



“LAW, JUSTICE & LEGAL SERVICES FOR WOMEN”

Dr. Seema Mandloi

B.Sc., M.A.(Eng. Lit.), B.Ed., LL.M. Ph.D.

Associate Professor, Department of Law, LNCT University, Bhopal (M.P.)

ABSTRACT :

‘Women’ constitute one of the backward social groups in need of special protection. Although nearly half the population of any society consists of women, they have suffered due to long tradition of male domination prevailing almost universally. Tradition, religion and law have conspired to make women subordinate to men. But subordination of women is against the spirit of democracy; it is against equality and justice. Women all over the world have had to struggle for equality with men. They had to fight against unequal laws and for equal opportunities. Even when they secured favourable legislation, they could not get the benefits of such legislation because of various roadblocks to their implementation. The legal system which comprises of the lawyers, police, courts, bureaucracy etc. has continued to be male dominated which has resulted in functioning of laws contrary to their declared objectives. The beneficiaries of such laws, i.e., the women, are mostly ignorant of them and tend to accept the inherited lot.

This paper investigate and highlights the laws which have been made with a view to affording equality and justice to women and how these laws have functioned in a practical setting. Secondly, the paper estimates the impact of judicial and legislative attitude towards women and their rights. Finally, it makes an attempt to showcase nature of legal services that needs to be given to women and a model of women’s legal service organizations.

KEYWORDS : *Discrimination on the basis of sex. Criminal Cases on rape cases dealing matrimonial matters, Constitution of India, Indian Penal Code, Labour Laws, Marriage Laws, Judicial Attitude.*

INTRODUCTION

‘Women’ constitute one of the backward social groups in need of special protection. Although nearly half the population of any society consists of women, they have suffered due to long tradition of male domination prevailing almost universally. Tradition, religion and law have conspired to make women subordinate to men. But subordination of women is against the spirit of democracy; it is against equality and justice. Women all over the world have had to struggle for equality with men. They had to fight against unequal laws and for equal opportunities. Even when they secured favourable legislation, they could not get the benefits of such legislation because of various roadblocks to their implementation. The legal system which comprises of the lawyers, police, courts, bureaucracy etc. has continued to be male dominated which has resulted in functioning of laws contrary to their declared objectives. The beneficiaries of such laws, i.e., the women, are mostly ignorant of them and tend to accept the inherited lot.



In this article, we shall review briefly (i) the laws which have been made with a view to affording equality and justice to women and how in practice these laws have functioned; (ii) judicial and legislative attitude towards women and their rights; and (iii) nature of the legal services

that need to be given to women and a model of women's legal service organizations.

Laws affording Equality and Justice to Women

The abolition of Sati by Lord Bentinck¹ was doubtless the first Legal measure taken by the British government for social reform. The British reluctance to legislate social reform is well-known. However, in spite of this, some reforms did come. Legalization of widow's remarriage, prohibition of child marriage and recognition of widow's property rights were some of the other reforms made during British rule². The Constitution of India, however, announced unequivocally that in independent India, there would be no discrimination on the ground of sex.³ However, realizing the special need for ameliorative efforts to bring about equality between man and women, it was stated very clearly that the equality provision would not prevent the State from "making and provision for women and children".⁴ The Constitution emphasizes the egalitarian thrust when it says that the State shall direct its policy towards securing equality to the citizens, men and women and have the right to an adequate means of livelihood⁵ or that there is equal pay for equal work for women⁶ and that the health and strength of workers, men and women, are not abused⁷. The state has also been enjoined to secure just and humane conditions of work and maternity relief⁸. A specific mention of maternity relief clearly reveals the anxiety of the Constitution-makers to make it abundantly clear that maternity was a social obligation and women would not be handicapped because of maternity.

Although the Constitution says so, do women have equal opportunities? True, the Constitution assures them equality in respect of public employment also⁹, and various labour laws provide equality¹⁰ and special facilities such as maternity relief¹¹ and creches¹², but women's employment has not increased significantly, employers avoid employing women so as to avoid providing for maternity relief or crèches. In private sector, their employability is minimal. Such restricted employment opportunities are bound to tell on women's role in other spheres such as family and society. Most of the social disabilities of women arise from their economic handicaps.

In social field, the Hindu Marriage Act, 1955 took a bold step of abolishing polygamy.¹³ Polygamy, however, has not altogether vanished. The incidence of polygamy among Hindus is hardly less than that among Muslims, for whom there is no legal prohibition against polygamy. A Muslim can marry four wives. Women's ignorance of law is exploited in both the communities. And marriage between two Hindus solemnized after the commencement of the Hindu marriage Act is void if at the date of the marriage either party has a husband or wife living and the provisions of Sections 494 and 495 of the I.P.C. become applicable.¹⁴ The offences under Sections 494 and 495 are non-cognizable and complaint has to be made by the aggrieved wife or by her father's or mother's brother or sister on her behalf.¹⁵ This seldom happens. The first wife accepts the second wife or her husband out of helplessness. In many cases, women are totally dependent on their husband for their survival and therefore dare not complain against the husband. Even her relative do not complain. In many cases, the second marriage is performed without the knowledge of the first wife. Although consent does not validate a bigamous marriage, in some cases, the husband persuades the wife to give consent to his second marriage. Such consent may be given due to undue influence or coercion or due to ignorance of the law. Also If the wife is childless. It is a ground for persuading her to give consent because having a child is necessary for a Hindu to continue his family. Sometimes not having a son is also a ground for her rejection. But in many cases, women are rejected in spite of bearing children and since getting maintenance through courts is very hazardous, they prefer to tolerate the second marriage of their husbands. The Hindu tradition inculcates in them the habit of obedience to the husband. The husband is God according to Hindu ethics and this still has a great influence on women.

