

JUDICIAL ACTIVISM AND LEGAL REFORMS RELATING TO WOMEN WITH SPECIAL REFERENCE TO PERSONAL LAW

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ABSTRACT

Judicial Activism may be defined as the pro-active role played by the Judiciary in ensuring that the rights and liberties of the people are protected. It may be understood as the role of the court in stepping out from its normal interpretative role. According to the former Chief Justice of India A.M Ahmadi, "Judicial activism is a necessary adjunct of the judicial function since the protection of public interest happens to be its main concern." This paper is an effort to highlight the progressive judgements given by the judiciary using the tool of Judicial Activism in the field of legal reforms pertaining to personal laws that impact India women.

Keywords: Judicial activism, legal reforms, progressive judgements, public interest litigation, women empowerment.

INTRODUCTION

"Laws are a dead letter without courts to expound and define their true meaning and operation." - Alexander Hamilton

The phrase "Judicial activism" carries more than one connotation. Judicial Activism may be defined as the pro-active role played by the Judiciary in ensuring that the rights and liberties of the people are protected. It may be understood as the role of the court in stepping out from its normal interpretative role. When the court moves beyond its normal role of mere adjudicator of disputes and becomes a player in the system of the country laying down principles and guidelines that the executive must carry out, that role of the court is said to be judicial activism. The basic intention behind this activism was to advance human rights jurisprudence.

In *C. Masilman Mudaliar v. Idol of Swaminathaswami Thirukoil*¹, the Supreme Court noted that as per the UN Report 1980, "Women constitute half of the world population, perform nearly two-third of the work hours, receive 1/10th of the world income and own less

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than one-hundredth percent of world's property." There are numerous laws enacted by the legislature aimed at empowerment of women in the areas of personal labour, criminal, service and socio-economic matters. Even the fundamental law of the land namely Constitution of India guarantees equality for women. But still women suffer from discrimination, exploitation and victimization; that is why there is a need for empowerment of women. Enacting laws is not enough for combating the discrimination against women. The courts and judges have to play a greater role as they can infuse life and blood into the dry skeleton provided by the legislature and create a living organism, appropriate and adequate to meet the needs of the society, in favour of social interest or for common good by using the tool of Judicial activism.

Judicial activism in India encompasses an area of legislative vacuum in the field of human rights. It reinforces the strength of democracy and re-affirms the faith of common man in the "Rule of Law."

ROLE OF THE WOMAN

Lord Denning in his book, *Due Process of Law*, has observed that a woman feels as keenly; thinks as clearly, as a man. She in her sphere does work as useful as a man does in his. She has as much right to her freedom to 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 the eyes of the community, hers 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 equal.² Charles Fourier had stated, "The extension of women's right is the basic principle of all social progress."³

In *Valsamma Paul V. Cochin University*,⁴ it was held by the Supreme Court that human rights are derived from the dignity and worth inherent in human beings. Human rights and fundamental freedoms have been reiterated by the Universal Declaration of Human Rights and they are interdependent and have mutual reinforcement. The human rights of women including girl child are therefore an inalienable, integral and indivisible part of universal human rights. The full development of personality and fundamental freedom of women and their equal participation in political, social, economic and cultural life are concomitants for national development, social and family stability and growth culturally, socially and economically. All forms of discrimination on grounds of gender are violative of fundamental freedom and human rights.

INTERNATIONAL CONVENTIONS AND TREATIES RELATING TO WOMEN

The Covenant on the Elimination of All Forms Discrimination Against Women [CEDAW], 1979 is the United Nations landmark treaty marking the struggle for women's right. It is regarded as the Bill of Rights for women. It graphically puts what constitutes discrimination against women and spells out tools so that women's rights are not violated and they are conferred the same rights.

The Declaration on the Elimination of Violence against Women [1993] is a comprehensive statement of international standards with regard to the protection of women from violence. The Declaration sets out the international norms which States have recognized as being fundamental in the struggle to eliminate all forms of violence against women.

