DIGNITY OF WOMEN - NOT A SLAVE TO THE SHACKLES OF LAW

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Abstract

Dignity of a Woman and its protection has been a battle that the civilizations have witnessed since ages. The battles in the Mythology have been the first of the lot to be read and understood as the means of protection of dignity of a woman. Battle of Kurukshetra or the Ravan Vadh has its inception attributed to the attack on the dignity of a woman. The cost of dignity of a woman can never be compared to even millions of lives as the dignity of a woman is above the vows of Gods also. The human intellect and the male domination though has been instrumental in degrading the dignity by all means but when the society resurrected the trend of equality the protection of women dignity was at its core. It is the base of any civilization to provide for the protection of women on all fronts and the civilization that fails to achieve the same has been shattered to rugs. The evolution of the legal machinery to achieve the said object was much needed over the last 159 years of the Indian Penal Code coming into force, but with the constitutional mandate being brought into existence since 1950 it was incumbent upon the Constitutional Courts to achieve the object with the purpose. The legal system has evolved over this period taking into consideration the global changes which are adopted in the country also. Various substantial and procedural changes have been given effect to in the said process wherein the Courts were burdened with the task of testing the veracity of such changes so as to comply with the constitutional mandate to protect the dignity of the Women. The courts have taken deviation from the strong procedural rigors of criminal jurisprudence to provide effective and complete justice to victims which is the least the judiciary can to do to provide respite to a victim. Deviation from law to protect the dignity of a woman has never been shied away by the Courts and hence the dignity of a woman need not suffer for the legal intricacies of the system.

Keywords: Human Dignity, Women, Article 15, Fundamental Rights, Human Right, Privacy, Victims

INTRODUCTION

Dignity of Women - Not a Slave to the Shackles of Law

"A woman has sacrosanct right to her bodily integrity"

Quoting the words of Justice Dipak Mishra, while permitting the termination of pregnancy so as to ensure the safety of the life of a woman who was compelled to approach the Supreme Court of India to get the pregnancy terminated as it was opined by the Medical Professionals that delivery of the child shall result in mental injury to the female and various other medical problems shall follow for her life. The Supreme Court in all its senses made sure that the legal provisions restricting the legal machinery to permit such abortion cannot be permitted to operate when the life of the woman bearing the child itself is at stake. The Honourable Supreme Court of India made sure that no legal machinery or restrictions are permitted to touch the bodily integrity of a woman and any legal bar shall pave way for her dignity and life.

DIGNITY OF WOMEN – INDIAN HISTORY

The dignity of a woman need not be a slave to the legal intricacies especially in a country like India with its rich heritage always applauding the sacrifices a woman has made in her life. The role of a woman in an Indian household has no bounds which can be not only derived from our scriptures but the mythology and also the evolution of law which we all have witnessed till the recent times. A mention to Sitamata offering herself to the earth is often seen as a mark of purity and we being the Indians have always been showering pride on such event, but when we look it closely the first question that needs to be staring at our face is Why only Sitamata had to go through such a test. Our mythology has given us a lot of instances wherein women have been subjected to such tests and those events are not glorified in the mythology but citing their results but the

1 Sarmishta Charaborthy vs Union of India 2018(13) SCC 339
question is why they need to be even put to such tests. Dignity of a woman is often bundled with her physical purity which is a rough patch on our thoughts and has often been hallowed in our mythology. As per Indian Mythology, Women are often considered as deities of prosperity and it has been said that By cherishing women one cherishes the goddess of prosperity herself and by afflicting her, one is said to pain the goddess of prosperity. Indian history tries to create balance between the Dignity of Women and Mode to Control a Woman which traces its intent from the Ramcharitmanas as mentioned by Tulsidas which narrates as “Dhol, Ganwar, Shudra, Pashu, Nari Sakal Taadana Ke Adhikari” and can be interpreted as “Drums, Morons, Untouchables, Beasts and Women all are meant for beating up hard”. Although, the historians claim that women have had a life of respect in ancient India, instances like these, require the assessment of position of Indian women through the ages. The literature pertaining to Medieval Age in India from the times of Gupta Dynasty with the quote of Chanakya also lacks the dignity a woman deserves- “Women have hunger two fold, shyness four fold, daring six fold and lust eight fold as compared to men”. The greatest of the names who have contributed to Indian Literature have fallen very short of being empathetic to women by virtue of their writings. The Indian Literature blossomed only to the extent of appreciating the physical beauty of women over such period and which continues even today. Virtues of a woman are often lacking the importance it deserves when her description is made in the literature.

