

JUDICIAL SENSITIVITY TOWARDS HUMAN RIGHTS OF WOMEN: NEED TO SENSITISE THE LOWER COURTS

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Introduction

All human beings are entitled to basic human rights. Such rights have been recognized and put together way back in the form of Universal Declaration of Human Rights in 1948. All individuals whether men or women, children or adults, sick or healthy etc. are entitled to enjoy same rights. Even the existence of the basic rights in the said international document has not been able to vest the humans with these rights across the world in real sense. India too voted in favour of the Declaration on 10 December 1948, amongst 47 other countries. These rights are universal but unfortunately, in India, the endowment of such rights varies and depends upon various factors such as their economic status, sex and community of the humans. Mainly the right to life and security of person, free choice of employment, right to an effective remedy by the Courts of law for acts violating the fundamental rights granted by the Constitution or by law are some of the human rights often denied to women in India.

Abuse against Women

Various offences such as violence against women, sexual abuse, abuses covered under domestic violence, matrimonial causes etc. are on the rise in India resulting into human rights violation of women. Several contributory factors have been responsible for such an increase viz. economic dependency of women on men, secondary status of women at home, under-employment, unemployment, lack of awareness about basic human rights and delayed justice delivery system. There are numerous social welfare legislations, relevant to combat violence against women, but having laws on the statute book is not enough, unless and until the judiciary would not deliver justice upto the expectations of vulnerable women. The Indian judiciary has come to the rescue of such women victims, whenever they have knocked the doors of justice. In particular, the High Courts and the Supreme Court exhibited extreme

sensitivity towards women victims and have upheld their basic human rights. These Courts have been interpreting the women-related laws favourably so as to ensure protection to them as and when needed.

Approach of the Higher Judiciary vis-à-vis Women's Rights

In recently delivered judgments, one can notice how the Supreme Court has taken a tough stand in cases of sexual offences against women. The traditional approach of Courts to inflict the punishment upon the offenders is increasingly being replaced by restitutive and compensatory approach. Though victims of rape and other sexual crimes cannot be restituted in real sense, but the government must provide them with suitable compensation, employment opportunities, financial assistance for marriage etc. In recently decided cases of 2013 and 2014, a similar approach of the Supreme Court can be noticed. In Mohd. Haroon v. UOI, decided in March 2014, the Apex Court held that it is the duty of the State to compensate the victims of sexual crimes. In the present case, various petitions of rape and similar offences were heard together and the Court directed the State of Uttar Pradesh to pay Rs 5 lakhs to all the victims. The Court also clarified that the compensation payable by the State Government under Section 357A, Cr PC shall be in addition to the payment of fine to the victim under Section 326A or Section 376D of the IPC. A conjoint reading of both the substantive and penal laws is reflected in this case. Again in Satya Pal Anand v. State of MP, decided in August 2013, the Apex Court opined that as a matter of fact, no amount of money can restore the dignity and confidence of rape victims. However, certain measures like adequate compensation, insurance, employment and social security scheme may help in the rehabilitation of rape victims to some extent.

The Supreme Court directed the Madhya Pradesh Government to pay Rs 10 lakhs as compensation each to the two school-going girls (belonging to poor families who were gangraped by 16 persons in an open field in Betma town in February 2012).

The judiciary not only showed great sensitivity in rape related cases, but also displayed its wisdom in live-in-relationship cases. The social taboo associated with living together without marriage in Indian society is attached even with some disadvantages for the women in such relationship. The Apex Court has been emphasizing that the existence of certain conditions bring at par a live-in couple with a married couple thereby allowing women of such relationships to live with dignity, even in absence of formal marriage. A latest application of such an approach of the Court is visible in Indra Sarma v. K.V.Sarma, decided in November, 2014 where the Apex Court took a gallant step by reiterating (Earlier in D.

Velusamy v D. Patchaiammal, 2010, woman in live-in relationship was given the benefit of maintenance only if the couple fulfilled certain conditions) that the female partner of a live-in relationship, when fulfilling the representative guidelines is entitled to the protection as wife under the Protection of Women from Domestic Violence Act, 2005. Duration of period of the relationship, shared household, pooling of financial resources, sexual relations, socialization in public must be present to take the benefit within the definition of domestic relationship under Section 2(f) . The Supreme Court while ensuring right of a woman to marry as per choice expressed that live-in or marriage like relationship is neither a crime nor a sin though socially unacceptable in this country. The decision to marry or not to marry or to have a heterosexual relationship is intensely personal.