Where such consent is not obtained, as in the case of the middle class or from educated women, a more stealthy way of entering into a second marriage is adopted. Section 7 of the Hindu Marriage Act says that "a Hindu marriage may be solemnized in accordance with the customary rites and ceremonies of either party thereto". Section 11 says that a polygamous marriage is void and Section 17 makes it punishable under Sections 494 and 495 of the I.P.C. However, in order to attract these sections, the marriage between two Hindus must be "solemnized". The word "solemnized" means that ceremonies provided by Section 7 must

be performed, and it has been held that a marriage not so solemnized does not result in the commission of the offence of bigamy.¹⁶ Therefore, the man who indulges in polygamy takes care to leave some ritualistic infirmity in either of the marriages.

Professor Derrent has observed that as a result of the above judicial interpretation two types of devices would be used by law evaders: (i) they would deliberately keep either of the marriages defective in form, or (ii) the relations and friends of the second wife would commit perjury and say that the marriage was not properly solemnized.¹⁷ Since criminal prosecution thus becomes difficult, the only remedy available to her is to get divorce.¹⁸ This she cannot do because she fears social stigma that is attached to a rejected woman and she is afraid of economic insecurity. If women were not as insecure economically, there would definitely have been better enforcement of the law against polygamy. Getting maintenance from the courts is not easy. A better remedy would be to prevent the second marriage by obtaining a permanent injunction against the husband from marrying a second wife. Although the Hindu Marriage Act does not contain any provision for granting injunctions against contemplated second marriage, Such a suit is not expressly or impliedly barred by any provisions of the Act.

Women's most irksome hazard is getting the maintenance. If a woman wants to have her husband because of his inhumane and cruel treatment to her, she cannot do it unless she has an alternative source of income. Most women are uneducated and therefore not capable of being gainfully employed. The law requires the husband to give maintenance allowance to his rejected wife or to a wife or to a wife who due to any of the above reasons cannot stay with him.¹⁹ An interim maintenance can be obtained immediately on the starting of the proceedings if it appears to the court that either the wife or the husband, as the case may be, has no independent income sufficient for her or his support and for the necessary expenses of the proceeding. An order for permanent maintenance can be passed at the time of passing the decree of divorce or separation at any time subsequent thereto on application made to the court for that purpose.

There is another provision in the Criminal Procedure Code for getting maintenance.²⁰ It is a quicker remedy. This remedy is available not only to the wife against the husband but is also available for minor children, destitute father and mother etc. The amount payable as maintenance under this section is, not limited. However, in practice, getting the maintenance is quite hazardous. The woman has to wait in the court for a number of days and when she gets a decree and even after getting the decree for maintenance, the husband stops paying alimony within a few months and again she has to go through the entire process for getting it. Legal services in this regard being not easily available, she is at a great disadvantage. She is exploited. In most of the cases, the husband does not show any income, he may not have any income at all. Where he is self-employed, there is no way of knowing his real income. He adopts a number of dilatory and evasive tactics to deny maintenance to the wife as long as possible. There should be a legal services machinery to secure such a benefit to the aggrieved women.

The question of maintenance is linked up with the question of women's proprietary position in general. Although a daughter has been given equal share in the property of her father or a wife has been given equal share in the property of her husband still there is a subtle discrimination against women in the prevailing Hindu Law. The woman does not become entitled to a share in the joint family property by birth, unlike man. Thus, if there is a father, his wife and four children including three sons and a daughter, the joint property (coparceners) is divided into five shares, one each of the father and the mother and other three of the three sons. The daughter gets her share only in the property of the father after his death along with the other heirs. Thus out of the whole joint family property each son gets one-fifth plus one-fifth of the father's share whereas the daughter gets only one-fifth of the father's share. The daughter will get equal share with brother from the property of the mother. An impression which generally prevails that women has equal share with man is therefore erroneous. However, in practice what happens is that even the small share out of the father's property which is due to her is often denied to her. In many cases, he does not ask for it. She voluntarily gives up her share in favour of her brother or brothers. Further, she has absolutely no share in the self-earned property of her father or husband unless it remains intestate after his death. The father or husband can give away his property in will. A housewife who has worked for her house for 20 years and had

