

WOMEN AND CRIMINAL LAW: A NASCENT GROWTH

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ABSTRACT

Man is a social animal and lives in a society. To ensure harmonious functioning of society, certain rules and regulations are required and it is also necessary that these rules be obeyed. THESE SET OF RULES AND REGULATIONS ARE CALLED AS LAWS. These laws are merely a culmination of great influences and remain in a constant state of flux. Laws in India relating to women have therefore been developed over a period of time as a result of public hysteria for uplifting the status of women in the society. Although India today is fast emerging as global power still the struggle of women to live with dignity continues. This is because of the constant physical and emotional abuse which is inflicted on her. Inequalities in laws effect both men and women alike but women are lagging behind in many fields. Therefore, this paper tries to analyze the position of women oriented criminal laws and to what extent they have been successful in dealing with the disadvantageous position of females after marriage in comparison to males due to the stagnant position of laws which have not changed since time immemorial.

Keywords- Victimization of Women, development of law, misuse of laws

INTRODUCTION

Man is a social animal and lives in a society. For the harmonious functioning of society and for preserving and maintaining the security of the individual in a society, certain rules and regulations are required and also necessary that these rules be obeyed. THESE SET OF RULES AND REGULATIONS ARE CALLED AS LAWS. In the primitive society these rules and regulations existed in the form of customs and usages. These rules and regulations have evolved over the time with the development of society and they ensure obedience by some kind of sanctions attached to them in the society for their observance.

Law is an evolving system and hence defining it in absolute terms is not possible. This is more because of reasons like, in all societies from primitive to those, which have reached the highest peak of civilization in one or the other form, there has been existence of law. Law means different things in different societies. In Hindu society it is termed as “Dharma” whereas in Islamic societies it is “Hukum”, in Roman it is “Jus”, in French it is “Droit” and in German it is “Richt”. All these terms in different societies convey different ideas and thinking and looking it to be same would not be a correct perspective reason being at different point of time different definitions have been given. Law as known is a social science, hence it grows and develops with the society. Law is required to cover new fields and move in new directions so as to keep pace with the development of society. Therefore, it becomes difficult for a definition of law to remain valid for all times.

STATUS OF WOMEN AND LAW

Sati, female infanticide, prohibition of widow remarriage and lack of women’s rights were some of the issues that were prevailing in the country during the British rule. However, the British Government by and large remained indifferent to the violence against women¹. In the early 19th century evil practices like that of sati was confined to districts of Bengal but it gradually spread to other areas. Also it was confined only to the upper strata of the society

¹ 34 LALIT DHAWAL & KUSUM CHAUHAN, DOMESTIC VIOLENCE: CAUSES, CONSEQUENCES, LEGISLATIVE AND JUDICIAL RESPONSE 218 (2007).

particularly among Brahamana and Rajput's. Among the princely families it was considered as a noble and a heroic act.

The main causes of sati were weaker position of women in the society, social convention, antiquity and adoration of the practice and the sense of salvation attached to the rites.

However, the approach of Hindu society changed immensely during the British regime due to the education and western impact on the socio-cultural life of India. The social reform movement of the 19th century and the nationalist movement of the 20th century influenced the status of women. The reformers began emphasizing the need for enacting progressive social legislation. Raja Ram Mohan Roy took initiative in the abolition and eradication of this social evil. As per him Sati was not a part of Shashtra's nor it was a fundamental part of Hindu religion. A number of religious leaders were against his cause. Even though it was banned in some of the princely states, but it was not made an illegal act for a very long period of time. Even today we have temples in Rajasthan known as Rani Sati Mandir where various episodes of sati have been reported, but the police in these cases have either been late or unproductive.

Another social evil namely Female Infanticide was mainly found among Rajput's of Benaras, Gujarat, Madhya Pradesh and some Sikhs. This institution arose mainly due to the deteriorated state of women in Hindu society and the prevalence of dowry system. Female Infanticide was proclaimed to be murder in India by the Bengal Regulation XXI in 1779. In 1804, this was extended to other parts of India.

