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## JUDICIAL ACTIVISM AND WOMEN EMPOWERMENT

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**Abstract:** violations against women- protection to them through law and judiciary. Women are disproportionately subjected to inequality and various forms of gender oriented exploitation by way of religion, custom, and culture and by laws. This paper is an attempt to expose how Indian Judiciary through its activism plays an important role in protection of their rights and where by empowerment of women can be achieved

**Keywords:** violations, women, judicial activism, empowerment.

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**Introduction:** Mary McLeod Bethune quoted “Whatever glory belongs to the race for a development unprecedented in history for the given length of time, a full share belongs to the womanhood of the race”. In India women held a high place of respect in the society in olden day as mentioned in Rigveda and other scriptures. But later on, women lost their status and were relegated to the dark corner of the society. Millions of women have to struggle with acute gender discrimination. The existing patriarchal system leads to unequal status of women, render the latter succumb to exploitation, oppression, deprivation and destitution. Recently, a global perception survey has pointed out India as the fourth most dangerous country in the world for women with high level female infanticide. Our constitution guarantees women equality of opportunity and wage and disallows gender bias. In spite of these commitments and realizations; however, there is universal consistency in the fact that those who are female are disproportionately subjected to inequality and various forms of gender oriented exploitation by way of religion, custom, and culture and by laws. This paper is an attempt to expose how Indian Judiciary through its activism plays an important role in protection of their rights and where by empowerment of women can be achieved.

In India, the Constitution makers while drafting the Constitution were profound to the problems faced by women and made specific provisions relating to them. But whenever there is a vacuum it is the Judiciary which through its interpretation of constitutional and statutory provision in favour of women empowers them. In our Country Judiciary is known as the independent wing of government. This Independent Judiciary has two roles 1) the traditional role i.e. to interpret the laws, and another is 2) Judicial activism i.e. to go beyond the statute and to exercise the discretionary power to provide justice. Credibility of Judicial process ultimately depends on the manner of doing administration of justice. Justice K. Subba Rao explains the function of the Judiciary as thus “It is a balancing wheel of the federation; It keeps equilibrium between fundamental rights and

social justice; It forms all forms of authorities within the bounds; It controls the Administrative Tribunals. Judges are entertaining the discretionary power to deliver better justice to women in the new context of the Socio-Economic conditions. Judiciary has played an active role in enforcing and strengthening the constitutional goals towards protecting the rights of the women”[1]. The courts in India have tried to interpret laws in harmony with the international treaties and conventions.

**Judiciary in the case of gender justice:** Judiciary has made enormous contribution to strike the balance between discrimination caused to the women and availing them of justice against such discrimination. In *C. B. Muthamma v. Union of India* (AIR 1979 SC 1868), a service rule whereby marriage was a disability for appointment to Foreign Service was declared unconstitutional by the Supreme Court [2]. In *Air India vs. Nargesh Meerza* (AIR 1981 SC 1829), the Air India and Indian Airlines Regulation were challenged as it violate Article 14 of the Indian Constitution [3]. The Supreme Court struck down the Regulation providing for retirement of the Air Hostess on her first pregnancy, as it is unconstitutional. The Court explained that the Regulation did not prohibit marriage after four years of joining service and if an Air Hostess after having fulfilled the first condition became pregnant, there was no reason why pregnancy should stand in the way of her continuing in service. After utilizing her service for four years, to terminate her service if she became pregnant, court said, amounted to compelling the poor Air Hostess, not to have any children. It thus amounted to interfere with and divert the ordinary course of human nature. It was held not only a cold-hearted and cruel act but an open insult to Indian Womanhood. Court also observed it was not only manifestly unreasonable and arbitrary but contained the equality of unfairness and exhibited naked despotism and was, therefore, clearly violate Article 14.

**Judiciary in protecting her person and personal liberty:** In *Vishaka v. State of Rajasthan* (AIR 1997 SC 301), the Supreme Court took a serious note of the increasing menace of sexual harassment at