contributed to the development of the house was penny less if she were to leave her husband. She was married at the age of 17 and after 20 years found that her ways and those of her husband could not meet and therefore they had to part Company. The estrangement was merely because she had grown and he had not. If she worked in Bombay and earned Rs. 12000 per month however, if she were to leave her husband, she would have to find separate accommodation for herself, which was next to impossible. What would she do? She must compromise her career and stay with her husband. Because even a most liberal maintenance allowance would not enable her to have a separate accommodation. In the law there is no provision for compelling her husband to share the existing accommodation with her. She has no right over self-earned property of her husband. If she leaves him, she will not have share in the ancestral property too. A Muslim women is also in equally helpless condition. She is entitled to maintenance from her husband if the amount of her mehar is not sufficient for meeting her legitimate expenses.²¹ This position has however been created by a decision of the Supreme Court. Before that decision she could get nothing over and above the amount of Mehar. In Muslim Law, daughter does not get a share in property equal to that of the son²². The position is the same even among Parsis²³. The share of the daughter is equal among non-Parsis to whom the Indian succession Act applies²⁴.

The tradition which did not provide any inheritance for women, however, seems to have given birth to the practice of dowry. Dowry means consideration given by the girl's father to the boy or his father for marrying his daughter. In some communities, the bride price is paid by the husband's side to the wife's father or guardian. It is interesting that while no claims are made to secure women's rights in the ancestral property, dowry is demanded from the father and the father who is not willing to give her any share in the property. It is the worst form of exploitation of womanhood. It makes the daughter a liability to the poor father. The practice of dowry has increased. This could also be traced to increase in ostentatious expenditure and greater flow of black money. Dowry is a symbol of social injustice and is a reflection of growing social violence and injustice. Dowry is based on inequality of sexes and inferior status of women. It is not true that women are in greater need of marriage. Women's status depends on marriage. If she is married and has her husband living, she has a higher social status. If she has children, the status is higher still and if she is mother of sons or a son, she is higher in status than the mother of a daughter. Because of such high value attached to marital status, marriage is a must for women and naturally boys have a higher price.

Although the Supreme Court has given liberal interpretation to the word "dowry",²⁵ the law is bound to have limited effect. Taking dowry is a non-cognizable offence and complaint is required to be made by any person who is aware of the commission of the offence. But there are difficulties in making it a cognizable offence. The offence of dowry is committed between persons having intimate relations and it would be most difficult for an outsider to know that it is committed. It will give rise to police interference in private or domestic affairs. Another loophole in the Act is that the presents in the form of cash, ornaments, clothes and other articles are not to be considered as dowry unless they are made as consideration for the marriage of the said parties. It is impossible to prove that a present was given in consideration for the marriage.

The joint Committee of both house of Parliament was appointed to examine the question of the working of the Dowry prohibition Act, 1961, and to suggest amendments which could be made in the law. The Committee submitted its report to the Lok Sabha on 11th August 1982. The Committee admitted that they were practically no cases reported under the Act²⁶. The Committee also admitted that "the evil sought to be done away with by the Act has, on the other hand, increased by leaps and bounds and has assumed grotesque and alarming proportions."²⁷ The Committee ultimately stated that the evil of dowry will not go by passing a law. We will have to undertake extensive measures. However, even for doing so, a law against dowry will be useful because it helps create public opinion in favours of the social change.

The legislature enacted criminal (second amendment) Act, 1983 to check evils of dowry. It has inserted section 498A of IPC providing punishment for cruelty and amended evidence Act by inserting sec 113 A raising a presumption as to abetment of suicide by a married women.

This was further strengthened by the Dowry Prohibition (Amendment) Act, 1986 it has amended Dowry prohibition Act, IPC, Cr.P.C. and evidence Act. Section 304-B of I.P.C. was inserted, which provides for dowry death and providing punishment sec 113B in Evidence Act was inserted for raising presumption as to dowry death in certain circumstances.

What may be done to curb dowry death ? How should a court try such cases? Following guidelines were given by the Supreme Court in *Kundula Bala Subramaniam v. State of A.P.*²⁸

1. Laws are not enough to combat the evil, a wider social movement of educating women of their rights, to conquer the menace is needed.
2. It is expected that the court would deal and not allow the criminals to escape on account of procedural technicalities.
3. The courts are expected to be sensitive in cases involving crime against women.

JUDICIAL ATTITUDE AND WOMEN

Indian judicial attitude as reflected at the Supreme Court and the High Courts has been favorable and even helpful to social change²⁹. We shall consider judicial attitude from the following cases. (1) Cases in which discrimination on the basis of sex was opposed; (2) Criminal law cases particularly on rape and murders of wives: and (3) Cases dealing matrimonial matters.