LEGISLATIVE INITIATIVES

In India there are numerous laws aimed at empowerment of women in the areas of personal, labour, service and criminal and socio-economic matters. The Fundamental Law of the land namely Constitution of India guarantees equality for women. Some of the most important legislations pertaining to empowerment of women and specific case laws relating to them which help in empowering the women are enumerated below:

Constitution of India

Constitution of India provides the legal framework for integration and implementation of measures promoting and protecting human rights of women. The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio-economic, educational and political disadvantages faced by them. Part III and IV provide the backbone of legislation for socio-economic emancipation of women. We may encapsulate major highlights regarding protection of women's rights from different parts of the Constitution.

Preamble: The Preamble begins with the words "WE THE PEOPLE OF INDIA..." which includes men and women of all castes, religions, etc. It wishes to render "EQUALITY" of status and of opportunity "to every man and woman". The Preamble again assures "dignity of individuals" which includes the dignity of women. On the basis of the Preamble, several important enactments have been brought into operation, pertaining to every walk of life – family, succession, guardianship and employment – which aim at providing protection of status, rights and dignity of women.

Article 14

Equality before Law – "Equal rights and opportunities for men and women in the political, economic and social sphere."

CASES:

Madhu Kishwar and others v.State of Bihar⁵

Air India International v. Nargesh Meerza⁶

Miss C.B Muthamma v. U.O.I⁷

Article 15

Article 15 (1): The State is not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

Article 15 (3): The State to make any special provision in favour of women and children.

CASES:

Githa Hariharan v. Reserve Bank of India⁸

Pratibha Rani v. Suraj Kumar⁹

Article 16

Provides for equality of opportunities in the matter of public appointments

CASES:

Randhir Singh v. Union of India¹⁰

Article 19

Protection of certain rights regarding freedom of speech etc. to practice any profession, or to carry on any occupation, trade or business.

CASES:

Vishaka v. State of Rajasthan¹¹

Delhi Domestic Working Woman's Form v. Union of India¹²

Article 21

Protection of Life and Personal Liberty.

CASES:

State of Maharashtra v. Madhukar Narain¹³

Chairman Railway Board v. Chandrima Das¹⁴

Article 23

Right against Exploitation. To give effect to this article and to curb the deep-rooted social evil of prostitution, the Parliament has passed "**The Immoral Traffic (Prevention) Act, 1956.**"

CASES:

Vishal Jeet v. Union of India¹⁵

Gaurav Jain v. Union of India¹⁶

Laxmi Kant v. Union of India¹⁷

Article 39

Enjoins the State to provide an adequate means of livelihood to men and women equal pay for equal work men and woman not forced by economic necessity to enter a vocations.

To give effect to this Article, the parliament has enacted "**The Equal Remuneration Act, 1976,**" which provides for payment of equal remunerations to men and woman workers.

CASES:

Randhir Singh v. Union Of India¹⁸

Article 42

State is to ensure the provisions for just and humane conditions of work and maternity relief. Following are the legislations which promote the objectives of this Article:

Women's Compensation Act, 1923

The Employees State Insurance Act, 1948

The Minimum Wages Act, 1948

The Maternity Benefit Act, 1961

The Payment of Bonus Act, 1965

CASES:

Municipal Corporation of Delhi v. Female Workers¹⁹

Article 44

Uniform Civil Code

The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.

CASES:

Mohd Ahmed Khan v. Shah Bano Begum²⁰

Sarla Mudgal v. Union Of India²¹

Article 51 A

It shall be the duty of every citizen of India: To renounce practices, derogatory to the dignity of woman.

This provision reflects its manifestation through the enactment of “**The Indecent Representation of Woman Prohibition Act, 1986.**”

Article 243 D

Reservations of not less than 1/3 of the total number of seats for woman belonging to Scheduled Castes and Scheduled Tribes in every Panchayat.

Article 243 T

Reservations of not less than 1/3 of the total number of seats for woman belonging to Scheduled Castes and Scheduled Tribes in every municipality.

OTHER LEGISLATIVE PROVISIONS RELATING TO WOMEN

Code of Criminal Procedure, 1973:

Under Sec 125 Cr. PC, a woman has got a Right to Maintenance

CASES:

Mohd. Ahmed Khan v. Shah Bano Begum²²

Indian Evidence Act, 1872:

Sections 113 (a), 113 (b) and 114 (c) provide for presumptions as to abetment of suicide by a married woman within 7 years of marriage, as dowry death of a woman and as to absence of consent of woman for sexual intercourse, respectively.

