consensual relationship with a partner who refused to marry her at the last stage.

[5] (2023) 9 SCC 444

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The appellant who was the eldest among the five siblings and whose parents were agriculturists, wished to terminate her pregnancy as he was afraid of social stigma and harassment and further that in absence of source of livelihood, she was not mentally prepared to raise and nurture the child as an unmarried mother. The High Court dismissed the plea on the ground that Section 3(2)(b) of the Act was inapplicable to an unmarried woman whose pregnancy arose out of consensual relationship.

The Supreme Court observed that the social stigma which women face for engaging in premarital sexual relationship prevent them from right to reproductive health. Applying the purposive interpretation to this Section, the Apex Court observed that the intention of the Legislation was not to restrict the benefit of Section 3(2)(b) and Rule 3B of the Rules only to woman who may be confronted with a marital altercation in the circumstances, but the benefit must extend to all women, and stated,

> "If Rule 3-B(c) was to the interpreted such that its benefits extended only to married women, it would perpetuate the stereotype and socially held notion that only married women indulge in sexual intercourse, and that consequently, the benefits in law ought to extend only to them."[6]

It was held that the artificial distinction between the married and single women is not constitutionally sustainable. The benefits in law have to extend equally to both single and married women.

Equality in Maintenance Rights

Charles Fourier stated, 'the extension of womens' right is the basic principle of all social progress'.

Personal Law Subjugated:

It was in the earlier times of 1979 that in *Bai Thira v. Ali Hussain Fidaalli Chothia*[7], the Supreme Court progressively ruled that the divorced wife has a right to maintenance. It was stated that Section 125 of the Code of Criminal Procedure, 1973 requires a *sine-equa-non* for its application neglect by husband. The Court observed that no husband can claim under Section 127(3)(b) absolution from his obligation to pay maintenance to a divorced wife and that the payment of illusionary amount by way of customary or personal law requirements may be adjusted in the maintenance rate, but it cannot any rate become a reasonable substitute. It was observed that there must be a rational relationship between the sum so paid and its potential as provision for maintenance. The submission was negatived that the

[6] Para 97

[7] AIR 1979 SC 362

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absence of mutual consensus to live separately must be made out if order of Section 125(4) is to be overcome.

The Supreme Court stated that, "divorce painfully implies that the husband orders her out of the conjugal form. If law has nexus with life, this argument is still born."

There was another decision in *Fuzlunbi v. K. Khader Vali*[8], in which the principle was reiterated that the payment towards maintenance under customary law must be reasonable and not illusionary amount. Unless the same is realistically sufficient to maintain the ex-wife and salvage her from destitution, it could not be considered the maintenance in law. The Apex Court observed that the payment of Mehar under the Mohammedan Law whether prompt or referred, was clearly not a contemplated quantification of a sum of money in lieu of maintenance upon divorce. Noticing that such customary divorce upon payment of paltry sum of money amongst some castes were in un-common, it was stated that Mehar as understood in Mohammedan Law cannot under any circumstances be considered as consideration to divorce as the payment made in lieu of loss of connubial relationship.

Emergence of Shah Bano

The decisions of the Supreme Court in *Bai Thira v. Ali Hussain Fidaalli Chothia*[9] and *Fuzlunbi v. K. Khader Vali*[10] had already taken a progressive view that the muslim wife is entitled to the maintenance under Section 125 of the Code of Criminal Procedure, 1973. Subsequently, a bench of the Apex Court doubted the dictum, which led to emergence of the well known Shah Bano case in *Mohd. Ahmed Khan v. Shah Bano Begum*[11].

The Supreme Court asked the question to itself irrespective of the aspect that the muslim husband enjoys the privilege to be able to discard his wife whenever he chooses for good, bad or independent reasons, does the Muslim Personal Law impose no obligation upon the husband to provide for the maintenance of his divorced wife. The Court was pained to say that the question and the attendant aspects were agonizing. It observed that the law cannot be so ruthless in its inequality that no matter how much the husband pays for the maintenance of his divorced wife during the period of iddat, the mere fact that he paid something and no matter how little, would it absolve him ever from the duty of paying adequately to enable the wife to keep her body and soul together.

Drawing a far reaching principle by interpreting clause (b) of Explanation to Section 125(1), CrPC which defines Wife, it was held that the word 'Wife' has in no way limited import to exclude the muslim women. It was held that the divorced muslim women so long as not remarried, is a 'wife' for the purpose of Section 125.