Equal Protection Cases

In **Muthamma v. Union of India**³⁰, the constitutional validity of a government rule which provided that a married woman could be asked to resign from the Indian Foreign Service if the Government was satisfied that her family and domestic commitments were likely to come in the way of the due and efficient discharge of her duties as a member of the service was questioned. A women member had to obtain permission of the government writing before her marriage could be solemnized. Another rule said that no married women shall be entitled as of right to be appointed to the service. Mr. Justice Krishna Iyer struck down the rule and observed, "sex prejudice against Indian womanhood pervades the service rules even a third of a century Freedom".³¹ He again observed:

"We do not mean to universalize or dogmatise that men and women are equal in all occupations and all situations and do not exclude the need to be pragmatic where the requirements of particular employment, the sensitivities of sex or the peculiarities of societal sectors on the handicaps of either sex may compel selectivity. But save where the differentiation is demonstrable, the rule of equality must govern."³²

In **Air India v. Nargesh meerza**³³, the validity of a rule which required the air hostesses of the Air India International Corporation to continue in service up to 35 years of age or up to her marriage if contracted within 4 years since recruitment or till first pregnancy, was challenged. The Court upheld the provision regarding marriage within 4 years as a bar to future service. According to the court, the regulation permitted an air hostess to get married at the age of 23 if she has joined the service at the age of 19 and this was "a sound and salutary provision". The three reasons which Fazal Ali, J. gave in support of the validity of this rule were: (1) it improved the health of the employee; it helped a great deal the promotion and boosting up of our family planning programme; (2) at the age of 20 to 23, an air hostess became fully mature and there was every chance that such a marriage would be success, and (3) if the bar was removed, the Air India would have to incur huge expenditure on recruiting additional air hostesses who conceived. It is submitted that the first two reasons were totally unrelated to the impugned provision the court was not considering a provision imposing age restriction on marriage in a matrimonial law. It has to examine why such age restriction was valid for air hostesses alone. If marriage at 23 was good for women in general, the provision could be made in the Hindu Marriage Act or the Special Marriage Act or in other relevant law. Why should it be only for the air hostesses? The same may be said regarding family planning. The truth is that the learned judge thought that unless such a provision existed, the Air India would be required to incur expenditure on

replacements of air hostesses proceeding on maternity leave. Is this view not similar to the view most of our employers entertain regarding women's employment? If a supreme Court judge, whose exposure as well as commitment to constitutional values are supposed to be much more would such a prejudice exist among employers who tend to look at things in a purely business manner and from a utilitarian point of view?

These two cases show how the principle of equality between the sexes was enforced through judicial process as late as in the seventies and early eighties, and that too with a patronizing tinge.

Muslim family affairs in India are governed by the Muslim Personal Law (Shariat) Application Act, 1937. The shariat is open to interpretation by the ulama (Muslim Legal Scholars). In traditional Islamic jurisprudence, triple talaq is considered to be a particularly disapproved, but legally valid, form of divorce. Changing social conditions around the world have led to increasing dissatisfaction with traditional Islamic Law of divorce since the early 20th Century and various reforms have been undertaken in different countries. The Practice faced opposition from Muslim women some of whom filed a public interest litigation in Supreme Court against the practice, terming it regressive.

In **Shayara Bano V. Union of India & Others**,³⁴ the bench that heard the controversial triple talaq case in 2017 was made up of multifaith members. The five judges from five different communities were Chief Justice JS Khehar, a Sikh, Justices Kurian Joseph a Christian, RF Nariman a Parsi, UU Lalit a Hindu and Abdul Nazeer a Muslim. The Supreme Court on August 22, 2017 declared the practice of triple talaq as unconstitutional and stated that it was violative of Article 14 and 21 of the Indian constitution. The three judges on the 5 judge constitution bench decided against triple talaq while two ruled in favor. Justice Kurian Joseph, RF Nariman and UU Lalit said triple talaq needs to go while CJI JS Khehar and justice Abdul Nazeer backed triple talaq.

The Supreme Court held that despite an earlier opinion of the Privy Council in an appeal from British India in the case of **Rashid Ahmed vs. Anisa Khatun**,³⁵ [that triple talaq amongst Sunni Muslims was valid even if not for any reasonable cause], after the commencement of India's Constitution this form of divorce pronounced by a Sunni Muslim husband on his wife was violative of Article 14, it was manifestly irrational and arbitrary that a marital tie could be permitted to be broken, so capriciously and whimsically; that despite the Shariat Act 1937 – a law in force under Article 13(1) of the Constitution recognizing "Triple Talaq", amongst Sunni Muslims, such a law would have to be struck down as arbitrary, void and violative of Article 14 of the Constitution.

Prime Minister Narendra Modi Government formulated a bill and introduced in the Parliament. The bill makes instant triple talaq in any form – spoken, in writing or by electronic means such as email, SMS and WhatsApp illegal and void, with up to three years in jail for the husband. Many parties are opposed the bill, calling it arbitrary in nature and a faulty proposal, it has generated debate around the rights of Muslim women as the issue of divorce, marriage, and inheritance come under the purview of the Muslim Personal Laws and they are opposing interference in the personal laws of the Muslim communities. When various reforms have been undertaken in different countries contrary to practices adopted in most Muslim-majority countries Muslim couples in India are not required to register their marriage with civil authorities. When countries like Pakistan and Indonesia have outlawed the practice for years then why not India. The countries like Morocco, Algeria, Indonesia, Iran and Tunisia do not recognize a divorce given by a husband unilaterally, and compel the parties to resort to a court of law. I must say you have to create those conditions and have to educate the men by which the attitudinal changes can come.

