

## **ROLE OF THE STATE AS HUSBAND, FATHER AND GUARDIAN - SOCIAL JUSTICE FOR WOMEN**

Prof. Dr. Mukund Sarda\*

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### **Introduction**

Justice is the first promise made under the Constitution of India. Justice – socio, economic and political is the mandate of the Constitution makers, binding on any democratic government working under the Constitution of India.

Article 38 of the Constitution emphasizes the concept of ‘social justice’ and imposes a duty on the State to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice - socio, economical and political, shall inform all the institutions of national life.<sup>1</sup>

In *Air India Statutory Corporation v. United Labour Union Others*<sup>2</sup> the Supreme Court of India has explained the concept of social justice in Article 38 of the Constitution of India as follows: “Social justice for women is a dynamic device to mitigate the sufferings of the poor, weak, *dalits*, tribals and deprived sections of the society, and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor *etc.*, from handicaps, penury, to ward off distress and to make their life livable, for greater good of the society at large. The aim of social justice is to attain substantial degree of social, economic and political equality which is the legitimate expectation and a constitutional goal.”

Article 39(f) of the Constitution says: “That children are given opportunities and facilities to develop in a

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\* Dean, Faculty of Law; Principal, New Law College, Bharati Vidyapeeth Deemed University, Pune.

<sup>1</sup> Pandey, J.N., *The Constitutional Law of India*, 49<sup>th</sup> Ed., Central Law Agency, p 410.

<sup>2</sup> AIR 1997 SC 645.

healthy manner and in conditions of freedom and dignity, and that childhood and youth are protected against exploitation and against moral and material abandonment.”<sup>3</sup>

In the backdrop of these provisions of the Constitution of India it is very clear, even to a layman, that the State has a special role to play in case of poor, weaker and deprived sections of the society. They do enjoy right to live with dignity as enshrined under Article 21 of the Constitution of India.

### **Victims of Matrimonial Life**

Under every personal law in India after 1955 there is a provision for divorce. The benefit of dissolving the marriage was extended to Hindus much later *i.e.*, in the year 1955, in comparison to the people professing other religions. Divorce can be taken by a married person on various grounds (on basis of the Fault Theory) or by mutual consent.

The personal law also gives right of maintenance to wife, children and parents. However, in reality the right to maintenance of these people is still a distant dream irrespective of their religions. The fight for maintenance took a constitutional debate for Muslim women. Under the Muslim law the duty of husband to pay maintenance after *talaq* was challenged in various cases like *Shah Bano*<sup>4</sup>, *Bai Tahira's case*<sup>5</sup> etc.

The judgments of the Supreme Court in these cases forced the legislators to enact a special law for Muslim women regarding their maintenance rights called as under the Muslim Women (Protection of Rights on Divorce) Act, 1986. This Act lays down that:

- A divorced woman is entitled to have a reasonable and fair provision and maintenance from her former husband and the husband must do so within the period of *iddat* and his obligation is not confined to the period of *iddat*.

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<sup>3</sup> *Supra* Note 1 at p 411.

<sup>4</sup> *Mohd. Ahmed Khan v. Shah Banu Begum and others*, 1985 2 SCC 556.

<sup>5</sup> *Bai Tahira v. Ali Hussain Fissalli Chothia and Anr.*, AIR 1979 SC 362.

- If she fails to get maintenance from her husband, she can claim it from relatives failing which, from the *Waqf* Board.<sup>6</sup>

The validity of this Act has been upheld by the Supreme Court.<sup>7</sup> It is evident that this Act was enacted by the Parliament to protect a divorced woman when she fails to get protection from her former husband and relatives in terms of maintenance. The spirit of welfare State is highlighted in the relevant section of the Act in order to protect the divorcee and to refrain her from becoming destitute.

To protect any woman from domestic violence, irrespective of her religion the Protection of Women from Domestic Violence Act, 2005, was passed which guarantees a woman who is victim of domestic violence, the right of residence, monetary relief, compensation order, custody order and some special orders from the court. This is a progressive legislation protecting the women from any type of physical, sexual, economical, emotional and social abuse.

In spite of several legislations, special enactments and various Supreme Court judgments, in India the position of women, in particular of a divorcee, is very pathetic and merciful. She has to depend upon her former husband for maintenance, and has to beg and wait till the payment is made. It has been the experience of many matrimonial women victims that in spite of the court orders and the law in their favor, the respondent (former husband) has no fear of law. This is mainly because of delay in justice, cost of litigation, lack of proper implementation and sensitization of the law officers including courts towards these victims.