**DIGNITY OF WOMEN-BODILY INTEGRITY**

It has been clear over the ages that a woman is given better recognition by her physical beauty and other virtues come into sight after crossing the first hurdle. A thought needs to be delivered to such process also as the same clearly makes the virtue of a woman dependant on her physical appearance. The right to bodily integrity did not require the life to be put at stake but the moment it is about a choice that a woman needs to make the right starts to operate breaking all the restraints law or society tends to put on them. In the case of Suchita Shrivastava right to reproductive choice had already been taken care of by including the same to be a part inseparable part of her personal liberty. Without reiterating the words of Justice Dipak Mishra that the body of a woman is a temple and it is her first right to worship the same and the same cannot be permitted to be encroached by any means. The same course has been adopted by the Honourable Supreme Court while dealing with the menace of eve-teasing and came down heavily on the laxity of the legal machinery in dealing with such instances. The Supreme Court while reading the concept of Gender Equality in such instances in the case of Pawan versus State of UP made it clear that “Eve-Teasing affects the fundamental concept of gender sensitivity and justice and the rights of a woman Under Article 14 of the Constitution”. The said judgement is a celebration one as the same deals with the Dignity of a woman on all fronts especially when she is subjected to such actions which are much prevalent in the society but fails to be noticed and dealt with by adopting the legal recourse. Some important mentions from the said judgement are required to be borne in mind by everyone who is connected to legal fraternity or not.

“The right to live with dignity as guaranteed Under Article 21 of the Constitution cannot be violated by indulging in obnoxious act of eve-teasing”

“Eve-Teasing creates an incurable dent in the right of a woman which she has Under Article 15 of the Constitution.”

“One is compelled to think and constrained to deliberate why the women in this country cannot be allowed to live in peace and lead a life that is empowered with a dignity and freedom.”

“It has to be kept in mind that she has a right to life and entitled to love according to her choice. She has an individual choice which has been legally recognized.”

“No one can compel a woman to love. She has the absolute right to reject.”

The Honourable Supreme Court of India in this decade has been instrumental to not only protect the dignity of women but has made all efforts to eradicate the legal intricacies that has been a shackle in the process to achieve such goal of women dignity. The Supreme Court while hearing the challenge to the Maharashtra Prohibition of Obscene Dance in Hotels, Restaurant and Bar Rooms and Protection of Dignity of Women (Working therein) Rules, 2016 in an Article 32 Writ Petition drew a line between the obscene conduct and the right to profession as a dancer in bar revolutionized the entire thought process which it had already down in the past also while lifting the bans on