Hindu Adoption and Maintenance Act, 1956

Section 18

Hindu Succession Act, 1956

Section 14 of the Act provides for property of female Hindu to be her absolute property.

The Hindu Minority and Guardianship Act, 1956

Section 6

The Hindu Marriage Act, 1955

Section 13 (2) of the Act provides special rights to wife to present a petition for divorce.

The Muslim Women [Protection of Rights on Divorce] Act 1986

Danial Latifi V.Union of India²³

The Factories Act, 1948

The Provisions of this Act provides for health, safety, welfare and working hours for women labourer working in factories.

The Prenatal Diagnostic Technique (Regulation and Prevention of Measure) Act, 1994

This Act prohibits diagnosis of pregnant women and also identification of child in the womb whether it is male or female.

The Commission of Sati (Prevention) Act, 1992

It safeguards women from Sati.

The Family Courts Act, 1984

The Act provides for setting up a family court for solving matrimonial disputes.

The National Commission for Women Act, 1992

The Act provides for a setting up of a statutory body namely the National Commission for Women to take up remedial measures, and facilitate redressal of grievances and advise the government on all policy matters relating to women.

The Protection of Women from Domestic Violence Act, 2005

The Act provides for punishment for domestic violence committed by husband and his relatives and also provides legal assistance to women suffering from domestic violence. It provides interim maintenance, compensation, damages, shelter home to victims.

Prohibition of Child Marriage Act, 2006.

JUDICIAL INITIATIVES

Though there are a plethora of legislations pertaining to empowerment of women, still they suffer from discrimination and exploitation. GCV Subbha Rao writes in *Family Law in India* (revised by T.V. Subba Rao and Dr. Vijendra Kumar):

*“Laws are social digesters and seldom are they neutral. They have masculine flavour especially with reference to family laws. Making of laws, administering the laws or resolution of disputes arising out of implementation of laws are totally considered to be of male bastion and equitable gestures, if any, towards women come out of men’s sympathies of women’s problems.”*²⁴

In this paper, some of the landmark judgements will be highlighted in which the Court via judicial activism has not only interpreted the law in its true spirit but has gone beyond that and laid down beneficial guidelines and fulfilled an important gap between the legislature and judiciary by imparting very progressive judgements with moral authority to empower women's rights.

Judicial Activism has not been palatable to many but there is no denial that it has brought about a paradigmatic change from 'rule-specific' to 'rights-specific laws' thereby successfully advancing human rights jurisprudence. The skill of the Judge as a surgeon in interpreting the given laws and the balm of Judicial Activism have in togetherness gone a long way in bringing about deep seated changes in, the life of women.²⁵The Supreme Court has made a determined bid to assuage the women's grievances against discrimination by upholding their Constitutional and Legal rights. Some of the recent decisions given by the Apex Court significantly advance the cause and the dignity of woman. Some of these judgements are given below:

Seema Vs. Ashwani Kumar²⁶

In this case, the Supreme Court made directions that the marriages of all citizens of India belonging to various religions should be made compulsorily registrable in respective states where marriage is solemnized. The Supreme Court directed the States and Central Government to make rules relating to the procedure for registration of marriages. Non-registration of marriages affects the women to a great measure. If the marriage is registered, it also provides evidence of the marriage having taken place and would provide a rebuttable presumption of the marriage having taken place. Through the registration itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding the validity of a marriage, yet it has a great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage. Further it will help various women related issues such as:

Prevention of child marriages and to ensure minimum age of marriage;

Prevention of marriages without the consent of the parties;

Check illegal bigamy / polygamy;

Enabling married women to claim their right to live in the matrimonial house, maintenance etc.;

Enabling widows to claim their inheritance rights and other benefits and privileges which they are entitled to after the death of their husband;

Deterring men from deserting women after marriage;

Deterring parents / guardians from selling daughters/ young girls to any person including a foreigner, under the garb of a marriage.

Shamim Ara Vs. State of UP²⁷

In the year 1979, Shamim Ara filed an application under Sec 125 Cr.P.C. against her husband Abrar Ahmed for maintenance. The case was transferred to the family court after its institution in the state. In a written statement filed in 1990, her husband claimed that he had

divorced Shamim in 1987. No particular of divorce were attached. The family court relied on an affidavit filed by the husband in a civil suit to which the wife was not a party in which he had stated that he had divorced her. The family court held that the affidavit corroborated the plea taken by the husband in his written statement that he had divorced his wife. On this basis, the court concluded that since she was divorced, she was not entitled to any maintenance.

