



Husbands Victimization Under Protective Legislation for Women in India: An Analysis

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ABSTRACT :

Matrimony is basis of institution of marriage which signifies complete physical, mental and spiritual union of man and woman as husband and wife to establish family. But due to emergence of industrialized societies, social awareness especially in women about their right of equality and personal liberty meaning of stability in context of marriage has been changing gradually in different span of times.¹ Specific laws for women are misused by errant women and police officers. Cry of victimized husbands their relatives is not heard either in courts or society. Practice proves that women specified laws are misused results husbands suffer for no fault. Therefore, there is need to change mind set about law relating to women and thereby it is not fair to pre-establish that domestic violence happens to wife only. In India there are no special laws for men. This study would reveal hidden suffering of men suffered more than women as law and society doesn't provide with enough solution to this specific issue resultantly reflects effects and challenges that male victim has to face. In this paper researcher has analyzed existed specific laws and tried to suggest solution social as well as legal to solve this type of problem.

Key Words: Victimized, Matrimonial, Judicial Approach, Constitutional Aspect, Statutory.

Introduction:

In India marriages are considered sacred and supposed to be once in life time. Occasion of marriage is an integral part of social traditions and rituals into which both side family members participated emotionally and community members give blessings for happy married life. Currently, increased number of married couples experiencing incompatibilities and distress. Family and other courts, police administration and various counselling cells are feeling helpless due to sudden bombardment of matrimonial problems related cases.² It becomes rule in India that lot of social and legal concerns expressed in favour of wives during matrimonial issues and ignored husbands and their family members and it turns more fatal during false implication of cruelty to them to get undue benefit from women favored laws in India. Therefore, it proves that marriage in Indian society not only changes lives of husband and wife but parents also and thereby harassment case is actually an exception to this rule.³ Number of favored laws provide for women who claim to be harassed but not for men. Men who seek to fight back against such find that they have also to fight against systematic bias of govt, corrupt system, police, courts alongwith prejudice propagated by famine organisations.⁴

Historical Perspective of Women:

From anciently, in India women seen as member of family and group and not as an individual with an identity or right of her own and considered them equal to men. In famous epic "Mahabharata" designation given as Shakti to her means prime energy source along with it is considered that there is no Guru like mother. In earlier vedic period also women held higher and honored situation in gender relationship and having same right and access to reading Veda's getting education and say in choice of her marriage partners. Also in epics glorified as "light of the house, mother of universe and supporter of earth and all its forests".⁵

During Muslims also women like Razia Begum rare to become ruler, Chand Bibi, Tara Bai and Ahaliya Bai holker left their great inspirations for ruling their capabilities. During 'Bhakti Movements' women like Mira Bai, Mukta Bai, Jana Bai and others contributed spiritual life of country. According to Manu "Where women are honored, there all sacred rites prove useless".⁶ Guru Nanak Dev Ji says, " within women is a man conceived from a woman, he is born, he is married to woman and with her goes through life---why call her bad, she gives birth to kings, none may exist without woman, only one true God is exterior to women".⁷ During birth period it is evident from fact that Maharani Laxmi Bai participated in 'First War of Independence' in 1857.⁸

Constitutional Provisions

Indian Constitution not only granted rights to women but also it empowers state to adopt measure of positive discrimination in favour of women for neutralizing cumulative socio-economic, education and political disadvantages faced by them through Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 are specific importance in this regard.⁹

Statutory Provision under IPC:

Dowry Death

Under Sec. 304-B IPC punishment is awarded to husband or his relative for death caused to woman within seven years of marriage by burns or bodily injury occurs otherwise than under normal circumstances and if it is shown that before her death she was subjected to cruelty by husband or relatives of him in connection with demand of such dowry than it shall be of deemed to have caused her death.¹⁰

Assault or Criminal Force to Woman with Intent to Outrage Her Modesty

Under Sec.354 IPC any person can punished for assault or criminal force to any woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty. Outrage to female modesty is nowhere defined but it was defined by SC¹¹ as 'essence of a woman's modesty is her sex and thus giving skeleton to flesh'.

Sexual Harassment

Punishment awarded under Sec. 354-A IPC to man for physical contact and advances involving unwelcome and explicit sexual overtures or demand or request for sexual favours or making sexually colored remarks or forcibly showing pornography or any other unwelcome physical, verbal or non-verbal conduct of sexual nature to women.¹²

Disrobing to Women

Under this man can be punished for assault or uses criminal force to woman or abets such acts with intention of disrobing or compelling her to be naked in any public place.¹³

Voyeurism

Under this man can be punished for watching or captures image of woman in private act in circumstances where she could usually have expectation of not being observed either by perpetrator or by any other person at behest of perpetrator.¹⁴

Stalking

Under this man can punished for follows woman and contacts or attempts to contact such woman to foster personal interaction repeatedly despite clear indication of disinterest by such woman or monitors the use by woman of internet e-mail or any other form of electronic communication.¹⁵

Sexual Intercourse with his own wife

Under this husband can punished for sexual intercourse with his own wife without her consent who is either living separately under decree of judicial separation or otherwise.¹⁶

Cohabitation Caused by Man Deceitfully Inducing Belief of Lawful Marriage

Under this man can punished for deceitful causes to any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that behalf. Only man is liable under this and therefore it is not gender neutral legislation.¹⁷