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2 Anusasana Parva, Mahabharata
3 Tulsidas Ramcharitmanas
4 Kautilya’s Arthashastra
5 Suchita Shrivastava versus Chandigarh Administration : 2009(9) SCC 1
6 Pawan versus State of UP : AIR 2017 SC 2459
7 Indian Hotel and Restaurant Association (AHAR) and Ors. vs. The State of Maharashtra AIR 2019 SC 589
the profession as Bar Dancers. The challenge to the said rules was on the ground of violation of Articles 14, 15, 19 and 21 of the Constitution of India. The State of Maharashtra took a defense by citing the preamble of the act which provided for prohibition of obscene dance in hotels, restaurants, bar rooms and other establishments and to improve the conditions of work, protect the dignity and safety of women in such places with a view to prevent their exploitation. Another justification given by the State was that the so-called intelligible differentia is on the ground that women who perform in the banned establishment are a vulnerable lot. They come from grossly deprived backgrounds. It was also pointed out that most of them are trafficked into bar dancing. The honorable Supreme Court after the perusal of the Objects and Reasons declared that the legislation in question proceeded on a hypothesis that different dance bars are being used as meeting points of criminals and pick-up points of the girls but there was no evidence having been presented to the Courts or the Government that these dance bars were actively involved in trafficking of women. The court then proceeded to discard such isolated example and maintained that the same is not sufficient to establish the connection of the dance bars covered Under Section 33-A with trafficking. Hence the submission of the State that the ban has been placed for the protection of the vulnerable women was negated.

The court further went on to hold that the State has failed to justify the classification between the exempted establishments and prohibited establishments on the basis of surrounding circumstances, or vulnerability. The court went on to hold that the legislation is based on an unacceptable presumption that the so-called elite i.e. rich and the famous would have higher standards of decency, morality or strength of character than their counterparts who have to content themselves with lesser facilities of inferior quality in the dance bars. Such a presumption is abhorrent to the resolve in the Preamble of the Constitution to secure the citizens of India “equality of status and opportunity and dignity of the individual”. The State Government presumed that the performance of an identical dance item in the establishments having facilities less than three stars would be derogative to the dignity of women and would be likely to deprave, corrupt or injure public morality or morals; but would not be so in the exempted establishments. The supreme court pointed its finger on the conduct of the State when the state filed to respond on the query that whether State does not find it to be indecent, immoral or derogatory to the dignity of women if they take up other positions in the same establishments such as receptionist, waitress or bartender. The women who serve liquor and beer to customers do not arouse lust in customers but women dancing would arouse lust. The supreme court while throwing away the stand of the state government was pleased to mention that degrees of lust cannot differ on the basis of their financial classes. Nor can it be presumed that sexual arousal would generate different character or behaviour, depending on the social strata of the audience. A mention about the History filled with examples of crimes of lust committed in the highest echelons of the society as well as in the lowest levels of society was avoided but was kept in notice also.

An effort to save the legislation by pointing out that the same is targeted towards the following
(a) prohibit obscene dance in hotels, restaurants, bar rooms and other establishments;
(b) improve the conditions of work of women dancers and other women working therein; and
(c) protect the dignity as well as safety of such women.

The plea was also turned down by the Supreme Court on various counts by quashing various onerous conditions for licensing but with a rider that the same shall be subject to scrutiny as to avoid criminal activities and exploitation of women.

Dignity of a woman need not be dependent on the vision a man can have but the feel a woman has for her own which includes her soul, her body, her hard work and the same cannot be at the mercy of others.

As if the others are given the opportunity to test the dignity of a woman then he shall see what he is filled off.

Quoting the words of Chief Justice Hidayatullah (as he then was) in the case of K.A. Abbas** “If the deprived begins to see in these things more than what an average person would, in much the same way, as it is wrongly said, a Frenchman sees a woman’s legs in everything, it cannot be helped.’

DIGNITY OF A WOMAN - VICTIM’S PLIGHT

A woman subjected to a horrific crime as rape, outrage of modesty, eve-teasing or even domestic violence is nothing else than the burial of her dignity. Rape has been described as the monstrous burial of Woman dignity in the darkness - It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. The courts while dealing with offences have been guided by the principle that the fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. True it is, on certain occasions, opportunities may be granted to the convict for reforming himself but it is

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8 State of Maharashtra Indian Hotel and Restaurant Association AIR 2013 SC 2582
9 K.A. Abbas v. Union of India, (1970) 2 SCC 780
10 Shyam Narain vs. The State of NCT of Delhi AIR 2013 SC 2589
equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. A victim subjected to the wanton lust, vicious appetite, depravity of senses, mortgage of mind to the inferior endowments of nature, the servility to the loathsome beast of passion and absolutely unchained carnal desire destroy the civilized stems of the milieu and comatose the narrows of sensitive polity and hence the first duty of the Court has been to make sure that no such events rehappen and a victim is protected at the best.