In an appeal filed by the wife, the Allahabad High Court ruled that the divorce was not given in the presence of wife and that it was not communicated to her. But since through his written statements, the husband has communicated the fact of divorce to her, the requirement communication of the divorce had been completed and hence, she was not entitled to maintenance thereafter.

The issue before the Supreme Court was whether the statement containing written statement regarding divorce can be construed as a valid communication of the divorce. The Supreme Court commented, “None of the ancient holy books or scriptures of Muslims mention such form of divorce as has been accepted by High court and the Family Court. No such text has been brought to our notice which provides that a recital in any document, whether a pleading or an affidavit, incorporating a statement by the husband that has already divorced his wife on a specified or unspecified date, even if not communicated to the wife, could become an effective divorce on the date on which the wife happens to learn of such a statement contained in the copy of the affidavit or pleading served on her.”

The Court was of the firm opinion that if *talaq* was to be effective, it had to be pronounced. The term “pronounce” was explained as: “to proclaim, to utter formally, to declare, to articulate”. The court held that mere plea in his written statement submitted to the court that *talaq* was given cannot be treated as a pronouncement of *talaq* by the husband on the wife. It was held that neither did the marriage between the parties stand dissolved, nor had the liability of the husband to pay maintenance come to an end. The husband continued to remain liable for maintenance till the obligation came to an end in accordance with the law.

In this case, Supreme Court has provided some norms and parameters within which the husband can pronounce a *talaq*. The Supreme Court discussed valid *talaq* in eyes of the Islamic law. The principles laid down by the judiciary with regard to husband’s right to *talaq* can be summarized as follows:

Plea of divorce taken by husband in a reply to the maintenance-claim filed by the wife does not constitute divorce;

Mere statement in writing or in oral disposition before the court regarding the *talaq* having been effected in the past is not sufficient to prove the fact of divorce;

To be effective, *talaq* has to be pronounced;

It is mandatory to have a pre-divorce conference to arrive at a settlement. This meditation should be in the presence of two mediators, one chosen by the wife and the other by the husband.

If wife disputes the fact of *talaq* before a court of law, all the stages of conveying the reasons for divorce, appointment of arbitrators, conciliation proceedings for reconciliation

between the parties by the arbitrators and failure of such proceedings are required to be proved.

A Muslim husband cannot divorce his wife at his whims and caprice; and the husband must also prove that there was a valid ground for divorcing the wife.

Mohd Ahmad Khan Vs. Shah Bano Begum²⁸

In this case the issue before the court was to find out the extent of Muslim husband's liability to maintain his divorced wife under Section 125 of the Cr. P.C., 1973. Ahmad Khan, an advocate, was married to Shah Bano Begum in 1932, and had five children. They lived together till 1975, when she was driven out of the house by her husband. In 1978, she filed a petition for maintenance under Section 125 of the Cr. P.C. As soon as she filed this petition, the husband divorced her 'by an irrevocable *talaq*'. He contended that after the divorce, he had no obligation to maintain her. The judicial Magistrate at Indore ordered him to pay her a sum of Rs. 25 per month even though the wife had alleged that he was earning Rs. 60,000 per year. On appeal, the Madhya Pradesh High court raised this amount to Rs. 179.20. Dissatisfied with this order, the husband came to appeal to the Supreme Court. He challenged the maintainability of the petition as also his liability to maintain her after the period of *iddat* and after returning her *mahr*.

The court went into the details of various authorities and translations of the verses of the Holy Quran in support of the view that a Muslim woman who has been divorced by her husband has a right to be maintained even after the period of *iddat*. The husband's plea that since he had returned to her the whole sum of Rs. 30,000 which, under the personal law applicable to them was payable after divorce in terms of provisions of section 127 of the Cr.P.C., he had no further liability towards her maintenance, was not accepted. According to the court, *mahr* was an obligation imposed on the husband as a mark of respect for the wife. It is not an amount in consideration of divorce. It further held:

"There can be no greater authority on this question than the Holy Quran, "the Quran, the sacred book of Islam, comprises in its 115 Suras or chapters, the total of revelations believed to have been communicated to Prophet Mohammed, as a final expression of God's Will" ... Verses (Aiyats) 241 and 242 of the Quran shows that there is an obligation on Muslim husbands to provide for their divorced wives."

