

Legal Frame Work and Protection of Women in India: A Critical Analysis

Abstract

The population of women is almost half of the human population. But still they are not treated equally in the society. Indian women are provided some guarantees of equality, and equal opportunity in various fields of life, but never the less their position is secondary in the society. Religious and social customs have left women weak and fragile. They are at the mercy of the men. They are still backward religiously, culturally, economically and politically. The threat of violence to women status throughout inception lives right from offshoot of technological advancements. The example is the modern tests like sex determination tests where female foetus is eliminated even before she comes to life. Though the State has prohibited this practice, but the sex ratio reveals that it is still continue in one way or other. The gender bias, which existed throughout the globe, placed women at a disadvantageous position throughout the world. The worst form of gender bias is seen in the physical and psychological violence committed against women in one form or other. Dowry deaths and bride burnings have become the common features of our society. Assault on women, wife beating, domestic violence in the form of cruelty to girl child, harassment at work places etc. are very common in this part of the globe. It is in this backdrop, in this paper an attempt has been made to evaluate the legal frame work available for the protection of women, despite which the women are still insecure in the country where woman is also worshiped in different form as Goddess.

Keywords: Constitution, Legislations, Rights, Violence, Women.

Introduction

The history of mankind reveals that the women is and has been the foundation stone of a family in particular and the society in general. She is spiritual and direct agent of life forces and if the foundation is not properly maintained, the whole building of the human life is bound to crackdown and dismember. A woman has been given position of pride in every religion. Under Christianity and Hinduism, they are respected and due importance is given to their rights and privileges. Women enjoyed a position of high esteemed in the Rig-Veda period. Any important function could to be completed without her participation¹. In the Holy book of Quran a complete Sura has been devoted to explain rights and duties of women so as to promote their welfare². This fact can also not be denied that women have been and will always be what man makes them. Since time immemorial women have remained confined within the four walls of the home and dismissed as the second sex³. Though they were considered as the creative source of human life since the early time, but they were considered not only intellectually inferior to men but also a major source of temptation and evil. In Greek mythology, for example, it was a woman Pandora, who opened the forbidden box and brought plagues and unhappiness to mankind⁴. The attitude towards women in east was at first more favourable. In ancient India, for example, women were not deprived of property rights or individual freedoms of marriage. In the Vedic age women occupied a high position in the society and played a significant role in all fields, including culture, social, religious and political. She had equal rights with men and played a more active economic role⁵. She performed numerous tasks as men did. However, during the post Vedic period the position of Women began to deteriorate. Even Manu was very harsh about them and stated that they were not entitled to independence⁶. In modern time, when the world is awakening to the call of enlightened feminism, in India women are still considered to be a burdensome appendage. Her birth in many part of the Country is greeted with silence or even sorrow⁷.

Crimes against women are as old as human civilization. However, the efforts to combat them are equally ancient. But these efforts

Mohd. Arif
Assistant Professor,
Deptt. of Law,
University of Jammu,
J&K

have not succeeded and crimes are still maintaining their upward trend. There are a record number of women who are being raped, abducted, beaten and subjected to other humiliated treatment⁸. This situation has still not changed in spite of the march of civilization and enactment of special laws to protect the women against such crimes. They are being burnt for not bringing enough dowries, tortured and harassed for not providing money to their alcoholic husbands, raped to satisfy the lust of the males, or just to teach them a lesson for being bold and outspoken. This is the reality in spite of the constitutional assurance of its belief in the 'equality and dignity of all human beings' and its guarantee 'that the State shall not discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them or subject them to any disability, liability or restriction on that count.' It assures every one of 'equality before the law and equal protection of law' and directs people to renounce practices derogatory to the dignity of women because its aim is to set up a social order in which 'justice, social, political and economic shall prevail. But the State has failed to provide these constitutional protections to women.

The constitution has authorized the legislatures to pass special protective laws in favour of women to undo the injustices done to pass under this head. These laws can misguide any one. They create an illusion that women enjoy a privileged position in our society and have special rights at the cost of men, but illusion is short-lived and vanishes the moment one starts delving facts. It is then the real picture emerges and we realize that the whole bulk of this protective legislation is a very modest attempt to combat the deep rooted and all pervasive evil of horrendous crimes are committed against women every day. These were committed in the past and they are being committed in the present also. There seems to be no letup in man's brutality towards women in spite of protective laws to defend women⁹. The National Crimes Record Bureau indicates that a total of 2,44,270 instances of violence against women occurred in 2012¹⁰. Where the number of violence instances increased in 2013, and reported as 3, 09, 506¹¹. It must be borne in mind that these figures largely relate to crimes that occur in the public sphere. Due to the lack of a redressal mechanism, a number of cases remain unreported especially with respect to domestic violence or marital rape. It is very shocking that 848 Indian women are harassed, raped and killed every day¹².

