

most parties - each according to its ability to abuse. [*V.R.Krishna Iyer*, Constitutional Miscellany, 2nd Edition, 2003, EBC, Lucknow, p.139].

In this scenario, the only silver lining is the positive role played by the judiciary in awakening the voters from their self-induced slumber.

VIOLENCE AGAINST WOMEN : VIOLATION OF HUMAN RIGHTS

[A response to Protection from Domestic Violence Bill, 2002]¹

By

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In September 2000, the United Nations Population Fund (UNPF) reported that across the world one in three women had been physically assaulted or abused in some ways, typically by someone she knew, such her husband or other male member of the family. In response, Governments publicly condemned violence against women and committed to provide political and financial support for its eradication, but their performance in practice failed miserably to meet women's needs. Whether in Peru or in Jordan, the United States or South Africa, or in other States, men who beat their female family members to restore 'family honour' or sexually assaulted females or raped women in their homes or in state custody, or who murdered students, were all too often able to do so with impunity. In Pakistan, successive civilian and military led Governments alike have treated violence against women as a low priority. [Human Rights Watch World Report, 2001: Women's Human Rights].

At Beijing +5, Pakistan along with several other obstructionist countries, lobbied successfully to delete language that identified customary laws and practices, such as early marriages, polygamy, Female Genital Mutilation (F.G.M.) and honour killings as violations of women's human rights from the final conference document that outlined future initiatives and actions to implement the Beijing Declaration and the Platform for Action.

In 1999, Russian Police reported that, as of 1997 they had registered over four million men potential abusers of members of their families. Yet Russia did not pass legislation specially criminalizing domestic violence, and did not provide federal funding for crisis centres to assist their work.

South African Women's rights activists reported that the country suffered from one of the highest levels of violence against

1. Based on a paper presented at a Symposium on the subject conducted by the IFWL, A.P. Branch, at ICADR, on 26-12-2004. Informal discussions on the subject with Prof. *V. Nageshwar Rao*, Academic Advisor, ICFAI, Prof. *Sudharshan Rao*, Principal, AMS Law College for Women, Sri *G.B.V.S. Nageshwar Rao*, Deputy Secretary, Law Department, Dr. *Rabul A. Shastri*, Joint Director, National Akademi of Development, Smt. *Anita Chandra*, Hyderabad Law Officer, Dr. *G.B. Reddy*, Vice-Principal, OU College of Law, *A. Srihari Reddy*, Secretary, Social Cause, were useful in finalising the view expressed in this paper.

women in the world. Human Rights Watch Research in April 2000, found that male students and teachers sexually assaulted female students on a regular basis, but abusers were seldom apprehended and punished.

The United Nations Declaration on the Elimination of Violence against Women in 1993 defines 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 deprivations of liberty, whether accruing in public or private life.” [See “Within the Four Walls - A profile of Domestic Violence”, ed. Multiple Action Research Groups (1998)].

The definition is amplified in Article 2 of the Declaration, which identifies three areas in which violence commonly takes place:

- Physical, sexual and psychological violence that occurs within the family, including battering; sexual abuse of female children in the household; dowry related violence; marital rape; Female Genital Mutilation and other traditional practices harmful to women; non-spousal violence; and violence related to exploitation;
- Physical, sexual and psychological violence that occurs within the general community, including rape; sexual abuse; sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women; and forced prostitution;
- Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs. [Radhika Coomara Swamy's Report, <http://www.un.org/rights1772e.htm>]

This Article is divided into two parts. The first part deals with “The Protection

from Domestic Violence Bill, 2002”, once introduced in the Parliament and since lapsed, and the suggested changes to new version that is proposed to be re-introduced. The second part deals with some interesting judgments delivered by the Supreme Court of India with respect to matrimonial cruelty, dowry harassment, violation of human rights.

PART I

Domestic violence is not unique to India, nor is it a recent phenomenon. But in India, what is unusual is the resistance to its elimination by society at large and society's lack of recognition of it as a serious issue. What is recent is the courage of moment to face up to domestic violence, not just women in organised groups but also female victims who are well aware of adverse consequences that “going public” will have on their lives, in the backdrop of the patriarchal social structure, the tradition of family piety and the asymmetrical gender expectations in India. This defiant moment to expose domestic violence has created a space for national debate on the issue. [Human Ahmed Ghosh, “Chattels of Society Domestic Violence in India”, *Violence Against Women*, Vol. 10, No.1, January 2004, 94-118].

