



INDIAN JUDICIAL PRONOUNCEMENTS ON WOMEN'S ECONOMIC RIGHTS AND SERVICE CONDITIONS

-Bhavana Rao¹

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I. INTRODUCTION

The role of precedent in a legal system has implications on assessing the strength of rights of stakeholders written in the books and how these rights may be effected. When courts actively look into precedents in guiding decisions, primarily in common law systems, precedents can have a substantial impact on the delivery of new judgments. Analyzing the strength of a statute or provision in isolation may be misleading.

Hence an attempt is being made to analyse the important judicial pronouncements of India, in which the economic empowerment as well as their service conditions in terms of gender equality has been discussed and recognised. This paper will try to ponder upon the issues of gender equality in workplace, promotion of economic rights of women and workplace safety and protection as provided under CEDAW provisions.

II. JUDICIAL PRONOUNCEMENTS – INDIA

This section will study some Indian precedents on economic issues of women.

1. *Associate Banks Officers Association v. State Bank Of India and Others*¹

In this matter, it was held that “equal pay for equal work for both men and women is one of the directive principles of State Policy laid down in Article 39(d) of the Constitution of

India. Article 37 makes it non justifiable. Yet, it must be borne in mind by the legislature while making laws.” It was further held that “historically, equal pay for work of equal value has been a slogan of the womens movement.” Equal pay laws, therefore, usually deal with sex based discrimination in the pay scales of men and women doing the same or equal work in the same organization. Equal Remuneration Act, 1976 provides for payment of equal remuneration to men and women workers which are to prevent discrimination on the ground of sex against women in the matter of employment.

The same doctrine has also sought to protect disadvantaged group against similar discrimination. It is held that, “The principle is to be applied in cases of irrational discrimination but, if an organization can provide basis or explanation for the difference the principle would not be applicable.”

2. *Randhir Singh vs Union of India*²

In this case while considering the case of drivers in the Delhi Police Force with other drivers in the service of the Delhi Administration and the Central Government, the court expounded the paramount principle of equal pay for equal work holding that: “It is true that the principle of equal pay for equal work is not expressly declared by our Constitution to be a fundamental right. But it

4660

¹*Associate Bank's Officer's Association v. State Bank Of India & Ors.* AIR 1998 SC 32.

²*Randhir Singh v. Union of India* AIR 1982 SC 879



certainly is a Constitutional goal. Art. 39(d) of the Constitution proclaims equal pay for equal work for both men and women” as a Directive Principle of State Policy. “Equal pay for equal work for both men and women means equal pay for equal work for everyone and as between the sexes. Directive principles, as has been pointed out in some of the judgments of this Court have to be read into the fundamental rights as a matter of interpretation”.

3. *C.B. Muthamma v. Union of India*³

In this case a writ petition was filed by Ms Muthamma, a senior member of the Indian Foreign Service, complaining that “she had been denied promotion to Grade I illegally and unconstitutionally. She pointed out that several rules of the civil service were discriminatory against women. At the very threshold she was advised by the Chairman of the UPSC against joining the Foreign Service. At the time of joining she was required to give an undertaking that if she married she would resign from service.” Under Rule 18 of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, it was provided that “no married woman shall be entitled as of right to be appointed to the service”.

Under Rule 8(2) of the Indian Foreign Service (Conduct and Discipline) Rules, 1961, “a woman member of the service was required to obtain permission of the Government in writing before her marriage was solemnised”. At any time after the marriage she could be required to resign if the Government was confirmed that her family and domestic commitments were likely to come in the way of the due and efficient discharge of her duties as a member of the service. On numerous occasions the petitioner had to face the consequences of being a woman and thus suffered discrimination, though the Constitution specifically under Article 15 prohibits discrimination on grounds of religion, race,

caste, sex or place of birth and Article 4 provides the principle of equality before law.

The Supreme Court through V.R. Krishna Iyer and P.N. Singhal, JJ. Held that:

“This writ petition by Ms Muthamma, a senior member of the Indian Foreign Service, bespeaks a story which makes one wonder whether Articles 14 and 16 belong to myth or reality. The credibility of the Constitutional mandates shall not be shaken by governmental action or inaction but it is the effect of the grievance of Ms Muthamma that sex prejudice against Indian womanhood pervades the service rules even a third of a century after Freedom.

There is some basis for the charge of bias in the rules and this makes the ominous indifference of the executive to bring about the banishment of discrimination in the heritage of service rules. If high officials lose hopes of equal justice under the rules, the legal lot of the little Indian, already priced out of the expensive judicial market, is best left to guess.”

