

# **Violence Against Women and Dispensation of Justice**

by

- **Prof.,(Dr.) Preeti Misra**, Head, Dept of Human Rights, School For Legal Studies, Babasaheb Bhimrao Ambedkar University, Lucknow, UP, India

## **Abstract:**

Violence against women is a universal phenomenon, which is reflected in many forms across culture, race and class. Rights of women are violated not only by unjust acts but also by unjust national and international structures. Such violations are generated not only by individual acts of violence but also generated by developmental models whether capitalist or socialist affecting poor, marginalized and the women. Violence against women takes specific forms. Social structures, and practices such as caste, customary laws, family religion etc. continue to discriminate against women. The object of present paper is to highlight various forms and causes of violence against women, to discuss judicial approach to ameliorate the position of women in India, to suggest some mechanisms and systems and to develop new strategies to empower women so that they may become equal partners in the development and future transformation of our societies.

**“When women thrive, all of society benefits, and succeeding generations are given a better start in life.”**

-- Kofi Annan

## **Introduction**

Violence against women is the most pervasive human rights violation in the world. Male violence against women is a worldwide phenomenon. Although not every woman has experienced it, and many expect not to, fear of violence is an important factor in the lives of most women. It determines what they do, when they do it, where they do it, and with whom. Fear of violence is a cause of women's lack of participation in activities beyond the home, as well as inside it. Within the home, women and girls may be subjected to physical and sexual abuse as punishment or as culturally justified assaults. These acts shape their attitude to life, and their expectations of themselves.

Human rights of women are violated not only by unjust acts but also by unjust national and international structures. Violations of human rights are not simple individual acts of violence. Such violations are generated by developmental models whether capitalist or socialist, which are weighted in favour of the state, or those in power and are against poor, the marginalized, minorities, and women.

Against this backdrop, with all areas of human rights, whether civil, political, economic or social, human rights violations against women take specific forms. Entrenched structures and practice such as caste, customary laws, the family, religion, etc., continue to discriminate against women. Economic institutions which are exploitative of women social institutions which oppress them or legal institutions which pride themselves on equal justice are gender biased and clearly distort gender natural notions of law.

We envision human rights for women as the “collective rights of a woman to be seen and accepted as a person with the capacity to decide or act on her own behalf and to have equal access to resources and equitable social, economic and political support to develop her full potential”, exercised her right as a full human being and to support the development of others.

Indian society has been a tradition bound society in which the traditionalists would present an idealized picture of women substantiating their claims on the basis of certain references from the vedic and classical literature.<sup>1</sup> In the vedic period women participated in all the fields like men and took active part in every sphere of human life. During the period, women enjoyed a fair amount of freedom and equality with men. The position of women declined steadily from the later vedic period onwards.

In Mughal period the position of women in general was subordinate to men.<sup>2</sup> The functions and the position of a woman were distinctly subordinate and in the long run came to be understood as the service of the male and dependence upon him in every stage of life.<sup>3</sup> The Muslims also showed great respect to their mothers.<sup>4</sup>

The position of Women was not satisfactory in the early period of British Rule.<sup>5</sup>

The movement of social reform began during the British rule though with a slow pace when a few educated Indians Ishwar Chand Vidya Sagar, Mahatma Gandhi, Raja Ram Mohan Roy, Tilak and other prominent figures laid emphasis on the

---

<sup>1</sup> Sood Sushma, Violence Against Women, (1990) p.xi.

<sup>2</sup> K.M. Ashraf: Life and conditions of the people of Hindustan, p. 192. See also S.C. Raychoudhary: History of Muslim India, Ed. 1986, pp. 252-53.

<sup>3</sup> Abul Fazal: Akbarnama", Vol. III. Trans. By Henry Beveridge, 1904, p.372. See also Neelam Upadhyay & Rekha Pandey: "Women in India: Past and Present, First published, 1990, p.18.

<sup>4</sup> Shakuntala Rao Shastri: Woman in the Sacred Laws (Bombay: Bhartiya Vidya Bhavan, 1959), p. 171.