On the occasion of the International Women's Day the Bill for prevention of Domestic Violence has been tabled in Lok Sabha on March 8th, 2002. The Bill lapsed consequent to the dissolution of the 13th Lok Sabha and change in the Government. It is learnt that the proposal is now pending consideration at the Ministry of H.R.D., G.O.I., for introduction.

As the Bill that lapsed had certain inadequacies, it is suggested that as and when it is re-introduced in the Lok Sabha, it may incorporate the following suggestions :

The definition of ‘Domestic Violence’ can be enlarged to cover children and elderly on the one hand and include psychological, sexual, economic violence on the other.

When we compare the definitions of Domestic Violence of the Bill prepared by Lawyers Collective and the Governments Bill we realize that the draft of lawyers collective stuck to the internationally accepted definitions of domestic violence, the Governments Bill is a vague and loose one. The lapsed Bill speaks only of the 'habitual assault' and concepts such as actions that make the life of the 'aggrieved miserable' so a woman would have to subject herself to repeated assaults to prove that her husband habitually assaults her. [See Brinda Karat, "Women would be better off without it" Deccan Chronicle, April 14th 2002 at 20].

It is suggested that the word 'habitually assaults' should be replaced with a term / phrase that covers the very first act of violence by the perpetrator.

Section 4(2) states " nothing contained in clause (C) of sub-section shall amount to domestic violence if the pursuit of conduct by the respondent was reasonable for his own protection or for the protection of his or another's property. Such clause limit and prohibit women from filing complaint because the testimony of the husband is essential to corroborate the charge of the domestic violence. He can take protection under these clauses and in an environment of patriarchal law enforcing institutions make a case for acquittal for himself.

It is suggested that Section 4(2) should be dropped because acting in self defence is legitimate within the I.P.C Sections 96, 97. By keeping this Section 4(2) the Bill begins defending men's property rather than women's Human Rights.

On another crucial front, the Government Bill also fails to declare that women have a right to reside in the "shared household". This is the most important right for women who are subjected to domestic violence. Law makers need to understand that by granting the right of residence she does not decide on

the ownership of property. A woman who is married should have right to stay in matrimonial home for as long as she desires. Thus the Bill should recognise the right of residence of petitioner.

The Government Bill fails to empower the Judges to grant residence orders, orders restraining dispossession and mandatory repossession of the matrimonial home which perhaps the most important reason for having a new law on domestic violence. A law on domestic violence without emergency monetary relief or custody orders for the abused women's children will serve no purpose. [*Leena Prasad* 'India: Violence in the home : Flawed Bill women's feature service New Delhi].

A newspaper report states that the UPA Government is working on a Bill to replace the lapsed Domestic Violence Prevention Bill, 2002. New clauses to make the legislation more effective include a more specific definition of domestic violence, the Court's right to ask the perpetrator of violence to leave the house or pay the victim rent for an alternative accommodation. The Court can also prohibit the abuser from entering the victim's workplace and also stop him from entering the victim's workplace and also stop him from accessing bank accounts, lockers and other jointly held assets. ["Keep Her Safe", New Bill to Protect Women from Domestic Violence, Times of India, December 17, 2004].

It is suggested that Section 4(b) of Chapter II can be re-framed as follows:

Section 4(b) "forces the aggrieved person to lead an immoral life or enter into incestuous relation".

Section 4(c) can be re-framed as follows "otherwise injures or harms physically or mentally the aggrieved person."

Section 4(d) can be added as follows "causing injury to female foetus in the

womb, misusing prenatal diagnostic techniques and causing abortions or indulging in acts of female infanticide”.

Section 11 of the Bill deals with the procedures for obtaining a protection order. It states that any stage of the proceedings under the Act the Magistrate may direct the respondent or the aggrieved person, either singly or jointly to undergo ‘mandatory counselling’ with any service provider. This aspect of counselling could delay the process of obtaining an order jeopardising the victim’s safety and security. Women’s group feel that prior to any such mandatory counselling, the period of which is not specified a protection order should be passed as it can ensure basic security for the victim. Sometimes it is apprehended that mandatory counselling can only end up convincing the women to accept her situation and to continue that relationship. It is desirable the counselling for the aggrieved should be voluntary.

It is suggested that for Section 12, Section 12(a) can be added as follows

“In any proceedings under the Act, the Magistrate may secure the services of a competent psychiatrist who can clinically help the respondent as well as aggrieved party in the required cases”.

Under Section 14, Section 14(6) can be added as follows

“In appropriate cases while appreciating the evidence the sole testimony of the aggrieved person shall be given credence”.