Another social evil still prevailing today in rural areas, among the urban illiterate and poor includes child marriages. This has culminated into the problems of over population, poverty, unemployment, ill health, lack of resources etc. The first legislation passed onto the issue was in 1860 under which the minimum age of consummation was raised to 10 and in 1891, it was raised to 12. In 1925 it was raised to thirteen for married girls and fourteen for unmarried girls. In 1929 Sharda Bill (Child marriage restraint) act was passed in which the minimum age of marriage for a girl was fixed at fourteen and for a boy at eighteen. Even though today the Hindu Marriage Act of 1955, states the minimum age for marriage for a girl as eighteen, and for boy as twenty-one years yet these legislations passed have not proved to be much effectual. Factors like Education, economic pressures and migration to towns and cities from rural areas have resulted in raising of the age of marriage of both the sexes. However, child marriage still persists. No severe action is taken for its violation.

There was also prevalence of the system of Slavery. Females were used as prostitutes. They were mostly found in princely states. The slaves in Bombay Presidency, Coorg, Assam etc. were insolvent debtors. These included migrants from Rajputana. There was existence of a practice of entering into a contract by a person to work for a definite period of time either to pay the debt or to have a new one. Today the institution is prevalent in the form of bonded labour

Various legislations like The Hindu Law of Inheritance Act of 1929, The Hindu Women Right to property Act of 1937, The Hindu Marriage Disability Removal Act of 194, The Dowry Prohibition Act 1961, The Maternity Benefits Act 1961, Special Marriage Act 1954, were passed to ameliorate the status of Hindu Women in matters of marriage, adoption and inheritance in the post-independence era.

Indian Penal Code drafted in 1860 is a comprehensive criminal law in India and tries to effectively cover all aspects of criminal law. This code was drafted by Britishers and over the years has been amended so as to cater to the present needs of the society. The most effective amendment was done in IPC in the year 2013 after the infamous Delhi Rape Case of a physiotherapy intern, after which a Judicial committee headed by JS VERMA was set up which suggested several amendments in the act. Several new forms of crimes such as Cybercrimes and Outraging the modesty of a women were added. The major amendment included an amendment to the definition of Rape.

This article therefore tries to analyze the position of women post marriage and whether our criminal law –Indian penal code has been effective enough to cater to the needs of women, and whether it is as effective as it should be in 21st century to protect and uplift the very status and position of female.

“To call women the weaker sex is a libel; it is man’s injustice to women. if by strength is means brute strength, then indeed the women is less brute than man. If by strength is meant moral power, then women are immeasurably man’s superior. Has she not greater intuition, is she not more self-sacrificing, has she not greater powers of endurance, has she not greater

Courage? Without her, Man could not be. If non- violence is the law of our being, the future is with women who can make a more effective appeal to the heart than man”²

DOWRY

The institution of marriage is said to have been made in heaven, but this union today is increasingly breaking in the lust of dowry. India in the last few decades has witnessed the evils of dowry in more acute forms in almost all the parts of the country. It is a matter of day to day occurrence that married women are harassed, humiliated and forced to commit suicide because the parents are unable to meet the irrational demands of in-laws and husbands. This system puts great financial burden on the bride's family. Dowry is referred to as Dahej in Hindi. In ancient India there was no question of dowry in marriages. In the Vedic period the marriage rites were affiliated with kanyadan. As per Dhramshastras the noble act of kanyadan is not complete till the time bridegroom was given dakshina. So the bridegroom at the time of marriage is given something in cash or in kind which constitutes Varadakshina. The varadakshina was offered out of love and did not constitute any kind of compulsion. Over the years the voluntary nature with gifts has disappeared and the compulsory element has crept in.

The law maker's concerned by the seriousness of this problem and its devastating growth on an unprecedented scale, took various legislative measures to plug the loopholes in law.

The first step in this direction was the enactment of **Dowry Prohibition Act 1961**. It was enacted with a specific objective, as outlined in the Preamble— '*An Act to prohibit the giving or taking of dowry*'. To make this act more effective it was amended by the **Amendment act 1984 and 1986**. In addition to this the **Dowry prohibition (maintenance of list of presents to the bride and bridegroom) rules 1985** have also been passed.