Again in the year 2018 in the case of **Indian young lawyers association and other's vs. State of Kerala**³⁶. The Supreme Court has struck down a rule that disallowed girls and women in the 10-50 age group from entering the Sabarimala temple in Kerala. The bench headed by Chief Justice Dipak Mishra by a verdict of 4-1 said the temple rule violated their right to equality and right to worship. The court held custom of non entry of girls or women in the temple is a custom which is a form of untouchability which cannot be allowed under the constitution "Article 17 certainly applies to untouchability practices in relation to lower castes, but it will also apply to the systemic humiliation, exclusion and subjugation faced by women. Prejudice against women based on notions of impurity and pollution associated with the menstruation is a symbol of

exclusion. The social exclusion of women based on menstrual status is a form of untouchability which is an anathema to constitution value. The court decline to grant constitutional legitimacy to practices which derogate from the dignity of women and to their entitlement to an equal citizenship. Notions of 'purity and pollution' have no place in constitutional order.

Criminal Cases involving Rape and Violence

Section 375 of the Indian Penal Code, 1860 defines the offence of rape. If a person commits sexual intercourse with a woman without her consent, or against her will, or with her consent when her consent has been obtained by putting her in fear of death or of hurt, or with her consent, when the man knows that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married or with or without her consent, when she is under sixteen years of age. In rape cases, the victim is so much under social stigma that many rapes are not reported and many end in acquittal. The prosecution has to prove that (1) sexual intercourse took place and (2) that it was without her consent. Since mere penetration is enough for constituting the intercourse, the proof of rape is difficult. The only way is to get the medical examination done of the victim. However, in the case of a married women, even medical examination is not always conclusive. In order to prove that she did not consent, the prosecution points out the marks of resistance such as torn clothes, injury on private parts, virginal tears, etc. The law of rape was so loaded in favour of men that to secure conviction against the rapist was well highly impossible. Mathura³⁷ case showed this pathetic situation. However, in recent years, the Supreme Court has shown greater willingness to believe in the testimony of the rape victim.³⁸

Justice Anand A.S. has time and again urged the court to be sensitive with cases concerning women, more particularly in cases of sex crimes he says "remember that while a murderer destroys the physical body of his victim a rapist degrades – the very soul of the helpless women."³⁹

In **Sheikh Zakir v. State of Bihar**⁴⁰, Venkataramiah, J. pointed out that normally it was a rule of practice to look for corroboration of the evidence of an accomplice by independent evidence. Although the victim of rape cannot be called an accomplice, the evidence of the victim in a rape case is treated almost like the evidence of an accomplice requiring corroboration. However, "if a corroboration, it will not be illegal on that sole ground". In the case of a grown-up and married women it was always safe to insist on such corroboration. Where corroboration was necessary it should be from an independent source. It was not necessary the every point of the evidence of the victim should be confirmed in every detail by independent evidence. The Supreme Court upheld a conviction of rape even through the women has taken a bath and washed the clothes and had no medical evidence to support. Since the woman was a married woman who had given birth to four children, there could not have been any injuries on her private parts. The accused was an influential person and the witnesses were not willing to give evidence and the victim and her husband belonged to backward community. They could not have known that they should rush to a doctor for medical examination. The conviction in the case is a good example of sympathetic and understanding judicial attitude. There are doubtless dangers in accepting women's statement without any corroboration and the learned Judge therefore stated that such corroboration ought to be there. But it could be gathered from the circumstances. The law of rape is also now undergoing legislative amendment⁴⁰. Cases of murders of women by husbands or in-laws have also been frequent.

In **Yaswant Narayan Pawar v. State of Maharashtra**⁴¹, the Supreme Court observed that since the instances of wife burning has increased, special police machinery be set up for the prevention and detection of such crime. Further, the court also observed that special provision facilitating easier proof of such special class of murders be made⁴². The Nari Samata Manch of Pune aroused public opinion through picture exhibitions and public demonstrations in two wife murder cases, namely, Shaila Latkar and Manjushri Sarda. In both the cases, the Nari Samata Manch helped the police in their investigation. Both cases have ended in conviction of the accused. Judge in this case held, Let me, however caution that fight for justice by females or cry for gender equality should not be treated as if it is a fight against men. It is a fight against traditions that have chained them – a fight against attitude that are ingrained in the society. It is a fight against

'Laxman Rekha' which is different for men and different for women therefore, men must rise to the occasion. They must recognize and accept the fact that women are equal partners in life they are individuals who have their own identity over the centuries of human civilization, a clear cut gender roles have emerged, based on the stereotype conceptions of feminine and masculine characteristics. Society needs to change its attitude. It is high time that human Rights of women are given proper priority.

State of Karnataka v Krishnappa.⁴³ the Supreme Court has observed, 'awakening of the consciousness is the need of the day change of heart and attitude is what is needed. The dowry prohibition Act 1961 was enacted in 1961 and has been amended from time to time, but this piece of social legislation', keeping in view the growing menace of the social evil, also does not appear to have served much purpose as do dowry seekers are hardly brought to book and conviction recorded are rather few. Laws are not enough to combat the evil. A wider social movement of educating women of their rights, to conquer the menace, is what is needed more particularly in rural areas where women are still largely uneducated and less aware of their rights and fall an easy prey to their exploitation. The role of the court under the circumstances assumes greater importance and is expected that the court would deal with such cases in a more realistic manner. A socially sensitized judge, in my opinion, is a better statutory armour in cases of crimes against women than long clauses of penal provisions, containing complex exceptions and proviso.