It is also suggested that the Bill should make a provision for suspended sentence and bond for good behaviour by the perpetrator for certain period.

The Bill also should make provision for periodic training and sensitising of protection officer and law enforcing agencies and spell out mechanism for dissemination of

information on the rights of the victims and duty of the State.

Separate and sufficient allocation should be created and sustained human resource, networking support structures, awareness programs research and training for the victims.

The Bill on Protection from Domestic Violence, should be re-introduced and passed as expeditiously as possible, with the above suggested changes.

PART II

The author proposes to review herein the interesting case law developed under Section 498 A of IPC, 304 IPC and on violation of human rights to appreciate judicial response with such cases.

In *Aruna Vyas and another v. Anita Vyas*, (1999) 4 SCC, p. 690, 691, the question that came up for consideration was whether the Magistrate can take cognisance of an offence which is time barred. The scope of Sections 468 and 473 of Cr.PC to be read with Sections 498-A and 406 of IPC was considered.

The Supreme Court held that the essence of offence in Section 498-A is cruelty. It is a continuing offence and on each occasion on which the respondent was subjected to cruelty she would have a new starting point of limitation. The last act of cruelty committed against the respondent, within the meaning of the explanation, the period of limitation commenced for the offence under sections from 13.10.1988 and ended on 12.10.1991 but the charge-sheet was filed on 22.12.1995. Therefore it was clearly barred by limitation under Section 468(2)(c) Cr.PC.

It is also observed that “Section 473 of Cr.PC enables the Court to take cognisance of the offence after the period of limitation, *inter alia*, if it is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interest of justice.

The expression “in the interest of justice” in Section 473 does not mean in the interest of prosecution. What the Court will have to see is “interest of justice”. The interest of justice demands that the Court should protect the oppressed and punish the oppressor/offender. In compliance under Section 498A the wife will invariably be the oppressed. It is therefore, appropriate for the Courts, in case of delay compliance, to construe liberally Section 473 of Cr.PC in favour of a wife who is subjected to cruelty if on the facts and circumstances of the case it is necessary so to do in the interest of justice, when the conduct of accused is such that applying the rule of limitation will give an unfair advantage to him or results in miscarriage of justice. The Court may take cognisance of an offence after the expiry of the period of limitation in the interest of justice..... This is only illustrative and not exhaustive.

Similarly in *Venka Radha Manohari v. Venka Venkat Reddy and others*, (1993) 3 SCC, p.4, the Supreme Court while interpreting the scope of Sections 468, 473 and 482 of Cr.PC to be read with Sections 498A and 494 of IPC observed :

“The object of introducing Section 468 Cr.PC was to put a bar of limitation on prosecution and to prevent the parties from filing cases after a long time, as it was thought proper that after a long lapse of time launching of prosecution may be vexatious, because by that time even the evidence may disappear. But that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant.

The general rule of limitation is based on the Latin maxim: *Vigilantibus et non dormientibus, jura subvertunt* (The vigilant and not the sleepy are assisted by the laws) That maxim cannot be applied in connection with offences relating to

women. Victim is subjected to such cruelty repeated and it is more or less like a continuous offence. It is only as a last resort that a wife openly comes before a Court to unfold and relate day to day torture and cruelty faced by her inside the house, which many of such victims do not like to be made public.

As such Courts while considering the question of limitation for an offence under Section 498A IPC *i.e.*, subjecting a woman to cruelty by her husband or the relative of the husband, should judge that question in light of the Section 473 Cr.PC.”

The Supreme Court also held that by virtue of the *non-obstante* clause in Section 473, the section has an overriding effect on the Section 468, if the Court is satisfied on the facts and circumstances of the case, that either the delay has been properly explained or that it is necessary to do so in the interest of justice.

In *Budev Chandra Karunakar and another v. State of W.B.*, (2001) 9 SCC 226, the Supreme Court in dealing with a case under Section 498A of IPC took a pragmatic approach with respect to a complaint filed before a Court lacking territorial jurisdiction and held that on facts, to meet ends of justice the complaint under Section 498-A should be treated as if it had been presented before the appropriate Court in Calcutta and had been transferred to Court of CJM, Bankura. In this case the Supreme Court expressed that such a direction is for ends of justice and to avoid dismissal of complaints filed in Bankura for want of jurisdiction.

Thus we can see in the above cases the Supreme Court gave a liberal interpretation on jurisdictional issue as well as provisions of Cr.PC with respect to delay of filing complaint in order to meet the ends of justice.