Commenting further on the discriminatory rules the Court said:

“Discrimination against woman, in traumatic transparency, is found in this rule. If a woman member shall obtain the permission of government before she marries. The same risk is run by government if a male member contracts a marriage. If the family and domestic commitments of a woman member of the service is likely to come in the way of efficient discharge of duties, a similar situation may arise in the case of a male member. In these days of nuclear families, intercontinental marriages and unconventional behaviour, one fails to understand the naked bias against the gentler of the species.”

Expressing its opinion on Rule 18 of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961, the Court observed:

“At the first blush this rule is defiance of Article 16. If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynous posture is a hangover of the masculine culture

³*C.B. Muthamma v. Union of India* (1979) 4 SCC



of manacling the weaker sex forgetting how our struggle for national freedom was also a battle against womans thraldom. Freedom is indivisible, so is justice. That our founding faith enshrined in Articles 14 and 16 should have been tragically ignored vis-a-vis half of Indias humanity, viz. our women, is a sad reflection on the distance between Constitution in the book and Law in action. And if the executive as the surrogate of Parliament makes rules in the teeth of Part III, especially when high political office, even diplomatic assignment has been filled by women, the Striking down the rules as violating the principle of quality, it was said:

“We do not mean to universalize or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to pragmatism where the requirements of particular employment, the sensitivities of sex or the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable the rule of equality must govern.”

4. *Air India v. Nargesh Meerza*⁴

In this case, Nargesh Meerza filed a writ petition, In this case, the air-hostesses of the Air-India International Corporation had approached the Supreme Court against, again, discriminatory service conditions in the Regulations of Air-India. The Regulations provided that an air-hostess could not get married before completing four-years of service. Usually an air-hostess was recruited at the age of 19 years and the four-year bar against marriage meant that an air-hostess could not get married until she reached the age of 23 years. If she married earlier, she had to resign and if after 23 years she got married, she could continue as a married woman but had to resign on becoming pregnant. If an air hostess survived both these filters, she continued to serve until she reached the age of 35 years. It was alleged on behalf of the air-hostesses that those provisions were discriminatory on the

ground of sex, as similar provisions did not apply to male employees doing similar work.

The Supreme Court upheld “the first requirement that an air-hostess should not marry before the completion of four years of service.” The court held that: “It was a sound and salutary provision. Apart from improving the health of the employee it helps a great deal in the promotion and boosting up of our family planning programme.”

However, this argument given by the Court came in for criticism that as the requirements of age and family planning were warranted by the population policy of the State and once the State had fixed the age of marriage, i.e. 18 years, the reasoning advanced for upholding the rule was a camouflage for the real concern. The Supreme Court struck down the “Air-India Regulations relating to retirement and the pregnancy bar on the services of Air-hostesses as unconstitutional on the ground that the conditions laid down therein were entirely unreasonable and arbitrary”.

4662

The impugned Regulation 46 provided that “an air hostess would retire from the service of the corporation upon attaining the age of 35 years or on marriage, if it took place within 4 years of service, or on first pregnancy, whichever occurred earlier”. Under Regulation 7, “the Managing Director was vested with absolute discretion to extend the age of retirement prescribed at 45 years. Both these regulations were struck down as violative of Article 14, which prohibits unreasonableness and arbitrariness.”

5. *Sarita Samvedi v. Union of India*⁵

The Supreme Court ddeclared “invalid a provision of the Railway Board Circular dated 27th December, 1982 which restricted the eligibility of a married daughter of a retiring official for out-of-turn allotment of a house, to situations where such a retiring official had no son or where the daughter was the only person prepared to maintain the parents and the sons

⁴*Air India v. Nargesh Meerza* (1981) 4 SCC 335)45

⁵*Sarita Samvedi v. Union of India* (1996 (2) SCC 380)46



were not in a position to do so". This was held to be discriminatory on the ground of sex. Reservations of seats for women in local bodies or in educational institutions have been upheld.

6. *Govt. of A.P. v. P.B. Vijayakumar*⁶

The Supreme Court in this case held that "reservation to the extent of 30% made in the State Services by the Andhra Pradesh Government for women candidates was valid". The Division Bench of the Supreme Court emphatically declared that "the power conferred upon the State by Article 15(3) is wide enough to cover the entire range of State activity including employment under the State. The power conferred by Article 15(3) is not whittled down in any manner by Article 16."

