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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

PROTECTION OF RIGHTS OF WOMEN **AND LEGAL AID SERVICES**

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Abstract: -

Crime against women increases day by day in India. Women are unsafe anywhere, whether in their homes, workplaces, or public places. Women are considered as goddess Lakshmi in Indian culture. But in the last few years crimes against women, there are at stake. In the present scenario, women are being subjected to harassment, abuse, discrimination, eve-teasing, rape, and more in the country. All women have the right to safety and security, protection, right to peace and prosperity, non-destructible rights and freedom, economic rights, etc. There are two aspects of the right available to women in India: constitutional and legal rights. Those rights which are provided under various provisions of the Indian constitution, i.e., constitutional right; and those rights that are provided in the various laws (acts) of the parliament and the state legislation is called legal right.

Legal aid means giving free legal services or advice to those people who are unable to afford the services of an advocate for the conduct of the case or any legal proceedings in any court, tribunal, or before a judicial authority. People like the indigent, needy, and illiterate generally need legal services for their cases or any legal provision. The main aim of the preamble of the Indian constitution is to secure the people's justice. Those services are governed by the legal services authorities act, of 1987. The national legal service authority regulates this legal service. Legal aid service is granted to all citizens of India by the Indian constitution as a fundamental right.

I will be discussing my views and opinions regarding protecting women's rights and legal aid services in addition to referencing some case laws.

PROTECTION OF WOMEN'S RIGHTS

As we know, women fought harder for their rights and safety but across the country, many women still face discrimination on the grounds of sex and gender. Some crimes against women include rape, cruelty by the husband and his family, dowry deaths, sexual and mental harassment at home or workplace, girl trafficking, and many more. These crimes are common and often happen to women. However, the safety and security of women is the utmost priority for the government in India. India has many laws related to the protection of women's rights. As above mentioned, the two aspects of rights available to women in India: -

1. **CONSTITUTIONAL RIGHTS:** - under the Indian constitution, women have equal rights as men. The constitution of India has given rights to dignity, equality, opportunity, freedom from gender discrimination, and more. Constitution has granted equality to women and empowers the state to adopt some positive discrimination in favor of women.

Constitutional provisions for women in our constitution: -

- ❖ Article 14: This article states that the state shall not deny to any person equality before the law or the equal protection of laws within the territory of India. In general words, men and women are equal in the eyes of the law and give treatment to both genders on various grounds.
- ❖ Article 15: The state shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth, or any of them. Here the term sex is given which considers male, female, etc.
- ❖ Article 15(3): The state is empowered to make any special provisions for women. This is affirmative discrimination in favor of women.
- ❖ Article 16: This article states that equal employment opportunities must be provided for all citizens and no citizens must be discriminated against based on sex, caste, religion, or region.
- ❖ Article 23: this article prohibits traffic in human beings and beggars and other similar forms of forced labor.
- ❖ Article 39(a): This article provides the right to adequate means of livelihood for all citizens irrespective of their sex whether men or women.
- ❖ Article 39(d): this article of the constitution promotes equal pay for equal work both for men and women.

- ❖ Article 42: The state shall make provisions for securing just and humane conditions of work and for maternity relief.
- ❖ Article 51A(e): To renounce the practices and derogatory to the dignity of women.
- ❖ Article 243D (3): Not less than 1/3rd (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats reserved for women and such seats to be allotted by rotation to different constitution in a panchayat.
- ❖ Article 243D (4): Not less than 1/3rd of the total number of officers of chairperson in the panchayats at each level to be reserved for women.
- ❖ Article 243T (3): Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.
- ❖ Article 243T (4): The offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes, and women in such manner as the Legislature of a State may, by law, provide.

2. LEGAL RIGHTS: - State has enacted several legislative measures/provisions to protect women's rights, and dignity, and to provide support services to them.