In *Boddhisatva Gautam v. Subbra Chakrobarty (Ms)'*, (1996) 1 SCC 490 case, a complaint under Sections 312/420/493/496/498-A of

IPC was filed by the respondent victim against appellant for developing sexual relationship with her on false assurance of marriage and later secretly marrying her before God by putting vermilion on her forehead and after having impregnated her twice compelling her to undergo abortion on both the occasions and ultimately deserted her. The Supreme Court while dismissing the SLP preferred by the appellant, held that it has jurisdiction to pass orders compelling the accused to pay maintenance to the victims during the pendency of the criminal case. The Supreme Court relied on the principles laid down in Delhi Domestic Women's Forum case.

The Supreme Court also observed :

“A woman in our country belonging to a class or group of society who are in a disadvantageous position on account of several social barriers and impediments and have therefore, been the victim of tyranny at the hands of men with whom they under the Constitution enjoy equal status. Women also have the right to be respected and treated as equal citizens. Their honour and dignity cannot be touched or violated.”

In dealing with a dowry death case in *Kundala Bala Subramaniam and another v. State of AP*, (1993) 2 SCC 684, the Supreme Court while interpreting Section 32(1) of Evidence Act 1872 held that the dying declaration had evidentiary value if found to be trustworthy, conviction can be founded solely on the basis of it. In case of more than one dying declaration, Court must be satisfied about their trustworthiness and consistency with each other.

In the above case the Apex Court also observed, “of late there has been an alarming increase in the cases relating to harassment, torture abetted suicides and dowry deaths of young brides, though keeps on sending shock waves to the civilised society whenever it happens and continues unabated. There is a constant erosion of the basic human values of tolerance and the spirit of ‘Live and let

live’. Lack of education and economic dependence of women have encouraged the greedy perpetrators of the crime.”

The Court also while relying on *State (Delhi Administration) v. Laxman Kumar* observed, (1985) 4 SCC 476, “awakening of the collective consciousness is the need of the day. Change of heart and attitude is what is needed. If man were to regain his harmony with others and replace hatred, greed, selfishness and anger by mutual love, trust and understanding and if women were to receive education and become economically independent the possibility of this pernicious social evil dying a natural death may not remain a dream only. The Legislature realising the gravity of the situation has amended the laws and provided for stringent punishments in such cases and even permitted the raising of presumptions against an accused in cases of unnatural deaths of the brides within the first seven years of their marriage.”

The Court also observed, “The Dowry Prohibition Act 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 dowry seekers are hardly brought to book and convictions 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 exploitations.”

On the other hand in *S. Gopal Reddy v. State of AP*, (1996) 4 SCC, p. 596, the Supreme Court held “the Courts have to be watchful to see that emotions or sentiments are not allowed to influence their judgment, one way or other and they do not ignore the golden thread passing through criminal jurisprudence that an accused is presumed to be innocent till proved guilty and that the guilt of an accused must be established beyond a reasonable doubt.”

With respect to Human Rights of women the Supreme Court has laid down certain important principles in the following cases:

In *Valsamma Pal v. Cochin University and others*, (1996) 3 SCC, p. 545, the Hon'ble Supreme Court observed, "Human Rights are derived from the dignity and worth inherent in the human person. The human rights for women including the girl child are therefore inalienable, integral and indivisible part of Universal Human Rights. The full development of personality and fundamental freedoms and equal participation by women in political, social, economic and cultural life are constraints for national development, social and family stability and cultural, social and economic growth. All forms of discrimination on grounds of gender is violative of fundamental freedom and human rights".

In *Visaka v. State of Rajasthan*, (1997) 6 SCC, p. 241, the Supreme Court held that gender equality includes protection from sexual harassment and right to work with dignity is universally recognised human right. In the absence of domestic law occupying the field to formulate effective measures to check the evil of sexual harassment of working women at all work places the contents of International Conventions and norms are significant for the purpose of interpretation of guarantee of gender equality, of right to work with human dignity. Any International Convention not inconsistent with fundamental rights and harmony with its spirit must be read into these provisions to enlarge the meaning and context thereof, to promote the objects of the constitutional guarantee. This is implicit from Article 51(c) and the enabling powers of Parliament to enact laws for implementing the International Conventions and norms by virtue of Article 253 read with Entry 14 of the Union List in Seventh Schedule of the Indian Constitution.