In **State of Maharashtra v. Madhukar Narain Mardikar**⁴⁴ (which was not a criminal case but a service case) one police inspector was charged in disciplinary inquiry for attempting to rape and for preparing a false documents and entry in the case diary to show that he carried a prohibition raid at the time of attempted rape near her house. He was removed from service. The high court allowed his writ petition. The supreme allowing the appeal held :

The Supreme Court observes that since Banubai is an unchaste women it would be extremely unsafe to allow the fortune and career of a government official to be put in jeopardy upon the in corroborated version of such a women who makes no secrete of her illicit intimacy with another person. She was honest enough to admit the dark side of her life. Even a women of easy virtue is entitled to privacy and no one can invade her privacy as and when he likes. Therefore, merely because she is a women of easy virtue, her evidence cannot be thrown overboard.

The **State of Punjab v. Gurmeet Singh**⁴⁵ was a criminal case regarding rape. The Trial court acquitted the accused but the High Court had allowed the Appeal and convicted the accused. The Supreme Court while dismissing the appeal held:

'The Court must deal with such rape cases with utmost sensitively. The court should examine the broader probabilities of a case and not get swayed by minor contradictions of insignificance discrepancies in the statement of the prosecutrix ... if the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars.'

The Court must also ensure that cross examination is not made a means of harassment or causing humiliation to the victim of crime. The court, therefore, should not sit a silence spectator while the victim of crime is being cross examined by the defense. It must effectively control the recording of evidence in the court. It may also be worth considering whether it would not be more desirable that the cases of sexual assaults on women are tried by lady judges wherever available, so that the prosecutrix can make the statement with greater ease.

The Court should as far as possible avoid disclosing the name of the prosecutrix in their order to save further embarrassment to the victim of sex crime.

We hope that the trial courts should take recourse to the provisions of sections 327 (2) and (3) Cr.P.C. liberally. Trial of rape cases in camera should be the rule and an open trial in such cases an exception.

It we examine evidence and procedure in Rape Trials we find many people saying that in rape trials past conduct of the victim is neither relevant nor important they also object to the way rape trials are conducted. They say that there are two rapes, first the actual one, the second at the time of the trial when victim is asked all sorts of questions. Section 146 of Evidence Act explains as to what questions may be asked in cross examination Sec 155 of Evidence Act is about impeaching credit of a witness. sub sec (4) of sec 155

which permitted the accused to show the past conduct of the Rape victim under these section has now been omitted in the year 2003.

By virtue of Criminal Law (Amendment) Act, 2013 section 53-A in newly added in the evidence act and now the character of the victim of rape cannot be gone into, whenever the question of her consent arises. During the course of criminal prosecution in relations to the offences listed under sections 354, 354-A, 354-B, 354-C, 354-D, 376, 376-A, 376-B, 376-C, 376-D or 376-E of the Indian Penal code or for an attempt to commit any of the said offences, the defence is now prohibited from leading evidence of the character of the victim or her previous sexual experience with any other person in relation to the consent or the quality of consent alleged to have been given by her. Similarly not even suggestive questions in regard to the past previous sexual experience of the victim with any other person cannot be allowed for the purpose of proving that the victim was a consenting party to the offence with which the accused is tried.

Like wise proviso is substituted by criminal law amendment Act 2013 to section 146 of evidence act runs as "Provided that in a prosecution for an offence under section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is an issue, it shall not be permissible to adduce evidence or to put questions in the cross-examination of the victim as to the general immoral character, or previous sexual experience, of such victim with any person for proving such consent or the quality of consent."

On 5 May 2017, a three judge bench of the Supreme Court upheld the death sentence of the four convicts in the 2012 Delhi gang – rape and murder case, which has shaken the entire nation with its brutality. Justice Deepak Mishra while pronouncing the judgement held "She was an object for their enjoyment For their gross, sadistic pleasures ... for the devilish manner in which they played with her dignity and identity" These were the final words with which Justice Dipak Mishra confirmed death penalty.

Highlighting the extent of mental perversion involved in the crime, the court read out the entire medical history of the victim – the shattered, perforated intestine caused by the respected insertion of an iron rod, the tearing of her clothes, looting of her personal belongings and aggravated sexual assault.

The barbaric crime led to the enactment of the Criminal Law (Amendment) Bill, 2013, or Anti-Rape Bill, which was later called the Nirbhaya Act. The new law mandated the death penalty under Section 376(A) of the Indian Penal Code. Under Section 376(A), whoever commits a rape which leads to the death of the victim or causes her to be in a persistent vegetative state' shall be punished with rigorous imprisonment for a minimum term of twenty years, which may extend to life imprisonment or even death.

On 26 December 2012, a Commission of Inquiry headed by former Delhi High Court judge Usha Mehra was set up to identify lapses, determine responsibility in relation to the incident and suggested measures to make Delhi safer for women.