<sup>5</sup> See B.N. Pandey, the Break up of British India (London : Macmillan, 1969); N.V. Sovani, "British Impact in India", in G.S. Metraux and F. Cruzet (eds.), The New Asia (New York: Meteor Books, 1965); Spear, A History of India (London; Penguin Books, 1965), Vol. II.

education of the Hindu Female, abolition of child marriage, lifting of *Purdah System*, removal of dowry evil and *Sati Pratha*.<sup>6</sup>

Independence led to the enactment of some legislations like Act of Woman's Legal Rights, 1952; the Suppression of Immoral Traffic in Women and Children Act, 1954; the Special Marriage Act, 1954; the Hindu Marriage and Divorce Act, 1956; the Hindu Minority and Guardianship Act, 1956; Intestate Succession Act, 1956; the Orphanages and Widow Home Act {The Orphanages and other Charitable Homes (Supervision and Control) Act, 1960}; and the Dowry Prohibition Act, 1961, to cite a few.<sup>7</sup>

After Independence, the Legislature took a more positive attitude in the matter of law reform and undertook to enact some of the measures which the British administrators were hesitant to undertake. Though 21st Century saw tremendous changes and various laws were passed for the betterment and amelioration of women, the new found opportunities melted away like thin ice before the subtle and camouflaged onslaught of the male chauvinism.<sup>8</sup>

### **Violence against Women in India**

Violence is violent victimization of women includes physical violence, coercion, threats, intimidation, isolation and emotional, sexual or economic abuse<sup>9</sup>. Narrowly, the term 'violence' has been applied to "physically striking an individual<sup>10</sup> and causing injury"<sup>11</sup>, to "the act of striking a person with the intent of causing harm or injury but not actually causing it"<sup>12</sup>, to "acts where there is the high potential of causing injury",<sup>13</sup> and to "acts which may not involve actual hitting, but may involve verbal abuse or psychological stress and suffering". Megargee has defined violence

---

<sup>6</sup> Jawahar Lal Nehru, *The Discovery of India*, (New York, 1946).

<sup>7</sup> Neelam Upadhyaya & Rekha Pandey: "Women in India – Past and Present", p. 41. First published, 1990.

<sup>8</sup> Neelam Upadhyaya and Rekha Pandey: "Women in India: Post & Present," First published, 1990, p.23. <sup>8</sup> See also Ghosh, S.K., *Indian Women Through the Ages*, (1989), p.19.

<sup>9</sup> Sinha, Niroj, *Women and Violence*, 1989, p. 32.

<sup>10</sup> Kempe, et. al., "The Battered Child Syndrome", quoted by Rechar Gelles in Wolfgang and weiner, "Criminal Violence", 1982, p. 201

<sup>11</sup> Gill, D, "Violence Against Children", 1970.

<sup>12</sup> Gelles and Straus, "Determinations of violence in the Family : Towards a Theoretical Integration", in Burr, Hill, Nye and Reiss (Eds), "Contemporary Theories about the Family", 1979.

<sup>13</sup> Straus, et. al., "Behind Closed Doors : Violence in the American Family", 1980.

as the “overtly threatened or overtly accomplished application of force which results in the injury or destruction of persons or their reputation”.<sup>14</sup>

The foeticide, infanticide, incest, wife battering, dowry deaths murder and abuse of elder women are pure forms of violence against women. Dowry has been referred to as a social cancer, a cruel custom and an insult to the dignity of women. It has been crystallized in our society and despite legislation, cases of dowry harassment and dowry deaths are increasing every year.<sup>15</sup> *Shyam Sunder v. Shantamani*<sup>16</sup> *Kundula Bala Subramanyam v. State of Andhra Pradesh*<sup>17</sup>, *Alamuri Lalitha Devi v. State of Andhra Pradesh*<sup>18</sup>, *Arvind Singh v. State of Bihar*<sup>19</sup> *Alamgir v. State of Assam*<sup>20</sup>, *Surender v. State of Hariyana*<sup>21</sup> are some important cases on dowry.