- ❖ Protection of Women from domestic violence Act, 2005: It was made in favor of women to protect them from domestic violence. Here domestic violence refers that violence that has been done by their relatives like family members including their husband, parent, and other relatives; in their domestic space or circle. It was enacted by the parliament to protect women who are facing domestic violence.
- ❖ Immoral traffic (Prevention Act, 1956): Any person involved in transferring, transporting, recruiting, or receiving people for prostitution or any kind of sex work is liable to be punished in the eyes of the law. The enactment of this act was to abolish prostitution and to limit it, also to stop the immoral trafficking of women and girls; by criminalizing various aspects of sex work.
- ❖ Dowry Prohibition Act, 1961: India has a history of taking and giving dowry in marriages. Dowry is not new but common in India. Dowry refers to any property or valuable security which is given or agreed to given by one party to the marriage to the other party; before, at the time of marriage, or after the marriage. Women have to face

physical or mental torture, and harassment in their own homes by their husbands or other relatives. This act was passed by parliament on 1st July 1961 and it extends to the whole of India. This act prohibits the giving and taking of dowry in India.

- ❖ Sexual Harassment of Women at the Workplace (prevention, prohibition, and Redressal) Act, 2013: The act has been enacted to protect women from sexual harassment in the workplace. This act ensures that workplaces remain free from sexual harassment so that women feel safe in their workplaces and can do their work without any hesitation. It also seeks to create awareness about sexual harassment and to provide legal remedies for victims.
- ❖ Minimum Wages Act, 1948: This act doesn't allow any discrimination related to wages between men and women workers.
- ❖ Medical Termination of Pregnancy Act, 1971: The act was made in the field of medical science regards safer abortion. This Act provides for the termination of certain pregnancies by registered Medical Practitioners. It affords the woman safety and not the unborn child.
- ❖ Protection of Children from sexual offenses (POSCO) Act, 2012: This act provides protection to children from offenses like sexual harassment, sexual assault, pornography, etc. In this act, children are considered who is below the age of 18 years. The act also safeguards the interest of children at any stage of judicial proceedings.
- ❖ Hindu succession act, 1956: Hindu succession act grants daughters equal rights to property as sons.
- ❖ Mines Act, 1952 and Factories Act, 1948: The act forbids the employment of women between 7 P.M. to 6 A.M. in mines and factories and provides for their safety and welfare.
- ❖ Equal Remuneration Act, 1976: It allows equal remuneration to both men and women. The act prevents discrimination on the grounds of sex, caste, gender, and religion in terms of remuneration.
- ❖ Indecent Representation of Women (Prohibition) Act, 1986: this act prohibits indecent representation, through publications, advertisement by writings, painting, or in other ways. Here, indecent representation of women means the depiction in any manner of the figure of a woman's body or parts in such a way that effects of being indecent or derogatory to, or is likely to deprave, corrupt, or injure to the public morality or morals.
- ❖ Maternity benefits act, 1961: It protects women workers and employers during their maternity period and provides maternity benefits to them.

- Apart from all these rights, laws are made under criminal laws in favor of women:
 - ❖ Indian penal code,1860: Indian penal code (Hereinafter referred to as ‘IPC’) laid down some provisions which penalize the culprit for heinous crimes/offenses against women. Provisions under IPC deal with such crimes:
 - ✓ Rape: Section 375 of IPC, 1860 defines rape. Rape is sexual intercourse or sexual activity with a woman against her will or without consent, either by force or threat of force or against the woman who is not able to give her consent due to intoxication, unsoundness, or unconsciousness. This offense is cognizable and non-bailable. Under section 376 of IPC, punishment for rape has been prescribed, in the form of imprisonment which is up to at least 7 years but it extends to 10 years or life imprisonment, and also liable with a fine.
 - ✓ Dowry death: Section 304B of IPC states that a woman should have died by burns, or bodily injuries other than the natural circumstances within the seven years of marriage; or suffered from cruelty or any kind of harassment by her husband or his relatives, before death in connection with or any demand of dowry. Whoever commits this offense shall be punishable with 7 years of imprisonment, which may extend to life imprisonment.
 - ✓ Cruelty: A married woman who is being subjected to cruelty by her husband or his relatives. Section 498A of the IPC deals with cruelty. Cruelty includes mental or physical harm to the body or health of the women and also harassment of the women for unlawful demand of property or valuable security.
 - ✓ Outraging the modesty of women: whoever commits assault or criminal forces on women to outrage the modesty of women. And if any person by using a word, gesture, or act intended to insult the modesty of women shall be punished. The provision comes under sections 354 and 509, respectively, in the IPC. The act of outraging the modesty of women is a cognizable and non-bailable offense.
 - ❖ Criminal Procedure of Code, 1973: Section 125 of criminal procedure of Code, 1973 provides ‘maintenance’ to wives, children, and parents. Maintenance is civil in nature but treat like a criminal offense. Maintenance is an amount of money that is given by the husband to a dependent person such as a wife, children, and parent so that they can take care of themselves financially.