The United Nations General Assembly Declaration on the elimination of Violence against women define violence against women as "any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life". This definition is very broad and also covers the violence which often occurs in private, within the footwalls of home. Creating a hostile environment whether at work or at home or making disparaging and humiliating remarks can also in some extreme cases rise to the level of violence.

In India the substantive Criminal Law has long recognized sexual offences or violent acts particularly directed towards women in the public realm. The Indian Penal Code criminalizes rape¹³, molestation¹⁴, harassment¹⁵, dowry death¹⁶, Cruelty by husband¹⁷, importation of girl¹⁸ and kidnapping and abduction¹⁹. Special laws have also been enacted to provide for offences such as trafficking, demanding, taking or giving of dowry, child marriage, female feticide, etc. Some of the provisions of these laws relate to the violence within the private sphere, but they do not fully address the range of the issues relating to domestic violence. Their implementation is also fraught with difficulties because the police often refuse to register complaints of domestic violence complaints and dismiss them as private matter. This fact can also not be denied that some times such provisions are misused by the women to exploit the men, but the ratio of such exploitation is low as compared to the violence incidents.

Legal Protection to Women in India Domestic Violence Act, 2005

Domestic violence is being recognized as a major issue of women human rights all over the world. In India, it has been increasing day by day. Domestic violence usually involves the infliction bodily injury accompanied by verbal threats and harassment, emotional abuse or the destruction of the property as a means of coercion, control, revenge or punishment, on a person whom the abuser is involved in an intimate relationship²⁰. It mostly occurs within the home, and policing and punishing it poses a challenge to the sanctity of familial relationships. It is violence that occurs in the private sphere, generally between individuals who are related through intimacy, blood or law²¹. It entails active and passive violence against children, the elderly, women- married, unmarried, widows and divorcees. So the primary and the most frequent victims of domestic violence are the women²². In order to prevent women who were ostracized by their "own" people in their "own" homes, a Bill was introduced in the Parliament, which finally attained the shape of an act in 2005. This Act, The Protection of Women from Domestic Violence Act, 2005 was brought into force in October, 2006. This legislation was passed to provide for more effective protection of the rights of the women, guaranteed under the Constitution, who are victims of violence of any kind occurring within the family and for incidental matters. The Act is primarily meant to provide protection to the wife or the female live in partner from domestic violence at the hands of the husband or the male live-in partner or their relatives. Under the Act, any person who has reason to believe that domestic violence has been committed or is likely can notify the Protection Officer, appointed by the State Government²³. Under the Act, Government is duty bound to appoint women as Protection Officers as far as possible²⁴. The Act provides for relief in the form of orders relating to protection, monetary relief, custody, residence, compensation, and others²⁵. The protection officer or Magistrate is vested with the duty to inform the victim of the available reliefs, services of the protection officer or NGOs, right to legal aid and where relevant, the right to file a complaint under Section 498A, of IPC²⁶.

While the Act is quite comprehensive and is a marked to protect the women from the domestic violence, still some points need to be addressed to achieve the result. The wide powers given to the protection officers under the Act can easily be misused. Further for the satisfaction of Victim, she should be allowed to deal with the Court directly, rather than intermediary Protection Officer. It is another fact that the majority of women victim of domestic violence cannot neither approach to the Court nor to the Protection Officer due to one or the other reasons. An other point of contention is that the Act permits only registered NGOs to play the role of service providers for victims of domestic abuse. This will help to impose accountability, but this can result in the exclusions of the unregistered organizations and individuals who have been helping victims in the past. Thus, while the present Act has greatly expanded the scope of the Law to address the issue of the domestic violence, there is still some room for improvement.