[8] AIR 1980 SC 1730
[9] AIR 1979 SC 362
[10] AIR 1980 SC 1730
[11] AIR 1985 SC 945

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More importantly, the statutory right to maintenance flowing from the provision would remain unaffected by the provisions of the personal law applicable to her. It was ruled that the Explanation to the Second Proviso to Section 125(3), which confers upon the wife the right to refuse to live with the husband if he contacts another marriage, go to show unmistakably that Section 125 over-rides personal law.

Equality With Social Reform

Inequality to women originate, quite often than not from family traditions, social taboos or religious practices. Bombay High Court in *State of Bombay v. Narasu Appa Mali*[12], while considering the validity of the Bombay Prevention of Hindu Bigamus Marriages Act, 1946 on the ground of violation of Articles 14, 15 and 25 of the Constitution noted the distinction between the religious faith and belief on one hand and, religious practices on the other hand, to observe that if the religious practices run counter to morality or social welfare, they must give way for the good of the people as a whole.

Not accepting the proposition that the polygamy is an integral part of Hindu religion, the Court observed,

> "If, therefore, the State of Bombay compels Hindus to become monogamists, it is a measure of social reform, and if it is a measure of social reform then the State id empowered to legislate with regard to social reform under Article 25(2)(b) notwithstanding the fact that it may interfere with the right of a citizen freely to profess, practice and propagate religion."

The philosophy that the social reform measure could be brought under the umbrella of Article 25 even if it interferes with the right of citizen to practice religion was applied by the Supreme Court in *Shayara Banu v. Union of India and others*[13], popularly known as Triple Talaq verdict, in which Supreme court by majority judgment held in the context of the Muslim Personal Law (Shariat) Application Act, 1937, that the Triple Talaq or Talaq-e-biddat followed as muslim religious practice is violative of fundamental right of muslim women and that it is unconstitutional. It was held that the 1937 Act when it seeks to recognize and enforce Triple Talaq, is within the meaning of expression 'Laws in force' in Article 13(1) of the Constitution and has to be struck down as void to the extent it approves and enforces such religious practices.

[12] AIR 1952 Bombay 84

[13] AIR 2017 SC 4609

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Aberrant Practice Ended

The muslim husbands used to practice razor-sharp arbitrariness by divorcing their wives at their sweet will with Triple Talaq. It was not to be approved even if such right was claimable under personal law.

A brighter facet of Article 14 of the Constitution was discovered by the Court to held that a manifest arbitrariness would be ground which could be applied to negate legislation. It was observed,

> "Given fact that Triple Talaq is instant and irrevocable, it is obvious that any attempt at reconciliation between husband and wife by two arbiters from their families, which is essential to save marital tie, cannot ever take place. Also, it is clear that this form of Talaq is manifestly arbitrary in sense that marital tie can be broken capriciously and whimsically by Muslim man without any attempt at reconciliation so as to save it."

This form of Talaq was held to be violative of fundamental right contained under Article 14 of Constitution of India. It was held that, 1937 Act, insofar as it seeks to recognize and enforce Triple Talaq, is within meaning of expression "laws in force" in Article 13(1) was struck down as void to extent that it recognizes and enforces Triple Talaq.

The protection of equality in law and equality before law for the muslim women treated with capricious and arbitrary approach of Talaq-e-biddat by the wanton husbands was taken to its peak by the Supreme Court when it was held that there is a right to approach the Apex Court to challenge the personal laws on the ground of infringement of fundamental rights.

Secular 125, CrPC

One Mohd. Abdul Samad was ordered by the Family Court in Telangana to pay monthly maintenance to his ex-wife. Said Samad had divorced his wife through Triple Talaq. The Triple Talaq was outlawed by the Supreme Court in *Shayara Bano's* case. The subsequent legislation – The Muslim Women (Protection of Rights on Marriage) Act, 2019 criminalized the Act of Triple Talaq.

It was a more recent decision of the Supreme Court in *Mohd. Abdul Samad v. State of Telangana and another*[14], in which the contention of the husband was rejected that the Muslim Women (Protection of Rights on Divorce) Act, 2019 over-rides Section 125, CrPC.

The legislation of 1986 was enacted at the instance of the then Government seeking to soften the impact of decision in Shah Bano case. The Supreme Court held that

[14] Criminal Appeal No.2842 of 2024 decided on 10th July 2024

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Section 125, CrPC applies to muslim women also and that the 1986 Act is not a substitute for Section 125, nor it has supplanted Section 125 CrPC.