Some judgments regarding the protection of the rights of women:

- **Vishaka vs. State of Rajasthan, 1997:** This is one of the landmark judgments on sexual harassment where the supreme court of India gave some guidelines as Vishaka guidelines regarding sexual harassment at the workplace. In this case, a woman named **Bhanwari Devi** was employed under the women's development project that was run by the Rajasthan state government. She tried to prevent child marriages. Abiding by her duty, Bhanwari Devi tried to stop the marriage of Ramkaran Gujjar's daughter, who was an infant. Bhanwari Devi tried to terminate the marriage but nothing happened. And she was gang raped by Ramkaran and his five friends in front of her husband and had also attacked her husband. The doctor at the primary health center declined to survey her and police had tried to avoid lodging the complaint, which resulted in delayed investigation. However, anyhow she managed to complain but the medical examination was delayed for fifty-two hours. The doctor at Jaipur only confirmed the age without recommendations of her being raped. After that, the trial court acquitted the accused citing lack of evidence. And this acquittal resulted, in a huge number of women activists and organizations that supported Bhanwari Devi. These organizations along with Bhanwari Devi approached the supreme court and filed a public interest litigation under Article 32.

Issues were raised in this case:

- Whether sexual harassment in the workplace is a violation of fundamental rights under articles 14, 15, and 21 of the Constitution?
- Whether there are mandatory guidelines to be laid in light of sexual harassment at the workplace?
- Employer has any responsibilities in case of sexual harassment by its employee at the workplace?

Judgment: It violates fundamental rights under articles 14, 15, and 21 of the Constitution. And it is also a violation of Article 19(1)(g). The Supreme Court also took reference from the international conventions from the provision of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). The Supreme Court acknowledged the loopholes and said that Sections 354 and 354A of the Indian penal code, 1860 were to be referred in any case of sexual harassment, but this provision is not sufficient or not specific to the issue at hand. This made the Hon'ble Court realize the need for proper and effective legislation that would deal with sexual harassment. In this case, the supreme court framed the guidelines to prevent sexual harassment at the workplace,

known as VISHAKA GUIDELINES, that should have been treated as law under Article 141 of the Indian constitution. Guidelines are:

- It shall be the duty of the employer or other responsible persons in workplaces to prevent or deter the commission of acts of sexual harassment and to provide the procedure for the resolution, settlement, or prosecution of acts of sexual harassment by taking all steps required.
- Definition: Sexual harassment includes such unwelcomed sexually determined behavior (whether directly or by implication) or,
 - a) Physical contact and advanced,
 - b) A demand or request for sexual favors,
 - c) Sexually colored remarks,
 - d) Showing pornography,
 - e) Any other unwelcome physical verbal or non-verbal conduct of sexual nature
- Employers or persons in charge of the workplace must take preventive measures like, an express prohibition of sexual harassment in the form of notifications or circulars, penalties by the government against the offender, and appropriate work conditions in respect of hygiene, health, and leisure.
- An organization should have a redressal committee to address harassment. This should be independent of the way that the demonstration establishes an offense under the Indian penal code, 1860; or some other law. Such a committee must have women as more than half of its members and its head must also be a woman, including a counseling facility. A report must send to the government annually on the development of the committee.
- Where such conduct amounts to misconduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer by those rules.
- **Ms. X vs Union of India, AIR 2016 SC 3525:** In this case, the petitioner was a rape survivor and she became pregnant. She had a fetus at 24 weeks and it was 'abnormal'. She filed a petition to the court for the abortion of the fetus.