Cruelty

Under chapter XXA of IPC cruelty causing to women by husband or relatives of him is punishable and make offence nonbailable, non-compoundable and cognizable by legislature to protect interest of woman for facing behind four walls of their matrimonial home.¹⁸

Words Gestures or Act Intended to Insult Modesty of Woman

Punishment awarded under Sec. 509 IPC to any person means male or female for intending to insult modesty of women by utters words or makes only sound or gesture or exhibits any object intending that such word or sound shall be heard or such gestures or object shall be seen by such women or intrudes upon privacy of such woman. The object of this section is to protect modesty and Chasity of woman.¹⁹

Provision under Crpc, 1973

Under Criminal Procedure Code if husband having sufficient means refuses to maintain his wife unable to maintain herself then on application filed by wife magistrate can pass order for maintenance and if further husband does not provide²⁰ for maintenance then magistrate can for enforcement of this pass order for imprisonment of one month for every part of monthly maintenance unpaid.

Provision under Hindu Marriage Act, 1955

A wife alone can file divorce on ground of guilty of her husband rape, sodomy or bestiality under Sec. 13(2) of sub clause (ii) and secondly in same way she can alone file for divorce if husband having more than one wife before 1955, provided that another wife was alive under Sec. 13(2) of sub clause (i) of Hindu Marriage Act, 1955. Thirdly, wife can only file for divorce after an order of maintenance 125 crpc or Sec.18 Hindu Adoption and Maintenance Act, 1956 granted by the court, cohabitation has not been resumed for a period of one year or more. Further if marriage of wife took place before 15 years of age and she rupidates marriage²¹ after completion of 15 years but before eighteen years then she can sue for divorce under Sec. 13(2) of sub clause(vi) of Hindu Marriage Act, 1955.

Provision under Protection of Women from Domestic Violence Act, 2005

Under this Act only application can be filed by aggrieved woman to judicial magistrate for redressal of their grievances against male family members for domestic violence lived with her in domestic relation in shared household and to claim damages or compensation or other relief provided under Act for injury²² caused. Therefore, this legislation is made for protection of constitutional rights of woman. It also concludes that this legislation is not gender neutral.

Judicial Approach

Judiciary has played pivotal role to declare husband as victim under protective legislation for women in India through its various decisions are: -

Compelling husband to shift in laws house

Court allowed husband petition for granting divorce by considering compulsion²³ caused by wife to shift in laws house amounts to cruelty, when husband have only source of income for his old aged parents and younger brother.

Failure to reconcile with child from earlier marriage

Husband having son from earlier marriage and widowed mother. After second wedlock, female child was born resultantly wife refuses to take care of son and blaming husband for discriminate with her daughter and apprehension for her dangerous to life in matrimonial home and further added demanding refrigerator and scooter from her and thereby court held it amounts to cruelty granted divorce to husband.²⁴

Psychological and hysterical repulsion to sexual intercourse

In this court held that wife's attitude in refusing to see specialist and continue her treatment for frigidity would appears to be willful act depriving her husband of harmonious sexual relationship and further find that husband was very anxious to lead harmonious life together²⁵ but wife was not willing to make effort considered as willful refusal to f full-fill her matrimonial obligations amounts to treat the husband with cruelty.

Right of wife to reside in parental home of husband

The court held that if husband is alive and not resided with his parent then wife cannot claim to residence in parental house of husband as matter of right and this claim considered as cruelty on the part of wife.²⁶

Allegations of illicit relations

It was upheld by court that making false allegation orally or in written form before court for having illicit relationship of husband with his sister and defame sister practiced in medical profession as representative amounts to cruelty against husband. Resultantly, decree of divorce u/s 13(1) (ia) deserves to granted.²⁷

Conclusion and Suggestions

Finally, it concludes that in spite of various legislations have been enacted in our country for protection and prevention of crime against women; crimes against women have not stopped, rather they have taken more aggravated forms due to improper implementation of these laws. On the other hand, position has become all more disturbing because these laws which were meant basically for protection of women have started misusing these laws by errant women and police officers against men to settle their selfish scores by harassing innocent man folk by pulling them downwards through abusing these laws, resultantly is serious concern for whole society.²⁸ To maintain balance between protection of rights of women and to prevent of misuse of law against men certain recommendations are -(a) Women Organisations should not encourage any woman to file criminal complaint against her in-laws for minor matters and in case they assist then they should be made liable for prosecution.(b) Create family counselling centers to help aggrieved families.(c) Speedy trial not only helpful for innocents but also lead to prompt redressal of grievances of real dowry victims.(d) Governments should create awareness among officers about misuse of laws.(e) Mainly, 498-A should be made bailable to prevent harassment to old parents, unmarried sisters, and school going children from languishing in custody without fault. (f) Matrimonial offences should be made compoundable to save institution of marriage. (g) Stringent action should be taken by court against persons making false allegations to husband and his family. (h) On making false allegations of dowry by women court should initiate proceedings under Dowry Prohibition Act. (i) In present social context there should be similar laws to protect harassed husband and his family members from an unscrupulous wife. (j) Endeavors should be made at the earliest help of professional counsellors, mediation, legal aid centers, legal professionals or friends and relatives in whom parties have faith be taken and avoid I.O. from participating in this process.

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