The Dowry Prohibition Act, 1961

The most pious rule associated with a Hindu marriage is *Kanyadaan* which means, the gift of a virgin. It is recommended in the *shastras* that "she" be duly adorned with jewellery and then be gifted away. The meritorious act of Dana, however, remained incomplete till the receiver was given *dakshina*. So when the bridegroom or *vara* was given something in cash or kind, along with *kanyadaan*, it was *vradakshina*. This act was voluntary in nature without any coercive overtones. The implied ideology governing dowry was that it was a means of pre-mortem inheritance for the girls from her parents' wealth²⁷. In fact, under Mitakshara system women were not entitled to a share in their parental wealth, and this system of bestowing the daughter with handsome dowry seemed to have been introduced to overcome this restriction. But with increasing industrialization breeding the desire to make fast money *dakshina* originally intended to be a token gained all characteristics of a market transaction. The custom which had its origin in sublime sentiments has now become a curse for the whole society. The universal form of marriage in the 19th century was marriage by purchase²⁸. The amount varied with the wealth and position of the families. The coercive element, too, started creeping into the post and pre marriage ceremonies. Such system of affairs gives rise to the crime of greed and cruelty against women. It results into the dowry deaths and bride burning. Earlier, cases of bride burning and dowry deaths were camouflaged by the police as accidents or suicides²⁹. Further probe into such cases revealed that a large percentage of such cases involved the newly married girls and post- marriage dowry demands lead their further harassment³⁰. As the root cause of such deaths was greed for more dowries, therefore, such deaths began to be called "dowry deaths". It took more than a decade for the legislatures to make 'dowry deaths' a crime under the penal code and to prescribe sentence for the culprits. In the mean time this crime crossed the religious boundaries, climbed down the caste ladder and even breached religious barriers. It has spread like epidemic and bride torture and bride burning has now become a common phenomenon.

The problem of dowry was sought to be tackled by conferment of improved property rights on woman by the Hindu Succession Act, 1956 but the evil persisted. The Dowry prohibition Act, 1961 was passed. It was the first legislation to ban this evil practice and made the demanding and giving of dowry punishable under law³¹. It was laid down in the Act that the dowry, if given, was to be treated as a trust in favour of the bride for whose benefit it was given³². This is a small penal statute consisting of only 10 sections. By the latter half of seventies it was realized that the brutal murders and agonizing deaths by burning of the brides were directly connected with dowry and the Act of 1961 had not been able to achieve the desired goal. The Dowry Prohibition Act, 1961 was amended in 1984 and again in 1986. On the recommendations of the Parliamentary Committee appointed to study the defects of the Dowry Prohibition Act, 1961, for dealing with the cruelty to married women, by the husband or the relative of the husband, for not getting sufficient dowry were given effect by introducing various changes in the IPC, Cr.P.C. and the Indian Evidence Act. These amendments, deal with the problem of dowry suicides and dowry murders.

In 1986, the IPC was amended to create the offence of 'dowry death' as a new section 304B. The offence under this section has been made punishable with imprisonment of not less than seven years, but which may extend to imprisonment for life. It is significant to note that the punishment awarded under this section is less than the punishment prescribed for murder under the IPC. The differing level of punishment under the IPC suggests that the offence of dowry death is not considered as serious as murder. Such a leniency in the penal statute results that the practice of dowry is still continued and has also resulted in the death of a large number of married women. This system of dowry has ruined many families and created many unhappy homes. It has also been noticed that the unmarried girls are also under the frustration whose parents are unable to provide them the huge property in the shape of dowry and some of them who cannot reconcile themselves to the unbearable trauma of making an exhibition of themselves, are driven to commit suicide.

The Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994

India has always possessed the hateful legacy of killing the female child. Earlier, because scientific techniques were not advanced and it was impossible to determine the sex of the child, the killing of the female child took the form of adding opium to the infant's milk or by suffocating the infant under the mother after birth or else by plainly ill-treating daughters. With the advent of modern techniques developed in recent times, it becomes quite possible to ascertain the sex of the child in the womb even in the early stages of the pregnancy. The technique used to diagnose the condition and sex of the foetus is medically called as "amniocentesis" which is one of the many pre-natal diagnostic techniques. These techniques are actually intended to test or analyze the amniotic fluids, blood or any tissue of the pregnant woman for the purpose of detecting any genetic or

metabolic disorder or chromosomal abnormalities or congenital anomalies or sex linked diseases. The truth is that the technique, whose real purpose is to detect abnormalities in the fetus, is now primarily conducted for sex determination and the consequent extermination of a female fetus. This technique is paradoxically adopted by supposedly educated and reasonably well-off families, rather than by poor, who can neither afford doctors' cost nor have ever heard of such perversion. The blind killing of female fetuses has led to a precarious situation where the male female ratio of the population is being affected³³.