A medical board comprising, seven doctors was constituted at the KEM Hospital and medical college, Mumbai, in furtherance of the direction issued by the Supreme Court. Obstetric examination shows 24 weeks of pregnancy, with severe polyhydramnios, with fetal parts not felt.

Based on medical examination it was found that the current pregnancy is of that 23- 24 weeks. Also, given severe multiple congenital anomalies, the fetus is not compatible with extrauterine life. There is a risk to the mother of continuation of pregnancy, it could endanger the life of the mother both physically and mentally.

Issued:

Whether it would be justified and legal, to terminate the pregnancy of the petitioner, which the medical report itself shows, as of 24 weeks duration?

Judgment: A clear finding has been recorded by the medical board, that the risk to the petitioner of the continuation of her pregnancy, can gravely endanger her physical and mental health. The medical board has also advised that the patient should not continue the pregnancy. The court interpreted section 5 of the medical termination of pregnancy act, 1971; which talks about an exception as to when the fetus can be aborted to save the life of a pregnant woman. The court held that in this case, it was necessary to abort the fetus of the child to save the mother's life and hence, allowed the petition.

- **Laxmi vs. Union of India, 2014:** This case is a landmark judgment on the acid attack in India. Laxmi, a 15-year-old girl, was attacked by acid. She was attacked by three men on the streets of New Delhi by throwing acid at her, as she refused to marry a man named Naeem Khan. Because of the acid attack, she faced a lot of mental trauma and physical pain too. She was admitted to Ram Manohar lohiya hospital, and even after so many surgeries, her report showed that she suffered approximately 25% acid burns in the upper part of the body. She filed a complaint against the culprit who was confined by the Delhi district court, and was later released on bail by the high court since there was no special law or provision in the Indian penal code, 1860 and code of criminal procedure, 1973 which punished for acid attacks. All this led to the filing of a public interest litigation by the victim before the apex court of India for prohibiting the easy availability of acid in the market.

Issues raised in this case:

- Complete restrictions on the sale of acid in an open market and its various forms.
- To make new laws or amend the existing laws like the Indian penal code and Code of criminal procedure relating to acid attack offenses.

- To constitute better compensation, rehabilitation schemes, and programs for acid attack victims.

Judgment: The Supreme Court of India after considering the seriousness of the matter and the vulnerable condition of victims, laid down several orders and guidelines for the betterment of acid attack survivors. Meetings were held in the presence of the secretary of the Ministry of home affairs, the Government of India, and the secretary of the Ministry of Health and family welfare, the Government of India with its all-chief secretaries collected data from all India of acid attack cases and filled the affidavit in court for the same. About the first issue, the state/union territories didn't regulate the sale of acids and other corrosive substances and ensured its operationality, the supreme court of India issued the following guidelines:

- Over-the-counter, sale of acid is completely prohibited unless the seller maintains a log/register recording the sale of acid which will contain the details of the person(s) to whom acid(s) is/are sold and the quantity sold. The log/register shall contain the address of the person to whom it is sold.
- No acid shall be sold to any person who is below 18 years of age.
- All stocks of acid must be declared by the seller with the Sub-Divisional magistrate (SDM) concerned within 15 days. In case the seller fails to provide such a report ton SDM can exercise the discretion to seize such unreported stocks of acid and may impose a fine extending to 50,000 rupees.
- In case when acid is purchased by any institution, enterprise, or lab for research, academics, or experimentation the credential of the same need to be mentioned in a register to be submitted before the SDM.