The Supreme Court while hearing the appeal in the case of Bundem Sundara Rao, noticed that crimes against women are on the rise and such crimes are affront to the human dignity of the society and, therefore, imposition of inadequate sentence is injustice to the victim of the crime in particular and the society in general and hence imposed the obligation on the courts also to award appropriate punishments so as to respond to the society’s crime for justice against such criminals. Public abhorrence of the crime needs a reflection through the Court’s verdict in the measure of punishment. The Courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment.

The remarks of the Supreme Court in the case of Gurmit Singh with anguish, that crime against women in general and rape in particular is on the increase. The learned Judges proceeded further to state that while the nation is celebrating women's rights in all spheres, there is absolutely no concern for her honour. It is a sad reflection of the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. The Court observed the effect of rape on a victim with anguish:

“We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault-it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female.”

The anguish of Supreme Court in the case of Jugendra Singh cannot be kept away while dealing with the offence of rape which quote as under

“Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The consequential death is more horrendous. It is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one’s physical frame is his or her temple. No one has any right of encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuate, on the collective at large. When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu.”

The Honourable Supreme Court has always been heads up for protecting the reputation and dignity of a woman in the society and went on to say that conduct towards woman shows the basic civility of a civilised society. The courts have been strong enough to say that no member of society can afford to conceive the idea that he can create a hollow in the honour of a woman.

International arena has also given a victim the dignity to have her say being approved without any further support of evidences. This is the least the courts could have done to support the victims to maintain her dignity.

In the case of Fatema Begum daughter of Azizer Rahman vs. Aminur Rahman Son of Afser Ali and others (18.04.2005 - BDHC : LEX/BDHC/0146/2005 reported in 2005 25 BLD 342) the Supreme Court of Bangladesh while believing the testimony of the victim and following the principle of further injury to the victim by not imposing punishment to the responsible persons held as under

“Rape is the most heinous crime against woman’s dignity. Rape not only violates woman’s body but it also injure her very soul. Rape for a woman is an incurable sore. The failure to punish the rapists adds further pain to this sore. So when a victim of rape comes to a court for justice by punishment of the rapist and her testimony before the court inspires confidence and is found to be reliable she must not be denied justice for minor defects in the prosecution of the case. The acquittal of rapists inspire of victim’s unimpeachable and reliable testimony is not only a great injustice to the victim but it also harms the whole society.”

It has been commonly observed and portrayed in the society that a rape victim was a woman of easy virtue and hence the allegations would not stand but the same is not the case in our legal system wherein while upholding the conviction the Supreme Court in the case of Lillu categorically laid down the law that such defense is not tenable that in case of minor victim, question as to whether she had been habitual to sexual activities or not, is immaterial to determine issue of consent. The courts were pleased to recommend the discarding of two fingers test and hymen rupture as the same does not give clear indication that prosecutrix is habitual to sexual intercourse and even if the victim of rape previously accustomed to sexual intercourse it cannot be determinative question. The court emphasized on question which still remained as to whether accused committed rape on victim on occasion complained of. Even if report of two finger test is affirmative, it cannot

11 In State of Andhra Pradesh v. Bodem Sundra Rao AIR 1996 SC 530
12 State of Punjab v. Gurmit Singh and Ors. AIR 1996 SC 1393
14 Lillu and Ors. vs. State of Haryana AIR 2013 SC 1784
ipso facto, be given rise to presumption of consent. The anamoly with regards to the victim being virgin or not came to be buried by citing that Even if the victim had lost her virginity earlier, it can certainly not give a licence to any person to rape her. Even a woman of easy virtue has a right to refuse to submit herself to sexual intercourse to anyone and everyone, because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. A prosecutrix stands on a higher pedestal than an injured witness for the reason that an injured witness gets the injury on the physical form, while the prosecutrix suffers psychologically and emotionally. It was further held that Two finger test and its interpretation violates right of rape survivors to privacy, physical and mental integrity and dignity. In view of International Covenant on Economic, Social and Cultural Rights, 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy.