7. *Madhu Kishwar v. State of Bihar*⁷

The Supreme Court dealt with the validity of the Chotanagpur Tenancy Act, 1908 of Bihar which denied the right of succession to Scheduled Tribe women as violative of the right to livelihood. The majority judgment however upheld "the validity of legislation on the ground of custom of inheritance/succession of Scheduled Tribes." Dissenting with the majority, Justice K. Ramaswamy felt that "the law made a gender-based discrimination and that it violated Articles 15, 16 and 21 of the Constitution". In his dissenting judgment he said: "Legislative and executive actions must be conformable to and for effectuation of the fundamental rights guaranteed in Part III, Directive Principles enshrined in Part IV and the Preamble of the Constitution which constitute the conscience of the Constitution. Covenants of the United Nations add impetus and urgency to eliminate gender-based obstacles and discrimination. Legislative action should be devised suitably to constitute economic empowerment of women in socio-economic restructure for establishing egalitarian social order."

8. *Kakali Ghosh v. Chief Secy. A&N Administration*⁸

⁶*Govt. of A.P. v. P.B. Vijayakumar*, (1995) (4) SCC 520)

⁷*Madhu Kishwar v. State of Bihar*(1996) 5 SCC 145)

In this case, the appellant had applied for child care leave for a period of initially 6 months for taking care of her child who was in class 10th. While her application was pending, She was transferred to another place. She again sent a letter requesting leave for 730 days but was allowed only 45 days leave. The bench comprising Justice SJ Mukhopadhaya and Justice Gopala Gowda held that "the 730 days of childcare leave at a stretch could be taken by the female employee for taking care of her son."

9. *Anuj Garg & Ors v. Hotel Association of India & Ors.*⁹

The appeal challenged the Constitutional validity of Section 30 of the Punjab Excise Act, 1914 prohibiting employment of "any man under the age of 25 years" or "any woman" in any part of such premises in which liquor or intoxicating drug is consumed by the public was the question involved in this appeal which arose out of a judgment and order dated 12.01.2006 passed by the High Court of Delhi in CWP No. 4692 of 1999.

The division bench comprising Justice SB Sinha and Justice Harjit Singh Bedi also brought in the "anti-stereotyping principle which is the foundation of American jurisprudence on sex equality. Accordingly, the court held the legislation as void and unconstitutional". The Court stated that the fundamental conflict between Right to employment and security remains a difficult and tricky jurisprudential matter. Where the right to self-determination is of utmost importance in gender justice discourse, security, and protection to carry out such choice in a state of violence-free being has to be kept in consideration. Nonetheless. the present law ends up victimizing the subject in the name of protection, making women vulnerable to state protection in the same manner the act questioned takes away their

⁸*Kakali Ghosh v. Chief Secy. A&N Administration* Civil Appeal No. 4506 OF 2014

⁹*Anuj Garg & Ors v. Hotel Association of India & Ors.* (2008) 3 SCC 1



freedom. In that regard, the interference prescribed by the state for pursuing the ends of protection should be proportionate to the legitimate aims. Instead of putting curbs on women's freedom, empowerment would be a more tenable and socially wise approach and should reflect in the law enforcement strategies of the state as well. It should be the state's duty to ensure circumstances of safety which inspire confidence in women to discharge the duty freely in accordance with the requirements of the profession they choose to follow.

10. *Municipal Corporation of Delhi v. Female Workers*¹⁰

In the case, the female workers (muster roll) who were engaged by the Municipal Corporation of Delhi raised a demand for the grant of maternity leave which was made available only to regular female workers. The same was denied to the female workers (muster rolls) since their services were not regularised.

The bench comprising of Justice S. Saghir Ahmad and Justice D.P Wadhwa held that "the provisions of the Maternity Benefit Act, 1961 indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, especially Article 42. A woman employee, at the time of advanced pregnancy, cannot be compelled to undertake hard labor as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery."

"A just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where

¹⁰*Municipal Corporation of Delhi v. Female Workers*
AIR 2000 SC 1274

they work; they must be provided all the facilities to which they are entitled."

11. *Uttarakhand Mahila Kalyan Parishad v. State of UP*¹¹

The petition was filed under Article 32 of the Constitution aggrieved by the fact the lady teachers and other female employees in the educational line doing administrative business in the employment of the State of UP are being discriminated against regarding the payment for doing the same work.

The division bench comprising Justice Ranganath Misra and Justice MH Kania found that "the Uttar Pradesh education departments creation of cadres of male and female teachers, and of paying female teachers less than male teachers, and according to them inferior promotional avenues, was illegal. No justification for women teachers being paid less or having fewer promotional avenues than their male counterparts and directed the state to ensure parity between women and men teachers."