On 3 February 2013, the Criminal Law (Amendment) Ordinance, 2013, was promulgated by the then president Pranab Mukherjee. It provides for the amendment of the Indian Penal Code, Indian Evidence Act and Code of Criminal Procedure, 1973, on laws related to sexual offences. While the amended rape law redefine rape to cover instances of non-penetrative sexual intercourse and increased the age of consent, it is also susceptible to misuse. It also covers instances of consensual sex where girls are below the age of eighteen years, as well as marital rape. In all, the case led to the enactment of much broader rape laws and harsher punishment for the perpetrators of the crime.

The Nirbhaya Trust was established to assist women who have experienced violence to find shelter and legal assistance. 'So many people supported us, so we want (to) help those girls who have no one,' said Nirbhaya's father. Nirbhaya Fund is administered by the Department of Economic Affairs, Ministry of Finance.

Nirbhaya Bhavan the headquarters of the National Commission for Women, was set up in Jasola, New Delhi. On the foundation-laying ceremony the then president Pranab Mukherjee said: 'Grater sensitization of society is needed to accord due respect to women and we have to work towards ensuring that adequate social awareness is created on women's right and against the evil of barbaric acts of violence and atrocities against women.'

The issues of violence against women and rape have become more salient since the Nirbhaya case. A heightened awareness has led victims to report the crime. The taboo on discussing rape and sexual violence has been broken. All these assertions reflected the changing thinking that violence against women is as much of a men's issue as it is women's. The Media has now started covering sexual violence cases and the police is a little more receptive. Safety and security measures like emergency buttons, GPS technology and CCTV's have been deployed in major cities across the country.

Rape and the issue of violence against women in general have been endemic to Indian society. The actual number of rapes is far from being recorded, since the unreported figure is extremely high.

There is an enemy in the mind, in our personality that impedes social change. Social change requires a collective attitudinal change and the replacement of norms. Shared normative beliefs and collective efforts are required to address the issue. Structural, societal and educational reforms are likely to usher in more positive norms.

The Supreme Court lone woman judge, R. Banumathi, has said the following:

"Stringent legislation and punishment alone may not be sufficient for fighting increasing crime against women. In our tradition-bound society, certain attitudinal change and change in the mindset is needed to respect women and to ensure gender justice. Right from childhood years, children ought to be sensitized to respect women. A child should be taught to respect women in the society in the same way as he is taught to respect men. Gender equality should be made a part of the school curriculum." Offences against women are not women's issue alone but a human rights issue.

On the Practical site Justice Bhanumati added that school teachers and parents should be trained not only to conduct regular personality building and skill-enhancing exercises but also to keep a watch on the actual behavioral pattern of children so as to make them gender sensitized. The effective implementation of various legislations protecting women, creating awareness in public on gender justice would go a long way to combat violence against women.

Matrimonial Cases

Should a woman have freedom to do a job even if it requires to stay away from her husband? Is she bound to stay with her husband and sacrifice the career prospects? The courts have responded differently to such questions. Some High Courts were willing to let her stay away provided she could meet her husband frequently, whereas others held that it would amount to withdrawal from the society of the husband.⁴⁶ Section 9 of the Hindu Marriage Act, 1955 provides for obtaining a decree of restitution of conjugal rights compelling the separated spouse to stay with the other. Unless the spouse shows that the withdrawal is for a reasonable excuse the court grants a decree of restitution of conjugal rights. There are sanctions provided in the Civil Procedure Code for non-obedience of the decree⁴⁷ which are seldom really invoked. But under the Hindu Marriage act, non-compliance with the decree is a ground for divorce⁴⁸. As early as in 1886 Rakhmabai⁴⁹ had valiantly fought against a court order asking her to stay with her husband with whom she was married when she was minor. But refused to live on becoming a major. The Bombay High Court expressed its helplessness in view of the Hindu Law precepts which treated the marriage of daughters as a religious duty imposed on parents and guardians rather than as a contract between two consenting individuals, In *T. Sareetha v. T Venkata Subbaiah*⁵⁰, Justice Choudhary of the A.P. High Court struck down Section 9 of the Hindu Marriage Act as being unconstitutional and void on the ground that it violated personal liberty guaranteed by Article 21 of the Constitution. The learned judge further said that a decree of restitution of conjugal rights constituted "The gravest form of a violation of an individual's right to privacy."⁵¹

This decision was going to have far reaching implications for women's liberty. It recognized that (i) a woman should be free to decide when and whether to have sex; (ii) a woman should decide whether or not to have pregnancy. If she does not want to stay with her husband, the latter can certainly sue her for clause of Section 375 of the Indian Penal Code which says that sexual intercourse without consent by a husband

with his wife is not rape. This provision permits imposition of sexual intercourse on woman and therefore violates Article 21. It may also be vulnerable under Article 14 of the Constitution.

But the Supreme Court of India in **Saroj Rani v Sudarshan Kumar**⁵² has maintained the constitutional validity of sec 9 of Hindu Marriage Act. 1955.