The word 'dowry' as contemplated by the dowry prohibition act is a demand for property or valuable security having an inextricable nexus with the marriage, i.e., it is a consideration from the side of the bride's parents or relatives to the groom or his parents for the agreement to wed

² Jitendra Aherkar & Sagar Poojari, *Mahatma and Women in India-Miles to go*, (Aug 02,2017,11:04AM), <http://www.mkgandhi.org/articles/mahatma-and-women.html>.

the bride-to-be³. Women suffer from dowry related violence which under certain circumstances may also cause the death of the female.

Cruelty by husband or his relatives -Violence against women is violation of human rights, sometimes deadly and always unacceptable. Violence implies the use of physical force so as to injure, abuse, damage, or destroy⁴. The evil of dowry can take various forms and affect the life of women.

Cruelty by husband or his relatives is defined under the act as-

Section 498A IPC-To check the increasing level of cruelty against women by husbands and in-laws a new chapter XXA entitled “**of cruelty by husband or relatives of husband**” was added to the penal code in 1983.

This section does not cover every kind of cruelty. To constitute an offence under this section it must fall under the Explanation of this section which defines cruelty as:

- (a) Any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Constitutionality of this section:

In- ‘Inder Raj Malik and others vs. Mrs. Sunita Malik⁵,

It was contended that this section is ultra vires Article 14 and Article 20 (2) of the Constitution. The Dowry Prohibition Act also deals with similar types of cases; therefore, both statutes together create a situation commonly known as double jeopardy. But Delhi High Court

³ Arjun Dhondiba Kamble v. State of Maharashtra, (1995) AIHC 273 (India).

⁴ Merriam –Webster, *Violence*, (June 13,2017,15:56 PM), <https://www.merriam-webster.com/dictionary/violence>

⁵ (1986) Cr LJ 1510 (India).

negatives this contention and held that this section does not create situation for double jeopardy. Section 498A is distinguishable from Section 4 of the Dowry Prohibition Act because in the latter mere demand of dowry is punishable and existence of element of cruelty is not necessary, whereas Section 498A deals with aggravated form of the offence. It punishes such demands of property or valuable security from the wife or her relatives as are coupled with cruelty to her. Hence a person can be prosecuted in respect of both the offences punishable under Section 4 of the Dowry Prohibition Act and this section.

DOWRY DEATH

Section 304 B – A new offence known as dowry death was inserted in the code by the Dowry prohibition (Amendment) Act 1986. Greed for dowry being limitless, the demands may in some case become insatiable followed by torture of the girl leading to either suicide in some cases or murder in some. Bride burnings are the most common forms of dowry deaths for a wide range of reasons. The provisions under section 304B are more stringent than that provided under section 498A of the penal code. Considering the nature of dowry offences which are generally committed behind closed doors and in secrecy, independent and direct evidence are not easily available. To solve this problem, the amendment act of 1986 has inserted **section 113B** to the evidence act 1872 to strengthen the prosecution hands by permitting certain presumptions to be raised if it is shown that soon before the death of woman she was subjected to cruelty, in connection with, any demand for dowry. In such cases the court shall presume that such person has caused dowry death under section 304B, IPC.

The law commission of India in its report stated that "Those who have studied crime and its incidence know that once a serious crime is committed, detection is a difficult matter and still more difficult is successful prosecution of the offender. Crimes that lead to dowry deaths are almost invariably committed within the safe precincts of a residential house. The criminal is a member of the family; other members of the family (if residing in the same house) are either guilty associates in crime, or silent but conniving witnesses to it. In any case, the shackles of

the family are so strong that truth may not come out of the chains. There would be no other eye witnesses, except for members of the family⁶."

To constitute an offence under this section it is necessary that the death must not have occurred under normal circumstances and within seven years of marriage. The period of seven years, perhaps have been considered cut off period for the reason that the marriage is complete after the bride and the bride- groom have taken seven steps before the sacred nuptial fire. One step being equivalent to one year.

Section 304B and 498A cannot be held to be mutually exclusive. They are two different provisions despite cruelty between common elements.

FEMALE FOETICIDE

If women exploitation is considered in a cyclic concept, one can identify the stages at which they are being victimized. For example, at pre-birth stage, sex selective abortion has been taking place, because in many developing countries like India, it is still a myth that baby girl would be a burden on the family and that they would not be economically and socially productive as they have not physically strong like men.