The journey of higher judiciary to uphold human rights of women does not come to an end here. Several notable judgments protect the rights and dignity of infertile wives. It is an open secret that in Indian society, the inability of the wife to conceive a child makes her confront with constant violence and trauma at the hands of her husband and in-laws. The husbands in such cases also take recourse to Section 13(1) (ia) of The Hindu Marriage Act, 1955. But the Punjab and Haryana High Court recently rejected this ground to grant divorce to the husband in Sandeep v. Geeta, decided in September 2013, where it positively held that being not able to conceive or give birth to a child by a wife cannot be construed to be a ground for divorce. Non-bearing of a child by a wife for no fault attributable to her behavior or conduct cannot be construed as cruelty to the husband in terms of Section 13 (1) (ia).

When a conflict between the right of morality and a woman's right to earn livelihood by way of dancing in bars came before the Courts, the higher judiciary exhibited positive approach towards the right to practice profession of her own choice. The Apex Court as well the Bombay High Court enunciated this right of profession for women who work as dancers in the bar, joining the league of women who were given right to work as bar tenders or waiters. In State of Maharashtra v. Indian Hotel and Restaurants Association, decided in July 2013, the Apex Court upheld the decision of the Bombay High Court allowing rights of women bar dancers to practice their profession. The prohibition on dancing violates the right to carry on one's profession/occupation under Article 19(1)(g) of the Constitution.

The fact of over-burdened judiciary is not unknown; still the Supreme Court of India came eagerly to protect vulnerable women. A warm appraisal has to be given for its suo moto action in gang rape of a 20 year girl in Subalpur Village of West Bengal, in West Bengal, decided in January 2014, where the Apex

Court underlined the statutory obligation of all hospitals, whether private or public institution, local bodies or other to provide free of cost first aid or medical treatment to victim of any offence covered under Sections 326A, 376, 376A, 376B, 376C, 376D, 376E of the IPC. The responsibility of the private medical institutions was stressed by the Court in this particular case, bringing them within the sphere of duty to provide treatment without any costs in cases of sexual violence. The paramount importance of rehabilitation of such victims was also noted by the Court. The highest Court of the country in this case recognized and decided in accordance with the latest amendment in the criminal law made in 2013.

Conclusion

The above recent judicial verdicts make it amply clear that having laws in place to protect women are insufficient unless judiciary cautiously and actively interpret the laws favourably for the women. It is unfortunate to note that in many of the cases, the lower judiciary acts insensitive towards offences against women, where such women had to go for appeals before the higher Courts. Fortunately, the higher judiciary has displayed a pro-women approach cautiously, reversing the verdicts of lower Courts when it found them denying women from their basic human rights. The tendency of callousness on the part of the lower judiciary is quite dangerous being a court of first instance where victims of violence appear directly before it. It is advisable that the regulatory bodies (such as Bar Council of India) dealing with legal education in the country should keep a proper check on the working of plethora of legal educational institutions which fail to train and sensitize the young minds, who opt for judgeship as their career. The failure is also due to non-adherence of the attendance norms in most of such mushrooming institutions, densely established across various States of India. With the measures to impart quality legal education, the standards and outlook of the lower judiciary might change. The non-sensitized lower judiciary even by frequent adjournments prolongs the justice delivery to the victims. The pronouncement of proper decisions, in tune with the Constitutional spirit of equality of women would prevent multiplicity of proceedings before the higher Courts.

The higher judiciary is expected to continuously interpret women legislations liberally, conferring women with the basic human rights. Let us hope that the judges of lower Courts would also realize gravity of increasing offences against women in India and will soon follow the responsive precedents set by the higher judiciary. Great care and caution have to be exercised by lower Courts to deliver justice at earliest to women as victims of various offences. It is expected that there would be a decrease in the

offences against women as well as justice would be rendered by the courts of first instance for the women victims. It is also anticipated that with this, women would be empowered in true sense – by being aware of their human rights, having the strength to take action for redressing the violation of their rights and getting the appropriate justice by the judiciary.