DIGNITY OF WOMAN – LEGAL SCENARIO

In view of the provisions of Sections 53 and 54 of the Evidence Act, 1872, unless the character of the prosecutrix is in issue, her character is not a relevant factor to be taken into consideration at all. It has been taken into note by the Courts at various instances that in view of International Covenant on Economic, Social, and Cultural Rights 1966; United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985, rape survivors are entitled to legal recourse that does not retraumatize them or violate their physical or mental integrity and dignity. They are also entitled to medical procedures conducted in a manner that respects their right to consent. Medical procedures should not be carried out in a manner that constitutes cruel inhuman, or degrading treatment and health should be of paramount consideration while dealing with gender-based violence. The State is under an obligation to make such services available to survivors of sexual violence. Proper measures should be taken to ensure their safety and there should be no arbitrary or unlawful interference with his privacy.

As quoted by the Supreme Court in various cases but primarily in the case of Delhi Domestic Help and the requirements it calls for as a part of change in the legal scenario and by quoting the following

   _It would appear that a radical change in the attitude of defence counsel and judges to sexual assault is also required. Continuing education programmes for judges should include re-education about sexual assault. Changes in the substantive law might also be helpful in producing new ways of thinking about this type of crime._

B. Kelly writes:
   _The most common cries were for more compensation and personal treatment from police officers. Victims remarked that, while they recognised officers had many cases to handle, they felt the officers did not seem sufficiently concerned with their particular case and trauma,“_

C. Shapland concludes:
   _The changes in the criminal justice system necessary to approximate more closely to the present expectations of victims are not major or structural. They are primarily attitudinal. They involve training the professional participants in the criminal justice system that the victim is to be treated courteously, kept informed and consulted about all the stages of the process. They involve treating the victim as a more equal partner... This might include a shift in working practices of the professional participants that might initially appear to involve more work, more difficulty and more effort, but paradoxically may result in easier detection, a higher standard of prosecution evidence and fewer cases thrown out at court.”_

D. O’Reilly stresses the attitudinal training thus:
   _We are now victim-oriented and have taken an active role in getting the entire helping network-lawyers, doctors, nurses, social workers, rape crises center workers - to talk and to interact together... Were are then in a position to concentrate fully on the primary goal that unites us all-helping victims of sexual assault to get their lives back together._

The words are not enough to mention the failure a woman faces in the legal system to protect her dignity but the courts have always been the front runner to make sure they down the law to protect her dignity at all fronts. The legal system has not only undergone a strong evolution but also proceeded in recognition of new modes on all fronts. Be it the change in the substantive laws or the procedural laws. The courts have given Women

15 Delhi Domestic Working Women’s Forum vs. Union of India (UOI) and Ors. (19.10.1994 - SC) : MANU/SC/0519/1995
Dignity the most value when it comes to the attack on the same and no legal hurdles have been permitted to operate against it.

Some specific mention is required as made by the Supreme Court in the famous cases as Voluntary Health association of Punjab vs Union of India

"The perception of any individual or group or organization or system treating a woman with inequity, indignity, inequality or any kind of discrimination is constitutionally impermissible"

"It needs no special emphasis that a female child is entitled to enjoy equal right that a male child is allowed to have."

"When a female foetus is destroyed through artificial means which is legally impermissible, the dignity of life of a woman to be born is extinguished"

The author rests his pen on this quotes as the author keeps in mind that the day this quotes are not to be used as a tool to protect the dignity but to celebrate the dignity of a woman then dignity of a woman can be felt to flow from the heart.