In the above case the guidelines issued by the Supreme Court to be treated as law declared by the Supreme Court under Article 141 of the Constitution. The guidelines so

issued had regard to the definition of "human rights" in Section 2(d) of the Protection of Human Rights Act, 1993.

In *Apparel Export Promotion Council v. A.K. Chopra*, AIR (1999) SCC p. 625, the Supreme Court has relied on the principles held in *Vishaka's* case. The Apex Court has reiterated its stand by holding that in cases of violation of human rights, the Courts forever remain alive to the International Instruments and Conventions and apply the same to a given case when there is no inconsistency between the international norms and domestic laws occupying the field.

Lamenting the status of women in Indian society the Supreme Court observed "Women have always been discriminated against and have suffered and are suffering discrimination in silence. Self-sacrifice and self-denial are their ability and yet they have been subjected to all inequalities, indignities, inequality and discrimination", (1996) 5 SCC 125.

In the same case the Court held that women have right to elimination of gender based discrimination particularly in respect of property so as to attain economic empowerment. This forms part of Universal Human Rights. They have a right to equality of status and opportunity which also forms part of the basic structure of the Indian Constitution. The Supreme Court is obliged to effectuate these rights of women and personal laws inconsistent with the Constitutional mandate are void under Article 13, *Ibid*.

In *Chairman Railway Board and others v. Chandrima Das (Mrs) and others*, (2000) 2 SCC 465, Supreme Court while discussing the scope of Articles 21 and 51 of the Indian Constitution observed: "Right to 'life' includes right to live with human dignity. Rape violates this right of women. Right to live is recognised as a basic human right. It has to be read in consonance with Universal Declaration of Human Rights 1946 on the elimination of violence against women, Articles 1, 2, 3, as also Declaration and Covenants of Civil and

Political Rights and Covenants of Economic, Social and Cultural Rights to which India is a party.”

In *State of Karnataka v. Krishnappa*, (2000) 4 SCC, p.75, the Supreme Court held that Courts are expected to deal with cases of sexual crime against women with utmost sensitivity and such cases need to be dealt with strongly and severely. A socially sensitised Judge is a better statutory armour in cases of crime against women than long clauses of penal provisions containing complex exceptions and provisos.

Conclusions:

For many women reporting domestic violence, divorce is not necessarily what they are seeking. Their interest lies in preserving their marriages, and cessation of abuse. Marriage is what grants a woman her status, privileges, and through her children, social security for future. Regrettably, the very institution that ascribes and defines status for women through intimate relationships is structured to use and exploit her. Thus, the crucial objectives that should be targeted *vis-à-vis* the institution of marriage in India and social and economic empowerment of women, to the extent that she perceives marriage as the only career available to her. [See note supra 4].

It is unfortunate that some States argued that they were responsible only for redressing gender-based violence, and not gender based discrimination. Many countries were willing to condemn violence against women but insisted that violence was unconnected to the wide range of violations of civil, cultural, economic and political rights of women.

In particular, the Governments failed to recognise that in many countries, women are denied access to public life, to paid work, to education, to credit, to custody of their children and to inherit land and property. The human rights violations make women particularly vulnerable to domestic violence

by making it almost impossible for them to leave an abusive relationship. [Dr. *Yarlagadda Padmavati*, “Status of Women and Human Rights: A Global Social-Legal Perspective”, 2002 (1) ALD p.21-22].

It is painful to note that the societal attitude towards the victims of either domestic violence or matrimonial cruelty is that of curiosity rather than concern. Many a times, we realise that when the victims are in a very vulnerable mental state, instead of giving moral or any other assistance, they push the victims to a state of self consciousness by showing a sense of superiority and driving the victims to become wrecks. This is the fear exactly which makes many of the victims to put up with either violence against them or violation of their rights to avoid social heckling. The fear of societal violence against a single woman is worse than domestic violence. It is high time that curious and uncharitable attitude of members of society be transformed into that of care and concern.

It is also noticeable that in many dowry related cases and cases of matrimonial cruelty, mothers-in-law and sisters-in-law take an active part. So it is not correct to say that women are abused by men alone. Women are abused by women also, and introspection is required on the part of women too on this particular issue.

Apart from other suggestion made in the Part I of this paper, it is further suggested that the Domestic Violence Bill can be further extended to cover marital rape as offence under the Act.

No doubt in trying to assert the right to live with human dignity and equality, the stability of marriage may be touched sometimes, but women have to face the consequences bravely realising that marriage is not the only career open to them. The society too has to understand that family stability can only be promoted on the basis of mutual trust and respect of members rather than on the basis of violence on women.