Female foeticide is the process of abortion to terminate female foetus from the womb of mother before birth after the sex determination tests like ultrasound scan.

Perturbed by the menace of female foeticide which has led to skewed sex ratio in the country, Maharashtra was the first state to ban pre-natal sex determination through the enactment of Maharashtra regulation of prenatal diagnostics techniques act 1988. Similar efforts at the National level led India to pass of first abortion-related law, the **Medical Termination of Pregnancy 1971 Act**, making abortion legal, but subject to certain conditions such as medical risk to mother, failure of device, physical and mental abnormalities to the child and rape.

⁶ Law commission of India, 91st report on Dowry deaths and law reform: Amending the Hindu Marriage Act, 1955 the Indian Penal Code, 1860 and the Indian Evidence Act, 1872 (July 10, 2017, 13:47 PM), <http://lawcommissionofindia.nic.in/51-100/index51-100.htm>.

The law also established physicians who can legally provide the procedure and the facilities where abortions can be performed. To further prevent availability of sex screening technologies and claims of its misuse, the Government of India passed the Pre-Natal Diagnostic Technique (PNDT) Act in 1994. This law was further amended into the **Pre-Conception and Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) (PCPNDT) Act** in 2004 to deter and punish prenatal sex screening and female foeticide. Apart from this, Section 312 and 313 of IPC deal with causing of miscarriage of a female.

On 21 April 2014, the Supreme Court ordered the Union of India and the State of Maharashtra to respond to fundamental rights violations resulting from implementation of The Medical Termination of Pregnancy Act (1971). A Writ Petition filed by the Human Rights Law Network (HRLN) on behalf of Mrs. X and Mrs. Y argues that the outdated and arbitrary 20-week limit on medical termination of pregnancy violates women's fundamental rights to life, health, dignity, and equality. NCW, FOGSI, and prominent doctors have advocated for amendments to the MTP Act that would ensure protections of women's mental and physical health throughout their pregnancies. Without such an exception to ensure the health of pregnant women, the MTP Act violates fundamental and human rights guaranteed by the Constitution of India and international law.

DOMESTIC VIOLENCE

Society considers home as a secure place where individuals have care for each other. The constitution of India also guarantees equal rights to both women and men. But the unfortunate reality is that the women are discriminated against in the society. A common saying is that the daughter is the treasure of someone else's home. According to Manu woman should never be independent. She must be under the constant supervision of father till her marriage and after that of her husband. It was said that woman should be loved but added protected.⁷ She is always discriminated against and her desires are suppressed being both daughter and after marriage as a daughter -in -law and a wife. Even when she is oppressed against and atrocities are heaped against her she remains silent so as to maintain peace and harmony in the family. There is a glorification of her silence, which adds to her suffering, as she is told to adjust. The term

⁷ V.K. DEWAN, LAW RELATING TO OFFENCES AGAINST WOMEN 33 (Asia Law House, 3rd ed. 2009).

domestic violence is synonymous with domestic abuse. A woman in an abusive relationship usually does not exercise her right to complaint.

The term “domestic means the ‘home’ or ‘family’ and the term domestic violence signifies the violence that takes place within the family. Oxford dictionary defines domestic violence as Violent or aggressive behavior within the home, typically involving the violent abuse of a spouse or partner⁸. The reasons for this could be the desire to gain control over another, the desire to exploit someone for personal gains, the flare to be in a commanding position all the time showcasing one’s supremacy so on and so forth. On other occasions psychological and social problems also add to the vehemence. Patriarchal social structure and family structure leads to subordination of women and contribute to a historical pattern of systematic violence directed against females in family

There are some basic provisions of domestic violence act, 2005, which are made specifically for the protection of women and for protecting their rights-

Section 3 Defines the term ‘domestic violence’⁹ in widest sense which covers all forms of physical, sexual, verbal, emotional and economic abuse that can harm, cause injury to, endanger the health safety, life, limb or well-being either mental or physical of the aggrieved person. This can range from subtle, coercive forms to marital rape and to violent physical abuse such as acid throwing those results in disfigurement or death.

Section 2(a) defines ‘Aggrieved person’¹⁰ as – aggrieved person covers not just the wife of the respondent but any female residing in the household or is in some or the other way related to the respondent.