Furthermore, amendments were added to the Indian penal code, code of criminal procedure. In the Code of criminal procedure, 1973; section 357A was inserted for the compensation to the victims or their dependents, preparing a scheme for providing funds to all those who suffered loss or injury due to such an acid attack and need rehabilitation. The victim Compensation scheme got notified in all states and union territories of India. And In the Indian penal code, 1860; sections 326A and 326B were inserted which exclusively dealt with acid attacks. Supreme Court directed the minimum compensation of 3,00,000 rupees to every acid attack victim in all states and union territories. No hospital/ clinic can refuse treatment of an acid attack victim and if any such complaint is made, the victim can take further appropriate legal action.

This case is an eye-opener that shows us how these hateful and spiteful crimes occur out of petty

issues and how there is a need to put stringent remedies to curb these crimes and their proclivities along with associated attacks. And also, this case changed the course of acid attacks and their punishment in India.

LEGAL AID SERVICES

In the constitution, article 39A talks about free legal aid services. It is also pro bono legal services that give to those people who cannot afford the service of an advocate and any other legal services at their costs. This service is provided for the needy, illiterate, poor, and weaker sections of society. The state must provide legal services to those people and ensure justice for all citizens. It is one of the fundamental rights which is given to all citizens. It is not a charity but it is a constitutional obligation on the state and rights of citizens. In the year 1976, the 42nd amendment act, of 1976 was introduced in the constitution, which inserted article 39A under the directive principle of state policy (Part IV). The main objective of this provision is to provide and promote justice.

Article 14 of the Constitution talks about fundamental rights and provides that the state shall not deny to any person equality before the law and equal protection of the law within the territory of India. The aim main of the article is to secure justice.

Article 21 of the Indian constitution talks about the right to life and personal liberty which says no one should be deprived of his life and personal liberty, every individual has a right to protect their life. Under Article 21, the right to free legal aid is also considered a fundamental right. In the case of **Hussainara Khatoun vs State of Bihar, 1979**; the apex court held that the accused has the right to free legal aid service and the state must provide free legal aid service to an accused person if he/she cannot afford legal service for himself/herself. It was held that Article 21 also includes the right to free legal aid as an alienable element of reasonable, just, and fair procedure. Also, in the case of **Khatri v. State of Bihar, AIR 1981, SC 262**; The supreme court held the state is bound to provide legal aid not only during the trial stage but also when they are initially presented before the magistrate or remanded at any time.

Article 38(1) of the constitution, states that the state must promote the welfare of the people by securing and protecting social, political, and economic justice.

Legal service authority act, of 1987; is the main statute of legal aid in India. section 12 of this statute outlines the eligibility criteria and states that every person who has to file or defend a case shall be entitled to legal services under this act if that person is –

- Member of scheduled castes or scheduled tribes.
- Victims of human trafficking or beggars
- Women or children
- Person with disabilities as defined in the persons with disabilities
- Individuals in underserved circumstances such as victims of mass disasters, ethnic violence, caste atrocity, flood drought, earthquake, or industrial disaster.
- Industrial workmen
- Individuals in custody, including those in protective homes
- In the case before the supreme court, individuals with an annual income of less than RS. 5 lakhs, and for cases before the courts, individuals meeting the income criteria prescribed by the state government.

CONCLUSION

India has numerous laws related to protecting women's rights but it seems that those laws are not enough to protect women. In my opinion, it is always difficult for women to fight for their rights and safety but across the country, many women still face discrimination on many grounds of sex and gender. In many cases, we have seen that it takes too long to get justice in so many cases like rape. After so many amendments, new laws, provisions, and judgments women are not safe, it seems that those laws and amendments are not enough and strict in a manner to protect women. We need some strict laws to maintain the dignity of women.

Justice and fairness are the right of every citizen. Article 39A, i.e., legal aid which is essential for everyone to provide justice regardless of the thing, that they don't have money. It is the duty of the state to provide legal services. Everyone should know about legal aid services and educate themselves to take advantages of this.