Demands of Women : Nature of the Services and Organizational Infrastructure

We have seen in the above pages that although laws benefiting women have been enacted, most of them have remained merely on paper. Polygamy, child marriage, dowry still continues to plague our social behavior. Dowry in fact has increased and has become a major instrument of oppression. When legislation is enacted for ameliorating the social condition of a depressed class the existing social framework will also have to change because it is designed to suit the old order. There are vested interests developed in the old order which will not allow an easy implementation of such laws. On the other hand the beneficiaries of such laws are often unorganized, poor and ignorant about their rights and therefore they cannot build up pressure for the implementation of such laws. Since professional legal services are available only on payment, they generally serve the interests of the privilege and maintain the status quo. The legal aid movement is a movement for successful use of law as an instrument of social change and also for bringing about equitable distribution of law as a resource. It must therefore take up the cause of the depressed classes and fight on their behalf for making legal method a success. The failure of the legal method will ultimately set in motion the process of violent overthrow of the existing order. The lawyers who have a stake in preserving the democratic process must there for contribute to the effort of organizing such needed legal services. The legal aid movement in India has been unorganized, diffused and sporadic. There is lack of coordination in it the lawyers barring a very few, have not taken much interest in it there are lawyers who merely pay lip service but do nothing. There are others who are cynical and there are some who are hostile. In spite of these drawbacks, the downtrodden have made some progress. The Supreme Court has given liberal and libertarian interpretation to constitutional phrases like procedure established by law⁵³ but much of it became possible because of the favorable responses of some individual judges of the Supreme Court and the High Courts and the efforts of a few lawyers.⁵⁴ These decisions have come out of the commitment of the individual judges and not because of any systematic legal aid efforts. The court has also encouraged public interest litigation and increased access to the courts by entertaining mere letter petitions.⁵⁵

Legal aid movement should not and cannot concentrate only on litigation strategies. All beneficial legislation – particularly affecting the downtrodden – as a potential for social change and we must concede that social change is too complex a process to be attained only by litigation. Social change will require the following efforts : (1) public education including legal literacy through meeting press, literature, seminars, workshops etc; (2) agitation movements with a view of bringing about legal reform through meeting, demonstrations, strikes, bandhas, dharmas etc.; (3) sustained legal aid given to members of such a group against injustice: this will include pre-litigation, paralegal litigation as well as rehabilitation efforts also; (4) public interest litigation, the purpose of which is to obtain a ruling in favors of a class or for a cause. Through such series, the implementation of the social welfare legislation is accelerated. It is the lack of such an organization that has made most of the beneficial legislation dysfunctional.

There are number of women's organizations. Many of them are merely feminine clubs – they have to be feminist. A large number of men as well as women are simply ignorant about laws and unexposed to modern, secular and liberal values. A fresh programmes of public education including legal literacy will have to be adopted to create a climate favorable to the successful execution of the laws.

Organizations providing such services for the protection of women need not and should not consist only of women. They must consist of men and women. Women's liberty is to be desired because it is an indispensable attribute of a just society. The issues of weaker section of society cannot be left to be dealt with only by members of such sections. We need an organized and institutionalized effort. Therefore, an organization for women's rights much have men and women who are committed to women's equality and liberty as an essential pre-requisite of social justice. Further, such an organization must contain a legal cell or

must be closely associated with a lawyer's group ready to help. It would be better if there is an integrated organization for undertaking educational, agitation and legal programmes. These three cannot be treated in an isolated manner but must form part of an integrated social change efforts. The legal component must also not stop after securing a favorable decision from courts. It is not enough that you obtain maintenance for the destitute woman. You must see that she gets it. The follow-up must be done by the legal services organization. The legal cell will help husbands and wives in every manner – from making effort at reconciliation to obtaining a divorce. They must take up cudgels on behalf of discarded wives and by appropriate legal means prevent the polygamous marriages or take up cases of dowry. One advantage of having such an organization is that it will have rapport directly with the suffering individuals. An institutionalized legal service would eliminate the class of touts who otherwise exploit the needy litigants and who unfortunately abound our court premises and lawyer chambers. A legal service organization would also eliminate the exploitations, however, it must also aim at providing rehabilitation facilities for destitute women. Many women are abandoned by their husbands – and husbands do not provide maintenance – they do not have resources or claim not to have the resources. Such women must be given work as well as shelter. Women's organizations cannot effectively assert the rights of women unless they have provision of shelter and work for such rebellious or helpless women. Rehabilitation should therefore form an important component of women's liberty programmes.

To Conclude this paper explains the 'status' of women in a patriarchal society where they are fighting for their rights and more. Though there are laws in place and there exists a legal machinery to implement such laws which are made exclusively for the betterment of women, still we see a division and biases associated with this gender. This is a perfect example of how law in books and law in action is different.

This paper also showed some appreciated evidences where the judiciary and legislature have made progressive attempts to uplift the status of women in society and protect their rights. Some of the remarkable achievement being the recent amendments to the maternity Relief Act which provides for maternity leave for 26 weeks earlier it was 12 weeks and providing crèche facilities. This paper concludes with providing a solution which would further result in a progressive approach towards women.

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Dr. Seema Mandloi

B.Sc., M.A.(Eng. Lit.), B.Ed., LL.M. Ph.D.

Associate Professor, Department of Law, LNCT University, Bhopal (M.P.)

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