As per the city court of Delhi, female in live in relationships as well as female servants are also included within the ambit of this definitions. The court further said that, “The protection to women under this Act is separately available, apart from remedies available under any other

⁸ English oxford living dictionaries, *Domestic violence*, (Aug.10, 2017,19:04 PM), https://en.oxforddictionaries.com/definition/domestic_violence.

⁹ The Protection of Women from Domestic Violence Act, 2005, No. 43, Acts of parliament, 2005 (India).

¹⁰ Id.

law and pendency of proceedings under other laws is no bar to filing a petition under the Act and granting relief under it.”¹¹

1. The ambit of Domestic Violence act is very wide as apart from the victim any person who has a reason to believe that any person is suffering under the act can also file a complaint.
2. The magistrate has been given powers to permit the aggrieved women to stay in her place of adobe and she cannot be evicted by her male relatives in the retaliation.

This is not all; the aggrieved woman can even be allotted a part of the house for personal use.

3. Also magistrate can bar the respondent to communicate with aggrieved person by “personal, oral, written, electronic or telephonic contact.”
4. Penalty up to one-year and/or a fine up to Rs. 20,000/- can be imposed under the act. The offence is also considered cognizable and non-bailable while Sec 32 (2) goes even says that ‘under the sole testimony of the aggrieved person, the court may conclude that an offence has been committed by the accused’.
6. The act ensures speedy justice as the court has to conduct the first hearing within 3 days of the complaint being filed in the court and every case must be disposed of within a period of sixty days of the first hearing.

Marital rape another major problem faced by women post her marriage is non-consensual sex in which the perpetrator is the victim's spouse. It is a form of domestic and sexual abuse. It usually exists in destructive relationships and is more about humiliation, degradation, anger, and resentment. Once unrecognized by law and society as a wrongdoing, marital rape is now opposed by many societies around the world, repudiated by international conventions, since the second half of the 20th century. Feminists worked systematically since the 1960s to criminalize marital rape. In December 1993, the United Nations High Commissioner for Human Rights published the Declaration on the Elimination of Violence Against Women. This establishes marital rape as a human rights violation. Still, in many countries, marital rape either remains outside the criminal law, or is illegal but widely tolerated. Laws are rarely being enforced, due to factors ranging from reluctance of authorities to pursue the crime, to lack of

¹¹ Amit Anand Choudhury, “*Couple living together will be presumed married*”, TIMES OF INDIA, Apr. 13, 2015.

public knowledge that forced sexual intercourse in marriage is illegal. In many countries, it is still unclear whether marital rape is covered by the ordinary rape laws, but in some it may be covered by general statutes prohibiting violence, such as assault and battery laws. Section 375, the provision of rape in the Indian Penal Code (IPC), mentions as its exception clause- "Sexual intercourse by man with his own wife, the wife not being under 15 years of age, is not rape." Section 376 of IPC provides punishment for rape as imprisonment of either description for a term which shall not be less than 7 years but which may extend to life or for a term extending up to 10 years and shall also be liable to fine unless the woman raped is his own wife, and is not under 12 years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to 2 years with fine or with both.

This section in dealing with sexual assault, in a very narrow purview lays down that, an offence of rape within marital bonds stands only if the wife be less than 12 years of age, if she be between 12 to 16 years, an offence is committed, however, less serious, attracting milder punishment. Once, the age crosses 16, there is no legal protection accorded to the wife, in direct contravention of human rights regulations.

CONCLUSION

The wife's role has traditionally been understood as dutiful and that of a homemaker. Sex has been treated as mandatory in a marriage and also taboo, At least the discussion openly of it, hence, the awareness remains dismal. Economic independence is still a dream for many Indian women and therefore undeniably important factor for being heard and respected. With the women being fed the bitter medicine of being "good wives", to quietly serve, even counselling remains inaccessible.

Hence, it can be analyzed from the above provisions that though our legislators have tried to improve the status of female in our society it has not been very successful. Even after 70 years of independence women are facing degrading and deteriorating status as compared to men. If, compared to women in the other parts of the world we are still at a very backward position. But, looking at the long history of Indian culture and societal background we have come a long way since the very inception.