Cruelty is a substantive offence punishable under section 498–A of the Indian Penal Code. It is also an essential ingredient of the offence of dowry death punishable under Section 304–B of the Indian Penal Code and of the presumptive Sections 113–A and 113–B of the Evidence Act.<sup>22</sup>

The starting point of the definition of cruelty is the following passage in *Russel v. Russel*<sup>23</sup> ‘conduct of such a character as to have caused danger to life limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such danger’. In *Shobha Rani v. Madhukar Reddy*<sup>24</sup> the Supreme Court held that the demand of dowry is prohibited under the law and is itself illegal and therefore, amounts to cruelty, though it may not have had an injurious effect on the wife.

Most of these women are harassed for a long time before they are murdered or driven to suicide and for every woman who dies in her home, there must be a million more who are beaten and harassed, economically deprived and mentally humiliated<sup>25</sup>.

The marginalisation of widows in India is consistent with the traditional perception

---

<sup>14</sup> Edwin Magargee in Wolfgang’s & Weiner (Eds), “Criminal Violence”, 1982 P. 85.

<sup>15</sup> The Statesman, December 16, 2001, p. 8.

<sup>16</sup> AIR, 1962 Oudh 50.

<sup>17</sup> 1993 Cr. LJ 1635.

<sup>18</sup> 1995 Cr. LJ 2127.

<sup>19</sup> (2001) 6 SCC 407.

<sup>20</sup> AIR 2003 SCW 111.

<sup>21</sup> (2006) 12 SCC 375

<sup>22</sup> Under the Hindu Marriage Act, 1955; Special Marriage Act, 1954; Indian Divorcer Act 1869; The Parsi Marriage and Divorce (Amendment) Act 1988; The Dissolution of Muslim Marriage Act 1939.

<sup>23</sup> (1897) A.C. 393.

<sup>24</sup> AIR 1988 S.C. 121.

<sup>25</sup> Ghadially, R., Women in Indian Society, 1988, p.151–152.

of Hindu widows as inauspicious and guilty women who, ideally, should lead a life of austerity devoted to the memory of their husband. This ideological influence, however, may be less crucial than the simple fact that widows are often seen as an economic burden. The most effective way of ensuring the social protection of Indian widows is perhaps to help them to be recognized as persons who have something important to contribute to the household economy.<sup>26</sup>

## **Legal Provisions Protecting the Rights of Women**

The Indian Constitution came into force in 1950 guaranteeing Indian citizens and non-citizens certain basic human rights called as fundamental rights. The rights guaranteed to the women are on par with the rights of men and in some cases the women have been allowed to enjoy the benefit of certain special provisions<sup>27</sup>.

In *Yousuf Abdul Aziz v. State of Bombay*<sup>28</sup> *Sowmitri Vishnu v. Union of India*<sup>29</sup> *Revathi v. Union of India*<sup>30</sup> *Air India v. Nargesh Mirza*<sup>31</sup> *Govt. of A.P v. P.B. Vijay Kumar*<sup>32</sup> the court secured the life and dignity of women by providing protection against discrimination and thus ensured the human rights of women. Resorting to judicial activism, the Supreme Court has expanded the scope of ‘right to life’ to new horizons by reading many more rights into it as integral and essential part thereof. Thus, women also have fundamental right to human dignity<sup>33</sup>, to privacy<sup>34</sup>, to healthy environment<sup>35</sup>, to primary education<sup>36</sup>, to free legal aid<sup>37</sup>, to speedy trial<sup>38</sup> as adjuncts to right to life.

The 73rd and 74th Amendments to the Indian Constitution effected in 1992 provide for reservation of seats to the women in Elections to the Panchayat and the Municipalities ensuring political justice to women –a facet of human rights.

---

<sup>26</sup>Chen Marty and Dreze, Jean, *Widows and Health in Rural North India*, EPW, Oct.24–31, 1992, ws–90.

<sup>27</sup>Reddy, G.B., *Women and the Law*, 2001, p. 2.

<sup>28</sup> AIR 1954 SC 321.

<sup>29</sup> AIR 1985 SC 1648.

<sup>30</sup> AIR, 1988 SC 835.

<sup>31</sup> AIR, 1981 SC 1829.

<sup>32</sup> AIR 1995 SC 1648.