12. *Ram Bahadur Thakur (P) Ltd. v. Chief Inspector of Plantations*¹²

This case is under Maternity Benefit Act, 1961 wherein, it is held that "computation of maternity benefit has to be made for all the days including Sundays and rest days which may be wage less holidays comprised in the actual period of absence of the woman extending up to 6 weeks preceding and including the date of delivery as also for all the days falling within 6 weeks immediately following the date of delivery thereby, ensuring that the woman worker get for the said period not only the amount equalling 100% of the wages which she was previously earning but, also the benefit of wages for all Sundays and rest days falling within the aforesaid two periods. It was held that Maternity Benefit Act will have to be given interpretation which will advance the purpose

¹¹*Uttarakhand Mahila Kalyan Parishad v. State of UP* AIR 1992 SC 1695

¹²*Ram Bahadur Thakur (P) Ltd. v. Chief Inspector of Plantations* 1982 (2) LLJ 20



of the act and therefore, rejected the contention of the employer and held the woman worker to be qualified to get maternity benefit."

13. *Omana Oomen & Others v. F.A.C.T. Ltd*¹³.

This case is about sexual discrimination in employments. In this case, the trainees of the company were comprised of both male and female. The female trainees were excluded from the internal examination only on the ground of sex. Whereas, the male trainees were absorbed as technicians after an internal examination being held for the purpose. This act on the part of the employer was held "to be not in accordance with the provisions of law and non-absorption of female trainees as technicians entirely on the basis of sex is violative of Article 14 and 15 of Constitution of India".

14. *M/S. Mackinnon Mackenzie & Co. Ltd. v. Audrey Dcosta & Anr*¹⁴

In this matter, the Equal Remuneration Act was applied to held "that stenographers of either sex were performing the same work or the work of similar nature and hence, difference in pay scale is not sustainable or has no ground whatsoever and therefore, the said is to be set aside and equal remuneration for men and women performing the same work or work of similar nature has to be seen."

15. *Vishakha v. State of Rajasthan*¹⁵

Sexual harassments being one of the evils of modern society have been dealt with by Honble the Supreme Court under Article 141 read with CEDAW in a case before it. S. Verma CJ noted "the hazards to which a working women may be exposed and the depravity to which sexual harassment can degenerate." Realizing the urgency for safeguard by an

alternative mechanism in the absence of legislative measures or enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse more particularly against sexual harassment at work places the Supreme Court laid down certain guidelines and norms for due observance at all workplace or other institution, until a legislation is enacted for the purpose.

The court did "so in exercise of the power available under Article 32 of the constitution for enforcement of the fundamental rights and emphasized that this would be treated as the law declared by this court under Article 141 of the constitution the court also clarified that these guidelines would not prejudice any right available under the Protection of Human Rights Act, 1993." The court further made it clear that "these guide lines and norms shall govern the behaviour of the employers and all others at the work places."

So as "to curb this social evil" of sexual harassment at work. As per the guidelines and norms laid down by the Supreme Court in Vishaka case. It shall be "the duty of the employer or other responsible persons in workplaces or other institutions to prevent and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required. The apex court prescribed the following preventive steps for the employers without prejudice to the generally of this obligation:

Express prohibition of sexual harassment as defined at the workplace should be notified, published and circulated in appropriate ways.

The rule/regulations of government and public sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender.

As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (standing order) Act 1946.

4665

¹³*Omana Oomen & Others v. F.A.C.T. Ltd* 1991 (2) LLJ 541.

¹⁴*M/S. Mackinnon Mackenzie & Co. Ltd. v. Audrey D'costa & Anr* AIR 1987 SC 1281

¹⁵*Vishakha v. State of Rajasthan* AIR 1997 SC 3011



Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at workplace and no woman employee should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

The Supreme Court also directed to establish an effective complaint mechanism for dealing with complaints of sexual harassment.

III. CONCLUSION

From the study of above case laws, some observations can be made. Indian Judiciary has recognised gender equality at work place. Maternity Benefits and Equal Pay for Equal work related litigations are the most contested litigations when it comes to economic benefits of women in India. Prevention of Sexual Harassment at work place is also one of the most sought after legal issues which has been categorically considered by the Courts. Especially Indian courts, since the time of Vishaka Case, have referred CEDAW and elaborated prompt mechanism for ensuring equal opportunities for women.

In spite of this recognition, economic rights of women could be enjoyed only after effective implementation of the basic rights and freedoms given both under the Constitution and CEDAW. Effective implementation envisages a thorough revisiting of the cultural and social stereotyping of women.

Even a case relating to sexual advances or harassment directly impacts the economic rights of women. Courts have repeatedly pronounced on the need to address these issues. Legislative changes have followed and have been implemented throughout the country. However, mobility is still an issue for the female workforce and economic rights of women workers and even entrepreneurs. A female entrepreneur venturing into businesses appoints a greater number of female workers and employees. So female entrepreneurship should be promoted and records of these be

kept at all levels to measure the quantum of achievements in economic rights of women.