The court, thus, upheld the wife's right to be maintained and imposed costs of Rs. 10,000 on husband who divorced his wife and threw her out of the house after 43 years of marriage and after having five children. It held that the provision for maintenance under Section 125 of the Cr. P.C. is not dependent on the religion of the spouses.

The Court further observed :

*"The liability imposed by section 125 to maintain close relatives who are indigent is founded upon the individual's obligation to society to prevent vagrancy and destitution. That is the moral edict of the law and morality cannot be dubbed with religion".*²⁹

This judgement created a hue and cry among Muslims and finally "The Muslim Women (Protection of Rights on Divorce) Act, 1986" was passed.

Danial Lafiti Vs. Union of India³⁰

In this case, the constitutional validity of the Muslim Women (Protection of Rights on Divorce) Act, 1986 (MWA), was challenged on the ground that it infringed Articles 14, 15 and 21 of the Constitution.

The principles laid down in this judgment include:

The provision of paying a reasonable and fair provision and maintenance applies only to a Muslim women whose marriage and divorce took place in accordance with Muslim law; it does not apply to women who are deserted and separated Muslim wives (who are not divorced); it does not apply to women who have married or have been divorced under other laws of India;

At the time of the divorce, the Muslim husband is required to contemplate the future needs for the entire life of the divorced wife and make preparatory arrangements in advance for meeting those needs;

Reasonable and fair provision may include provision for the divorced women's residence, food, clothes and other articles;

As per the provisions of the 1986 Act, the Muslim husband is obliged to pay the maintenance within the *iddat* period;

A divorced Muslim woman is legally entitled to receive life-long post-divorce maintenance within the *iddat* period (i.e. three months from the date of divorce);

A divorced Muslim woman, who has not remarried, and who is not able to maintain herself after *iddat* period can proceed as provided under section 4 of the Act against her relatives who are liable to maintain her in proportion to the properties which they inherit on her death according to Muslim law, from such divorced woman, including her children and parents. In case of any of the relatives being unable to pay maintenance, the Magistrate may direct the State Wakf Board established under the Act to pay such maintenance;

The provisions of the Act do not offend Articles 14, 15 and 21 of the Constitution of India.

This judgment has reiterated the fact that the 1986 Act would be applicable only to women who have married under Muslim law. A civil marriage under the Special Marriage Act, 1954 is a viable option for those women who do not wish to be governed by provisions of Muslim law. The provisions of *mehr*, divorce without the intervention of the court and polygamy would not be available to Muslims marrying or subsequently registering their marriages under the Special Marriage Act. This judgment also held the 1986 Act to be legally valid.

So, the court, by way of its interpretative skills, held that the use of word "written" and not "for" makes it clear that this provision and maintenance extends not just for the *iddat* period but for the entire life of the divorced wife until she remarries.

Shabano Bano Vs. Imran Khan³¹

The Supreme Court finally laid the controversy to rest and confirmed that family courts have the power to decide issues under the Muslim Women's Act. The court commented that where social legislations enacted to secure the rights of the needy women are concerned, adherence

to rigid rules of procedure and evidence should be avoided. The petitioner, Shabana Bano had approached the family court at Gwalior under S.125 Cr. P.C., directed for maintenance of Rs. 3000 p.m. Her plea was that her husband was harrassing her and she was asked not to return after her delivery from her parents house unless his demands for dowry were not met. In response, the husband pleaded that he had divorced her and hence he is not liable to pay any maintenance to her. Conceding this plea, the family court awarded Shabana Rs. 2000 p.m. for the four months between the date of filing the petition and the alleged divorce. The Madhya Pradesh High Court dismissed her appeal against the judgement of family court.

Reversing the High Court judgement, the Supreme Court held that if a petition filed by the wife under S. 125 Cr.P.C., is pending before a family court at the time of her divorce, the same must be decided by the family court, as per the provision of MWA, and until such time, the wife should be awarded maintenance under S. 125 Cr.P.C.