<sup>33</sup> *Francis Coralie v. Union Territory of Delhi*, AIR, 1981 SC 746; *Menka Gandhi v. UOI*, 1981 SC 746.

<sup>34</sup> *People’s Union for Civil Liberties v. Union of India*, AIR, 1997 SC 568.

<sup>35</sup> *Indian Council for Enviro–Legal Action v. Union of India* (1996) 3, SCC, 212; *State of Maharashtra v. Madhukar Narain*, AIR 1991 SC 207.

<sup>36</sup> *J.P. Unnikrishnan v. State of Andhra Pradesh*, AIR, 1973, SC 2178.

<sup>37</sup> *Kadra Pahadia v. State of Bihar*, AIR 1981 SC 939.

<sup>38</sup> *Ibid.*

Hindu Marriage Act, 1955 ;Dissolution of Muslim Marriages Act 1939 ; Parsi Marriages and Divorce Act 1939 ; Special Marriage Act 1954 As Amended by Amendment Act 2001 ; Hindu Adoption and Maintenance Act, 1956 ; Muslim Women (Protection on Divorce) Act, 1986 ; Indian Divorce Act, 1869 Protect human rights of women relating to marriage, maintenance, adoption etc.

To meet the challenges of increasing violence Criminal Acts were amended in 1983 and 1986 to create special categories of affairs like realty to women dowry harassment and dowry death. In order to combat the increasing incidents of torture of women by their husbands and his relatives, the legislature enacted S 498A<sup>39</sup> of the IPC and S 113A<sup>40</sup> of the Indian Evidence Act. In order to convict a person for a crime under Section 498A IPC, the prosecution has to prove that the accused committed acts of harassment or cruelty as contemplated by the section and that the harassment or cruelty was the cause of the suicide<sup>41</sup>. As the earlier law was not sufficient to check dowry death, the legislature introduced stringent provisions under the Section 304B, IPC and Section 113B Evidence Act in 1986<sup>42</sup>.

---

<sup>39</sup> Inserted by criminal law (2<sup>nd</sup> Amendment) Act 1983. Act 46 of 1983. The section came into effect on 25<sup>th</sup> December 1983. Section 498–A reads as under :

498A Husband or relative of husband subjecting her to cruelty – Whoever being the husband or the relative of the husband of a woman, subjects such a woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation : For the purpose of this section, ‘cruelty’ means –

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

<sup>40</sup> Section 113A reads as under :

113A Presumption as to abetment of suicide by a married woman – when the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband has subjected her to cruelty the court will presume having regard to all the circumstances of the case, that such a suicide had been abetted by her husband or by such relative or her husband.

Explanation : For the purposes of this section, ‘cruelty’ shall have the same meaning as in S 498A IPC (45 of 1860). The term cruelty in this section has to be construed taking into account the definition of cruelty in S 498A of the IPC – Smt Shanti v. State of Haryana, AIR 1991 SC 1226.

<sup>41</sup> State of Maharashtra v. Ashok Chotelal Shukla (1997) 11 SCC 26.

<sup>42</sup> Section 304B of the IPC reads as under :

(1) 304B Dowry Death – where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of marriage and it is shown that soon before the death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called ‘dowry death’ and such husband or relative shall be deemed to have caused her death.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.

Section 113B of the Evidence Act reads as under :

Some special laws for example Dowry Prohibition Act, 1961, Sati Prevention Act, 1987 and Protection of Women Against Domestic Violence Act, 2005 have been enacted, but laws to prevent violence against women have proved inadequate which point out that totally new approach is needed to deal with the situation.

At least four world conferences have been held with regard to protection of rights of women, but nothing concrete has happened. At the international level, prohibition against sex discrimination was first articulated in the *United Nations Charter of 1945* and later reiterated in the *Universal Declaration of Human Rights of 1948*. The movement from the First *UN World Conference on Women held in Mexico in 1975* to the *Fourth World Conference on Women held at Beijing in 1995*, has been a journey in search of equality, development and grant of rightful place to women throughout the world. The two human rights covenants of 1966 - the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights, reinforce the equality concept and forbid discrimination on account of sex (Art. 3 of the covenants).