Responding to this alarming situation where the dignity and rights were being violated even before the birth of the female child, various women activists raised their voice against it. Realizing the grave implications of the misuse of pre-natal diagnostic technique the parliament was obliged to limit the use of the same only for medical purposes. The Government realized that the abuse of techniques, which were originally used to detect genetic disorders or chromosomal abnormalities or congenital abnormalities or sex linked diseases was leading to female foeticide which was discriminatory against the female sex and also affected the dignity and status of the women. It is in this context, the Parliament passed the Pre-conception and Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 which came into force on 1st January, 1996. Later on, this Act was renamed as the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994. The Act provides for the use of prenatal diagnostic techniques for the purpose of detecting any genetic or metabolic disorder or chromosomal abnormalities or congenital anomalies or sex linked diseases or disorders³⁴. The Act prohibited the misuse of pre-natal diagnostic techniques for determination of sex of the fetus leading to the female foeticide³⁵. The Act requires all genetic counseling centre, laboratories and clinics to register in order to be able to engage in activities relating to pre-natal diagnostic techniques³⁶. It criminalizes advertisements relating to prenatal determination of sex and prescribes imprisonments for up to three years and fine up to Rupees 10,000 for such offences³⁷. The Act contains a presumption that a pregnant woman has been compelled by her husband or the relatives to undergo prenatal diagnostic techniques³⁸. All offences under the Act are cognizable, non-bail able and non-compoundable³⁹. The code of Medical ethics formulated by the Medical Council of India also prohibits the medical practitioners from conducting the sex determination tests.

However, the implementation of such laws is also seems weak and a number of female child are eliminated even before the birth. Decline in sex ratio is still continues which otherwise, put question marks on the sufficiency of law to prevent the female foeticide.

Penal Laws

Beside these legislations several provisions of Indian Penal Code also protect the women from the rape, kidnapping, abduction and other types of sexual assault. Section 375 of the Indian Penal Code define the offence of rape to mean sexual inter course by a man with a woman without her consent or against her

will. It also covers the consent under the fear of death or injury to the victim or another person. So the substantive Criminal Laws have long recognized sexual offensive or violent acts particularly directed towards the women in public realm. Recently the parliament has enacted the law to protect the women workers from sexual assault. But these laws are implemented by activating the machinery of the state i.e, prosecution which is a complex issue for the women. Due to the ignorance of these laws or to the fear of procedural technicalities one has to bear during this course of action number of women preferred to maintain silence than to report their case.

Conclusion

Laws and the legal systems are major tools that may be used to promote justice and these play a vital role in the well being of any society. Formal legal system comprises of the constitutional provisions as well as substantive and procedural laws. Constitution and substantive laws set the normative framework while procedural laws facilitate enforcement. However, the legal system may act like a double-edged sword. Just as fair laws can dispense justice, unfair laws can lead to infringement of rights and violations of principles of justice. Similarly, even if laws are fair and impartial, but implementation of laws is carried out in unfair manner, it may act as a barrier to achieve the goal of justice. This becomes apparent when one considers the issue of laws pertaining to violence against women within Indian context. Presently, the formal legal system is adapted to accommodate a set of laws and procedures to protect women from violence. Yet several pitfalls, systemic constraints and restraints within the system operate against elimination of violence against women. These lacunae exist in spite of the process of law reform that has been initiated by several stakeholders in the justice delivery system as well as the civil society. In other words it may be said that the ad hoc and sporadic attempts of legal reforms has resulted in formulation of a system which provides for inadequate redress to the victims of violence. Parliament of India from time to time has enacted various legislations to protect the women from violence and other abuses but due to the lack of implementation machinery or technicalities in procedure these legislations have yet to improve the condition of women in India. Most of the women are victimized due to their ignorance towards the right and the law. It is to be admitted that there is no lack of laws to protect the women in India. The area which deserves the due attention is the implementation which needs to simplify the procedure and to educate the women for their protective rights. In this situation judiciary can also play an important role to narrow down the gap between the women victim and the laws which protect them from their home to their work place.

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