The Supreme Court in this case cleared all doubts and vagueness surrounding the issue after post-enactment of the Muslim Women [Protection of Rights on Divorce] Act, 1986. The Supreme Court made it crystal clear that even a divorced Muslim woman would be entitled to claim maintenance from her divorced husband under Section 125 of the Cr.P.C even after the *iddat* period as long as she does not remarry. This being a beneficial piece of legislation, the benefit thereof must accrue to the divorced Muslim women. Secondly, the Supreme Court arrived at a finding that the family court established under the Family Courts Act shall exclusively have jurisdiction to adjudicate upon the applications filed under Section 125 of the Cr.P.C.³²

Sarla Mudgal Vs. Union of India³³

This is a landmark case on the bigamy conversion issue, which initiated the debate on the Uniform Civil Code(UCC) by directing the Union Government to file an affidavit about the action taken for framing UCC. The Court examined whether a Hindu husband, married under Hindu Law, by embracing Islam, can solemnise a second marriage and whether such a marriage without having the first marriage dissolved under law, would be a valid marriage qua the first wife who continues to be Hindu . From a catena of case laws, the Supreme Court inferred that a marriage celebrated under a particular personal law cannot be dissolved by the application of another Personal Law to which one of the spouse's converts and the others refuses to do so. Where a marriage takes place under Hindu law the parties acquire a status and certain rights by the marriage itself. Under the law governing the Hindu Marriage and if one of parties is allowed to dissolve the marriage by adopting and enforcing a new personal law, it would tantamount to destroying the existing rights of the other spouse who continues to be Hindu. The Court ruled that there was no automatic dissolution of the marriage and by virtue of equity, good conscience and natural justice, the second marriage will be rendered void and S. 494 IPC will be made applicable. So, the Court held that if husband converts to another religion and marries to another woman without having first marriage dissolved, the apostate husband can be prosecuted under Section 494 for committing bigamy. Conversion does not *ipso facto* dissolve first marriage. And so the second marriage during subsistence of first marriage is void even if solemnized after conversion. It is a welcome judgement which seeks to stop back- door entries to bigamous relationships under the garb of conversion.

Githa Hariharan Vs. Reserve Bank of India , Vandana Shiva Vs. J Bandhopadhyaya³⁴

In these two cases, the constitutional validity of Sections 6 (a) of the Hindu Minority and Guardianship Act, 1956 and 19 (b) of the Guardians and Wards Act, 1890 was challenged as being violative of Articles 14 and 15 of the Constitution. The Court observed that the *wording of section 6 (a) of the Hindu Minor and Guardianship Act, 'the father and after him the mother'*, do give an impression that the mother can act as a guardian only after the life time of the father. The Supreme Court construed the provisions in a manner so as not to effect the constitutional mandate of gender-equality and non-discrimination and adopted the *harmonious construction* and held that the word "*after*" in section 6 (a) of the Hindu Minority and Guardianship Act need not necessarily mean "*after the life time*", but "*in the absence of*", that is, when the father is not in the charge of actual affairs of the minor, either because of his indifference or by virtue of mutual understanding between the parents, or because he is staying away from the place where the father can be considered as 'absent' under the impugned provisions and the mother, who, in any case is recognized natural guardian, can act validly on behalf of the minor as the guardian. The predominant consideration in every case, however, would be the welfare of the child.

In this case, Supreme court constituted the guardianship legislation in the radiance of Articles 14 & 15 of the Constitution of India, to the effect that the mother was entitled to be the natural guardian even during the life time of the father, despite the fact the statutes had relegated the women to a secondary position .

Ramesh Chandra Rampratap ji Daga Vs. Rameshwari Rameshchandra Daga³⁵

It is a historical judgement in which the Supreme Court upheld the maintenance rights of women in informal relationship or invalid marriages. In this case the husband, a widower, had married Rameshwari who had obtained a customary divorce (*chhor chithhi*) through a divorce deed. The wife alleged that this document was shown to the husband prior to the marriage and he had accepted the validity of same. Later, when disputes arose and the wife was driven out of the matrimonial home, she filed for judicial separation and claimed maintenance. During these proceedings, the husband denied the marriage on the ground that the woman had not been formally divorced. Rejecting the plea, both the family court situated at Mumbai and the High Court had upheld the wife's and her daughter's right of maintenance. The Supreme Court accepted the women's plea that the husband, an advocate, was aware of the customary divorce at the time of his marriage. The Court held that a bigamous marriage may be declared illegal being in contravention of the provisions of the Act but it cannot be said to be immoral so as to deny even the right of alimony or maintenance to a spouse who is financially weak and economically dependent.