Excluding Section 125 CrPC for divorced muslim woman would be in violation of Article 15(1) of the Constitution which states that the State shall not discriminate on the ground of religion, race, caste, sex, place of birth, etc.

The Court ruled that Section 125 and 1986 legislation operates simultaneously and parallelly exist in their distinct domain at the option of a divorced muslim woman. One of the Hon'ble Judge in the bench in her separate judgment observed that although the provisions of 1986 Act have been upheld by the Constitution bench in the decision in Danial Latifi v. Union of India [(2001) 7 SCC 740], the same would not in any way restrict the application of Section 125, CrPC to a divorced muslim woman.

Maintenance as Empowerment

A woman who has been divorced in a valid manner, she can approach the Magistrate under the 1986 Act, but if she is victim of mischief under 2019 Act, then her right to subsistence allowance is secured through Section 5 of 2019 Act, said the Supreme Court. The intent of the Parliament is to provide adequate remedies to women from economic depravation which may result from marital discord, irrespective of their status as a married or divorced woman. The court disseminated the philosophy about the vulnerability of married women in India who do not have an independent source of income or who do not have access to monetary resources in their households particularly for their personal expenses,

> "….But what is the position of a married woman who is often referred to as a "homemaker" and who does not have an independent source of income, whatsoever, and is totally dependent for her financial resources on her husband and on his family? It is well-known that such an Indian homemaker tries to save as much money as possible from the monthly household budget, not only to augment the financial resources of the family but possibly to also save a small portion for her personal expenses."

Equality Through Security

The Supreme Court opined that some husbands are not conscious of the fact that the wife who has no independent source of finance is dependent on them not only emotionally but also financially. On the other hand, a wife who is referred to as a homemaker is working throughout the day for the welfare of the family without expecting anything in return except possibly love and affection, a sense of comfort and respect from her husband and his family which are towards her emotional security. This may also be lacking in certain households.

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It was observed,

> "….an Indian married man must become conscious of the fact that he would have to financially empower and provide for his wife, who does not have an independent source of income, by making available financial resources particularly towards her personal needs; in other words, giving access to his financial resources. Such financial empowerment would place such a vulnerable wife in a more secure position in the family. Those Indian married men who are conscious of this aspect and who make available their financial resources for their spouse towards their personal expenses, apart from household expenditure."

Thus, the financial security as well as the security of residence of Indian women who are emphasized to be protected and enhanced to observe further that it would truly empower such Indian women who are referred to as homemakers and who are the strength and backbone of Indian family which is the fundamental unit of Indian society. The Supreme Court stated that a stable family which is emotionally connected and secured provides stability to the society at large. These are the moral and ethical values, proceeded the Supreme Court to observe, which are inherited by succeeding generation which would go a long way in building Indian society and that it is the mandate of present times.

At Workplace

Extension of greater opportunities and providing wider participations to the women at the workplaces and promoting them to work with men, may be a effective measure to accord the class of women an equal status in the society. However, because of avoidable family traditions or regressive perceptions, as also on account of the obvious impediment on the gender lines, the women in our Country have chosen to stay back.

The barrier on this front was endeavored to be removed by the Supreme Court when in *Vishaka v. State of Rajasthan*[15], the Court showed its strong disapproval to the evil of the culture of sexual abuse or sexual harassment of working women at the work place, holding that the trio-Articles 14, 19 and 21 guarantee gender equality and right to work with human dignity for the women. The Supreme Court intertwined the ideals of International Conventions.

The writ petition was filed by an NGO where the cause for filing was the alleged brutal gang rape of a social worker in a village of Rajasthan, which revealed the hazards to which working women become prone to be exposed. The sensitive court noticed about the deprivity to which sexual harassment to women can degenerate. The Court framed the guidelines in exercise of powers of Article 32 of the

[15] AIR 1997 SC 3011

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Constitution recommending for exhaustive legislation on this count, to ensure the prevention of sexual harassment to the women at the workplace.

The Supreme Court observed that each incident of sexual harassment of women at workplace results into violation of fundamental rights of gender equality. It was held that, 'the meaning and content of fundamental rights guaranteed in the Constitution are of sufficient amplitude to encompass all the facets of gender equality including prevention of sexual harassment or abuse.'

At the time when the judgment was delivered, there was no Legislation in force in the area. The Supreme Court innovated the principle to frame the guidelines to achieve the purpose of safeguarding the class of working women against sexual harassment, with intake of the contents of the International Conventions and norms, interpreting the guarantee of gender equality and women's dignity at workplace, as flowing from Articles 14, 15 and 19(1)(g) of the Constitution.