In these circumstances, the question arises: A woman is punished for no fault on her part (in case of divorce other than mutual consent where the husband has either cheated her or is guilty of some fault). Whether such woman has right to live with human dignity like an ordinary citizen or not? If the answer is yes, then why she

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<sup>6</sup> Section 3 of the Muslim Women (Protection of Rights on Divorce) Act, 1986.

<sup>7</sup> *Danial Latif v. Union of India*, AIR 2001 SC 3262.

feels helpless and has to stand in queue to get the means of livelihood *i.e.*, maintenance. Is it not the moral and legal responsibility of the State to take care of such woman who has no one to take care of? What is the role of the State as husband, father and the guardian?

### **Victims of Sexual Assault (Rape)**

Compensation to victims of sexual assault is another grey area of concern with the rising number of rape victims. Recent gang rape of *Nirbhaya* in Delhi which shocked the whole world forced the Government of India to pass an ordinance on anti-rape laws and protection to rape victims. However, there still remains a doubt as to the rehabilitation of rape victims. The Supreme Court of India in numerous cases has laid down guidelines on providing compensation to rape victims which are still in Government cupboards. The prime recommendations given by the Supreme Court in *Delhi Domestic Working Women's Forum v. Union of India*<sup>8</sup> are:

- The complainants of sexual assault cases should be provided with legal representation.
- The advocate's role shall not be confined only to court, but to also assist her in police station, and to guide her as to how she might obtain help of a different nature from other agencies.
- The list of advocates shall be kept at the police stations that are ready to help the rape victims.
- Name of the rape victim shall not be disclosed.
- Criminal Injuries Compensation Board shall be constituted.
- Compensation for victims shall be awarded by the court on the conviction of the offender, and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as the loss of earnings due to pregnancy and child birth if it accrued as result of rape.
- The National Commission for Women must be asked to frame schemes for compensation and rehabilitation to ensure justice to victims of such crimes.

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<sup>8</sup> 1995 SCC (1) 14.

Further, the Supreme Court of India in a landmark judgment *Chairman, Railway Board v. Chandrima Das*<sup>9</sup> where a foreign national, a Bangladeshi women was gang raped, held that compensation can be granted under public law (Constitution) for violation of fundamental rights on the ground of domestic jurisdiction based on constitutional provisions and human right jurisprudence. The State was made liable for the act of railway employees. This judgment supports the idea that State shall act as guardian and protect the dignity and honor of every woman.

In spite of all these judgments, guidelines and clarifications, little help is extended to rape victims. There is no rehabilitation scheme or compensation paid to victims at large. Again the same question arises: what is the role of the State for such victims?

### **Suggestions**

The State shall take pro-active role, and shall ensure social justice in reality rather than on papers. The innocent matrimonial and rape victims need special protection from the State as husband, father and guardian. Following are a few suggestions which can strengthen and reassure human dignity and respect to such victims. The State can adopt welfare measures like:

- Providing Government jobs to such victims as per their qualifications and abilities;
- Assistance in getting house accommodation under Government schemes;
- Free education for their children;
- Free medical assistance and concession in traveling;
- Benefits of ration card for purchase of food grains and necessary articles for household;
- Counseling and rehabilitation centers to be established;
- National/State Compensatory Board to be constituted for awarding compensation or maintenance to the victims.
- Tax rebate shall be given to such victims.

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<sup>9</sup> AIR 2000 SC 988.

The Doctrine of *Escheat* enables the Government to claim the property of a person who has died without any heir. The Government becomes the legal owner of such property. In a similar way, the responsibility lies on the Government to protect and provide means of livelihood to the innocent women victims of matrimonial offences and sexual assaults.

The Doctrine of *Parens Patriae* emphasizes that the State is the parent of all the citizens and has a role of protector, provider and entrepreneur in a democratic setup. Social justice is the golden promise made under the Constitution of India for the poor people in India. It has remained a distant dream even after 65 years of independence. Rehabilitation of victims of matrimonial and sexual assaults will be a true sign of victory of democracy and welfare of citizens.

The question remains: On planet earth, a woman has been given special protection by God, by Nature and by Law; then why not by the Government of India?