The other conventions of special importance to women, are the Convention on the Political Rights Of Women, 1952 and the Convention on the Nationality of Married Women, 1957 adopted by the United Nations General Assembly. In 1960, the General Assembly adopted the Convention against Discrimination in Education which prohibits “any distinction, exclusion, limitation or preference” on account of sex and affecting thereby the equality of treatment in education (Art. 1). In pursuance to Article 16 of the Universal Declaration of Human Rights, the General Assembly, in 1962 adopted the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. The Convention strives to ensure “equal rights” of “women and men as to marriage, during marriage, and at its dissolution” by virtue of the “principle of free consent to marriage” and prohibits child marriages. The Convention is further strengthened and supplemented by a General Assembly

---

113B Presumption as to dowry death – when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty, harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

Explanation : for the purposes of this section, ‘dowry death’ shall have the same meaning as in S 304B of the Indian Penal Code (45 of 1860).

recommendation on the same subject in November 1965, which specifies the minimum age of marriage not to be lower than "15 years of age".<sup>43</sup> India, which is a party to all the above mentioned Conventions, including the two Covenants, is not a signatory to this convention, where a lot is desired to be done at the national level.

However, it is the Convention on the Elimination of All Forms of Discrimination Against Women (Discrimination against Women Convention), adopted by the General Assembly in 1979, which is the most comprehensive instrument on the human rights of the women and contains more concrete provisions aimed at the real implementation of the rights already recognized. India has ratified the Convention on 9th July 1993.<sup>44</sup>

## **Conclusion**

It is concluded that the condition of Indian woman is very much shocking. Woman is still regarded second rate citizen. She is subjected to all kinds of humiliations, discrimination and violence. She is also denied opportunities in life. Even at the threshold of the 21st Century, having so many legal and constitutional rights, a woman has not been given her due place in society.

The life of woman in India is still surrounded by violence, neglect and exploitation. Violence against women is increasing at an alarming rate in day-today life. No doubt, the law has tried to check the violence against women, which is evident from the very Acts passed by the legislature and the amendments made in the provisions of the existing law from time-to-time, but it has failed to evoke the desired initiative from the victim on account of slow, inappropriate ineffective implementation of laws.

Despite so much of legal protection and liabilities on the part of government human rights of women appear to be a myth in India. Women are still the sufferer of gender discrimination both in private as well in as public life. They suffer discrimination, deprivation and exploitation for being women. Because of gender discrimination they are the poorest, illiterate, and most miserable section of all castes as well as communities suffering a number of atrocities like sex selective abortions, female foeticide, child marriage, domestic violence, widow abuse, sati, dowry deaths,

---

<sup>43</sup> See I. Ottonelli, "Human Rights Violations: Sexual Discrimination" in Thessaloniki, The Evolution of International Law since the Foundation of the UN, XVI (1990), p. 793 at797.

<sup>44</sup> See UN Doe. ST1LEGISER.AJ57 (1994), p. 444.

criminalities like rape, sexual harassment physical and mental torture etc. which are on an increase, despite the high place given to 'Gender Justice' in Indian Constitution. There is no dearth of laws in this regard; even then Indian women are discriminated socially, economically politically culturally and religiously.<sup>45</sup>

The security of human rights for women requires some attitudinal changes on the part of both men and women. But this would happen only when the relationship between the sexes is seen as essentially complementary and non competitive. The social, structural and prevalent patriarchal ideology is anti women and it needs to be changed at every level. The status of women in society and equality of sexes in every sphere of life is essential to bring about changes in the status of women. The situation of all women in public at the general societal level needs to be improved so that some women do not become victims of violence at an individual level. Moreover, we need to question anti-women concept of patriarchy like chastity of women, submission, docility and obedience in marriage, etc. In the words of **Charlotte Bunch** it can be concluded that--

**“Sexual, racial, gender violence and other forms of discrimination and violence in a culture cannot be eliminated without changing culture.”**

---

<sup>45</sup> Skinnider, Eileen, Violence Against Children : International Criminal Justice Norms and Strategies in Gaur, K.D. (ed.) Criminal Law and Criminology, 2002, p. 740.