This judgment sowed the seeds of enactment of law called Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the provisions of which ensure equal and dignified treatment to women.

The sexual harassment at workplace is now legally viewed as violation of women's right of equality, life and liberty and that it creates insecure and hostile work environment, discouraging women's participation in work to thwart their socio-economic empowerment. The Act contemplates as mandatory the constitution of Internal Complaints Committee by every employer as defined in Section 2(g) of the Act. The machinery for submitting compliant of sexual harassment and for enquiry into the complaints is provided, duty is cast on the employer for providing safe working environment, display of penal consequences, organising the workshops and awareness programmes, etc.

While In Service

The decisions are several in which the courts have struck down the rule which operate to discriminate, deprive of equality, or humiliate the womenfolk in the workplaces and working conditions. In *Punjab National Bank v. Atamijadas*[16], it was held that a woman can avail leave for a period of six weeks from the date immediately following the day of her delivery or medical termination of pregnancy as noted in *Neera Mathur v. LIC*[17], the case was that woman candidate was required to furnish information about her menstrual period, pregnancy and miscarriage. The Supreme Court declared that it was embarrassing and humiliating. The Court directed the LIC to delete the columns which require information of such nature. In *Maya Devi v. State of Maharashtra*[18], the Court stated that the stipulation which required a married woman to obtain her husband's consent before applying for

[16] (2008) 3 LLJ 58 (SC)
[17] (1992) 1 SCC 286
[18] (1986) 1 SCR 743

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public employment was not only invalid and unconstitutional, but of the nature of an anachronistic obstacle to woman's equality. In *Bank Officers' Association v. State Bank of India*[19], the Apex Court highlighted the history and evolution of the principle 'equal pay for equal work', which in its origin had the idea of eliminating sex-based discrimination in the pay scales between men and women doing the same nature of work.

Parity in Work Conditions

The Supreme Court in *Air India v. Nergesh Meerza*[20], dealt with the Air India employees service regulations to hold that Regulation 46(i)(c) was unconstitutional which contained the provision to retire the Air Hostesses on first pregnancy. Striking down the provision as violative of Article 14, the Supreme Court sent a message that it was much concerned about the gender equality in applying the service regulations to the women at the workplace.

In *Mackinnon Mackenzie and Co. Ltd. v. Audrey D' Costa*[21], the Court dealt with the case where female stenographers and male stenographers were meted out different treatment in the conditions of work to drive out the women from particular type of work, with a view to pay them the less salary. The following observations only beacon the commitment of the Court to gender equality,

> "It may be that the management was not employing any male as a Confidential Stenographer attached to the senior executives in its establishment and that there was no transfer of Confidential Lady Stenographers to the general pool of Stenographers where males were working. It, however, ought not to make any difference for purposes of the application of the Act when once it is established that the lady Stenographers were doing practically the same kind of work which the male Stenographers were discharging."[22]

It was then stated that the employer is bound to pay the same remuneration to both of them irrespective of the place where they were working unless it is shown that the women are not fit to do the work of the male Stenographers. Nor can the management deliberately create such conditions of work only with the object of driving away women from a particular type of work which they can otherwise perform with the object of paying them less remuneration elsewhere in its establishment.

[19] (1998) 1 SCC 429
[20] AIR 1981 SC 1829
[21] (1987) 2 SCC 469
[22] Para 9

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No to Physiological-biological Notions

The decision in *Secretary, Ministry of Defense v. Babita Punia*[23], ensured the application of the ideal of gender equality in the armed services. The Supreme Court was dealing with the issue of grant of Permanent Commissions to Women Short Service Commission Officers. The proposal which was mooted by the government had distinguished the women Officers who were in service for less than fourteen years, and those who had rendered services beyond fourteen years, by envisaging that only those women officers with less than fourteen years of services would be considered for grant of Permanent Commissions.

It was viewed with the lens of gender equality that not only there was a fundamental fallacy in the distinction made, but such differentiation was founded on the stereotypes, premised on the assumptions about socially ascribed roles of gender discrimination against the women. The provision was deprecated as an affront against the dignity of women as well as dignity of Indian Army.