workplace. Considering the inadequacy of legislation regarding sexual harassment at workplace, the Court even assumed the role of legislature and defined sexual harassment and laid down instruction for the employers. The Apex Court has said, "*Gender equality includes protection from the 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 absence of the domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working woman at all working places, the contents of the international conventions and norms are significant for the purpose of the 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 safeguard against the sexual harassment implicit therein and for the formulation of guidelines to achieve this purpose.*" In Apparel Export Promotion Council vs. A.K. Chopra, The accused respondent tried to molest a women employee. Miss X, a clerk cum typist on 12<sup>th</sup> August, 1988 at Taj Hotel, Delhi. The respondent persuaded Miss 'X' to accompany him while taking dictation from the chairman, so that her typing was not found fault with. While Miss 'X' was waiting in the room, the respondent taking advantage of the isolated place tried to sit too close to her and touch her despite her objections; and tried to molest her physically in the lift while coming to the basement, but she saved herself by pressing emergency button, which made the door lift open. In this case the Supreme Court held that "In a case involving charge of sexual harassment or attempt to sexually molest, the courts are required to examine the broader probabilities of case and not swayed away by insignificant discrepancies or narrow technicalities or dictionary meaning of the expression 'molestation' or 'physical assault'. The sexual harassment of a female employee at the place of work is discordant with the dignity and honour of a female and need to be eradicated and that there can be no compromise with such violation". In Railway Board vs. Chandrima Das (AIR 2000 SC 988), in this case Bangladeshi national was gang-raped by the employees of the Indian Railway in a room at Yatriniwas at Howrah station. These employees managed the 'Yatriniwas' the government contended that it could not be held liable under the law of torts as the offence was not committed during the course of official duty. However, Hon'ble court didn't accepted this argument and stated that the employees of union of Indian, who are deputed to run the railways and to manage the establishment, including the Railways station and Yatriniwas are essential components of the government machinery which carries on the commercial activity. If any such employee commits

an act of tort, the Union Government of which they are the employees can, subject to other legal requirement being satisfied be held vicariously liable in damages to the person wronged by the those employees. The victim was awarded by Supreme Court with a compensation of Rs. 10 lakhs for being gang raped in Yatriniwas of Railway. Since the right is available to non-citizens also, the reach of the right is very wide. In Bodhisattwa Gautam vs. Subhra Chakraborty (AIR 1996 SC 922), In this landmark case the Supreme Court ordered the accused to pay Rs. 1000 per month as a interim compensation to the victim of rape during the pendency of the criminal case. Referring to the pitiable condition of women in society Mr. Justice Saghir Ahmad observed that "*unfortunately, a woman in our country, belongs to class or group of society who are in disadvantaged position on account of several social barriers and impediments and have therefore, been victims of tyranny at the hands of men with whom they, unfortunately, under the constitution enjoy equal status*". "*Women also have the right to life and liberty; they also have the right to be respected and reacted as equal citizens. Their honour and dignity cannot be touched or violated. They also have the right to lead an honourable and peaceful life.*" In State of Punjab v. Gurmit Singh (AIR 1996 SC 1393), the Supreme Court observed, "*The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury.*" Supreme Court in this case has directed that the name of the prosecutrix in rape cases should not be disclosed by the courts and the trial should be held *in camera* as a rule. It also directed that as far as possible, trials must be conducted by women judges. In Om Prakash Vs. State of U.P (2006 Insc 297), the Apex Court held that a rape accused could be convicted on the evidence of the victim, even if medical evidence did not prove rape[4]. In Madhukar Narayan Mardikar vs. State of Maharashtra (AIR 1991 SC 207), Supreme Court held that even a woman of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. So also it is not open to any and every person to violate her as and when he wishes. She is entitled to protect her person if there is an attempt to violate it against her wish. She is equally entitled to the protection of law. Therefore, merely because she is a woman of easy virtue, her evidence cannot be thrown overboard.

**Conclusion :** Thus, on observing the above stated case laws it can be said that Judiciary plays a very

dynamic role in case of women empowerment. Judiciary empowers the women both by its traditional and activist role. The traditional role of Judiciary is to deliver justice through interpretation of laws. The other is the activist role which is popularly known as "Judicial Activism". When there is no specific law for a specific offence in that case Judiciary applies its activist power. As our society is dynamic, the need of the society is also dynamic. Because of the rigidity of law or because of the long and time taking procedure of enactments of laws by legislature, it is unable to keep pace with the fast changing society. There is always a chasm between the progress of the society and the legal system prevailing in it. When such hardships and injustice occurs to women, Judiciary is the last resort. As in Visakha case where the question regarding the sexual harassment of women in

working places was raised and there was no legislation relating to sexual harassment in working places at that time, Judiciary by judicial activism declared some guidelines for the protection of women from sexual harassment in working place. This guideline was provided by Supreme Court in the year of 1997 and the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 came into force on 9<sup>th</sup> December 2013. Thus through the golden word of Justice P.N. Bhagwati "*The Judge infuses life and blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society*" [5]. Hence it can be said that judicial activism is the need of the hour for women empowerment.

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