The judgement sets right the wrongs suffered by legions of Hindu women for half a century. The Hindu Marriage Act, 1955 had rendered Hindu marriages monogamous in letter but, Hindu marriages continue to be bigamous in reality. The advantage of this mandate of 'legal monogamy' was to the husband, as he could escape from the economic liability of maintaining his wife on the ground of a legal defect or lacking legal sanctity in the marriage. Several earlier judgements had denied women in such relationships the right of maintenance by adopting a 'righteous and moral stand'.

B.P Achala Anand Vs. Appi Reddy³⁶

The Supreme Court pronounced a land mark ruling in the above case by breathing a new life into the right of women to the matrimonial home. In its opening comments, the ruling reiterates the power of the judicial law making:

“Unusual situations posing for resolution are an opportunity for innovation, law, as administered by courts, transforms into Justice. Markandey Katju, while reaffirmed, that ‘the law does not remain static. It does not operate in a vacuum. As social norms and values change, laws too have to be re-interpreted and re-casted, law is really a dynamic instrument fashioned by society for the purposes of achieving harmonious adjustment, human relations by elimination of social tensions and conflicts. Lord Danning once said: ‘ Law does not standstill, it moves continuously. Once this is recognized, then the task of a judge is put on a higher plain. He must consciously seek to mould the law so as to serve the needs of the time.’”

Since the parties were Hindus, the Court examined the right in the context of Hindu law and held that the right to residence is a part and parcel of a wife’s right to maintenance and that the right has been statutorily recognized with the enactment of the Hindu Adoption and Maintenance Act, 1956. ‘Maintenance’ under Section 18 of the Act includes residence and further that, for the purpose of maintenance, the term ‘wife’ includes a divorced wife. Since there were no Indian legal precedents which address the issue directly, the Court referred to the legal principles under English Law and approvingly quoted Lord Denning:

‘A wife is no longer her husband’s chattel. She is beginning to be regarded by the law as a partner in all affairs which are their common concern. Thus, the husband can no longer turn her out of the matrimonial home. She has as much right as he has to stay there even though the house does stand in his name..... Moreover it has been held that the wife’s right is effective, not only as against her husband but also as against the landlord. Thus where a husband, who was statutory tenant of the matrimonial home, deserted his wife and left the house, it was held that the landlord could not turn her out so long as she paid the rent and performed the conditions of the tenancy.’”

Y. Narasimha Rao Vs. Y. Venkata Lakshmi³⁷

The issue in this case was whether a divorce decree passed by a foreign court which has neither jurisdiction nor the legal ground to dissolve a marriage under the Hindu Marriage Act, be recognized in India. The rules of Private International Law in India are not codified and are scattered in different enactments such as the Civil Procedure Code, the Contract Act, the Indian Succession Act, the Indian Divorce Act, and the Special Marriage Act etc. The Court in this matter relied on the relevant provisions of Section 13 of the C.P.C., which are capable of being interpreted to secure the required certainty in the sphere of this branch of law in conformity with public policy, justice, equity and good-conscience, and the rules so evolved will protect the sanctity of the institution of marriage and the unity of family which are the corner stones of our societal life.

Various guidelines laid down by the Apex Court in this case and the directions issued for strict observance of the principles of natural justice by foreign courts while exercising

jurisdiction in matrimonial courts, will surely provide protection to wives whose husbands abandon them and manipulate divorce decree under foreign jurisdiction.

CONCLUSION

By going through judicial judgments in realm of personal laws, one finds that Indian judiciary has imparted very progressive judgments by using the tool of judicial activism. It kept alive the aspirations of the framers of the Constitution and the goals enshrined in the Preamble. Judiciary should be applauded for the way it is shaping the future laws for women's right through silent and determined activism. The Supreme Court through intense judicial activism has become a symbol of hope for the people of India.

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