The policy decision of the Union Government was lauded when it allowed the Permanent Commissions to women was to be welcome, but for its conditional operation which resulted into a gender discrimination and denial of equality of opportunity, observing,

> "… The decision of the Union Government to extend the grant of PC to other corps in the support arms and services recognizes that the physiological features of a woman have no significant to her equal entitlements under the Constitution."[24]

Changing Mindset

What was emphasized was that there is a need to change, the pre-colonial notions and that the attitude and mindsets were still to undergo a change even after 75 years. The justification given for treating the women officers in the Army differently, was frowned upon,

> "Underlying the statement that it is a "greater challenge" for women officers to meet the hazards of service "owing to their prolonged absence during pregnancy, motherhood and domestic obligations towards their children and families" is a strong stereotype which assumes that domestic obligations rest solely on women. Reliance on the "inherent physiological differences between men and women" rests in a deeply entrenched stereotypical and constitutionally flawed notion that women are the "weaker" sex and may not undertake tasks that are "too arduous" for them."[25]

[23] (2020) 7 SCC 469

[24] Para 67

[25] Paras 68 and 69

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The court opined that the arguments founded on the physical strengths and weaknesses of men and women and on assumptions about women in the social context of marriage and family do not constitute a constitutionally valid basis for denying equal opportunity to women officers.

> "To deny the grant of PCs to women officers on the ground that this would upset the "peculiar dynamics" in a unit casts an undue burden on women officers which has been claimed as a ground for excluding women."[26]

The physical strength and weaknesses of men and women do not provide basis for constitutionality valid classification emphasized the Apex court.

No Equality Without Opportunity

Unless opportunities are made available, the equality would remain a myth. *In Charu Khuranna v. Union of India*[27], the Supreme Court, observing that the equality of opportunity is essential to attainment of equality, disapproved bye-laws of Cine Costume Make-up Artists and Hair Dressers Association in Maharashtra, which was registered under Trade Union Act, 1926. The membership card was denied to the petitioner as a 'make-up artist and hair stylist' and she was compelled to delete the words 'make-up artist' from her application. Not only that when the petitioner was found to be working as make-up artist, fine was imposed on her.

The petitioner was a Hollywood trained make-up artist and hair stylist who wanted from the Association a membership card as a make-up artist and hair stylist. She was forced to apply only as a hair dresser. Holding that it was a discriminatory practice in the field of employment in the film industry, the Supreme Court observed,

> "When the access or entry is denied, Article 21 of the Constitution which deals with livelihood is offended. It also works against fundamental human rights. Such kind of debarment creates a concavity in her capacity to earn her livelihood. A clause in the bye-laws of a trade union, which calls itself an Association, which is accepted by the statutory authority, cannot play foul of Article 21. The discrimination done by the Association, a trade union registered under the Act, whose rules have been accepted, cannot take the route of the discrimination solely on the basis of sex. It really plays foul of the statutory provisions."[28]

Gender equality is recognized as a fundamental right. It is violative of constitutional values and norms. If a female artist does not get an opportunity to

[26] Paras 68 and 69
[27] (2015) SCC 192
[28] Paras 44 to 46, 51 and 52

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enter into the arena of being a member of R-5 Association, she cannot work as a female make-up artist, stated the Supreme Court.

Equality Worshipped

Lord Denning in his Book, 'Due process of law', observed that a women feels as keenly, thinks as clearly, as a man. She in her sphere does work as useful as man does in his. She has as much right to her freedom-develop her personality to the full-as a man. When she marries, she does not become the husband's servant but his equal partner. If his work is more important in life of the community, her's is more important in the life of the family. Neither can do without the other. Neither is above the other or under the other. They are equals."

"It is a universal truth that faith and religion do not countenance discrimination, but religious practices are sometimes seen as perpetuating patriarch thereby negating the basic tenets of faith and of gender equality and rights", viewed the Supreme Court. The Sabarimala Temple in Kerala had an age old practice of debarring the female devotees between the age group of 10 to 50 years from entering and worshiping Lord Ayyappa Temple and such permission was denied to them on the basis of certain custom and usage.

In a writ petition filed by petitioner-*Indian Young Lawyers Association and others (Sabarimala Temple, in Re) v. State of Kerala*[29], directions were sought against the Government of Kerala, Devaswom Board of Travancore, Chief Thanthri of Sabarimala Temple and the District Magistrate of Pathanamthitta to ensure entry of women worshippers between the above age group in the Temple. In that context, challenge was lost to the Constitutionality of Rule 3(b) of the Kerala Hindu Places and Public Worship (Authorisation of Entry) Rules, 1965 framed under the powers conferred under Section 4 of the Kerala Hindu Places and Public Worship (Authorisation of Entry) Act, 1965.

Equality In Religious Freedom

Ruling per majority that the restriction on right of women of age group of 10 to 50 years to entry into Sabarimala Temple for worship of Lord Ayyappa was violative of Article 25 of the Constitution, the Apex Court extensively disseminated its philosophy about equal right of women to religious freedom, the participatory rights for women in a religious activity to be fundamental right inhering the Constitutional vision of equality and necessary facet of constitutional morality. It was stated that the 'morality' in Article 25(1) of the Constitution means 'Constitutional morality'.

The equality premise on which the judgment of the Supreme Court was rested was that "patriarchy in religion cannot be permitted to triumph over the element of pure devotee borne out of faith and the freedom to practice and profess one's religion.

[29] (2109) 11 SCC 1

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The subversion and depression of women under the garb of biological of physiological factors cannot be given the seal of legitimacy", and that "any rule based on discrimination or segregation of women pertaining to biological characteristic is not only unfounded, indefensible and implausible, but can never pass the muster of constitutionality".

It was beautifully stated that any relationship is the Creator is a transcendental one crossing all socially created artificial barriers and not a negotiated relationship bound by terms and conditions and that such a relationship and expression of devotion cannot be circumscribed by dogmatic notions or biological or physiological factors arising out of rigid socio-cultural attitudes not meeting the prescribed test of constitutionality.

Right To Be Included

It was held that Article 25 is a gender neutral and confers interfaith as well as intrafaith parity. The women cannot be excluded from entering into the Temple to denude them their right to worship. The Court stated that the fundamental right claimed by Thanthris and worshippers of Sabarimala Temple based on the customs and usage under very Article 25(1) must necessarily yield to the fundamental right of women in as much as women are equally entitled to right to practice religion.

This right would be meaningless, unless they are permitted to enter the Temple and worship the Idol. Argument was negatived that all women are not prohibited from entering the Temple or that they can worship other Ayyappa Temples, as it would amount denial of their fundamental right to practice religion. The right to practice religion which was claimed by the Thanthris and worshippers was balanced with the right of the women.

The women irrespective of age group were held entitled to enter the Temple. The right of women between the ages of 10 to 50 who were completely debarred from entering the Sabarimala Temple based on biological ground of menstruation, was permitted to be overridden as their fundamental right to practice religion, over the view and the claim asserted by the Priests. The Court observed that in public Temples like Sabarimala the right of entrance flows from nature of institution itself. For claiming such rights, no custom or usage needs to be asserted or proved.

Political Empowerment

Availing the opportunities to the women in the areas of country's governance at all levels of democratic institutions is a necessary facet of ensuring for them equality with empowerment. The governance, administration and politics need not remain a male centric.

The reservations of seats for women in the grassroot level democratic institutions like panchayats and municipalities are provided under Articles 243D and 243T of the Constitution, introduced by 73rd and 74th Amendment. The purpose of these

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Constitutional Amendments is that the women in India are able to participate more in democratic setup especially at all levels.

> The Supreme Court in *Charu Khuranna (supra)* observed,
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> "This is an affirmative step in the realm of women empowerment. The 73rd and 74th Amendments of the constitution which deal with the reservation of women has the avowed purpose, that is, the women should become parties in the decision-making process in a democracy that is governed by the rule of law. Their active participation in the decision-making process has been accentuated upon and the secondary role which was historically given to women has been sought to be metamorphosed to the primary one."

The Women's Bill which gives 33.3% reservation for women at various levels has been passed by Rajya Sabha and also by the Lower House of the Parliament. When brought into effect, it will guarantee 181 out of 543 seats at the Parliamentary level, and 1370 seats out of 4109 seats at the State Assembly level for the women. This is considered to be a significant steps towards women equality and women empowerment.

It is matter of satisfaction that the graph of women's' representation starting from First Lok Sabha to Eighteenth Lok Sabha has tilted upward. The First Lok Sabha had 22 women MPs which in percentage was 4.50. The figure increased almost continuously in every succeeding election to the house of the people. In Tenth Lok Sabha, the percentage was 7.87 with 42 number of women MPs. In Fifteenth Lok Sabha, the percentage was 10.68 and number of women MPs were 58. In Seventeenth and Eighteenth Lok Sabha respectively, 78 and 74 women MPs were elected.

Powerhouse

Summing up with the words of Swami Vivekananda, who had said: 'Just as a bird could not fly with one wing only, a Nation would not march forward if the women are left behind'.

Undoubtedly, this teaching is imbibed, inculcated and practiced not by the Country's law makers and elected legislators in the degree much lesser, than it is done by the judiciary through the Judge made law.

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