

HUMAN RIGHTS OF WOMEN UNDER CRIMINAL LAW

By

—Dr. GALI VINOD KUMAR,
Vice-Principal and Director,
Post-graduate College of Law,
Osmania University, HYDERABAD, A.P.

The concept of human right is as old as the hills. Whenever human rights were trampled there was revolt. The humanity cannot do without these rights. Long history is behind the evolution of human rights.

The human rights are available to both men and women. No doubt there is progressive increase in the realisation by political scientists that recognition of human rights and their enforcement leads to stability in society and also assists for upward mobility of weaker sections in society. There should be awareness and consciousness in the mankind to constitute egalitarian society. The human rights broadly consist of the right to decent livelihood, food and shelter, security of life and property, employment, free health and medical services, education and equal pay for equal work of equal value.

The rights of women have been denied not only in India but also the world over. Women are constantly exploited. The Courts of law down the ages have attempted to ameliorate their status but the awakening has not dawned on the perpetrators. Describing the present status of women in England Lord Denning in his book 'Due Process of Law' (page 2CO) has observed:

"In the last 100 years we have seen more progress towards equality than in the thousand years before. The women of today are the companions of men during the war they shared in its toils. They made munitions, they drove army cars, they decoded cyber messages, they plotted the course of aircraft. They were dropped for secret service behind the enemy lines. In peacetime they work alongside men in all tasks for which they are physically suitable. They work in the factories. They patrol the streets as police. They share in the cares of Government. They serve in

Parliament. A woman is now our Prime Minister. They become Ministers of the Crown and Mayors of Cities, They are educated in the same way as men. The girls go to boy's school; and the boys to girls' schools. Most of the colleges at Oxford and Cambridge have both men and women. They become doctors, lawyers, writers, directors of Companies, and so forth. They become Queen's Counsel and Judges. Plato's ideal is substantially attained".

In another context while delivering judgment in *Suialds v. Coomes*, (1978) 1 WLR Page 1408 'What next in Law' Lord Denning observed that:-

"A company had 90 betting shops. Nine of them were in rough area where there was fear of violence. The man counter hand was paid more than the woman counter hand because he was thought to be better able to deal with trouble makers. She claimed equal pay. She put her claim under the English Statute (The Equal Pay Act 1970) but this was very obscure upon the point so the Court made reference to Article 119 of Treaty and, being influenced by it, decided in favour of the lady".

"There was a significant difference between what they did. The man filled a protective role. He was a watchdog ready to bark and scare off intruders out otherwise they worked alongside one another hour after hour doing the same work. It was rather like the difference between a barman and barmaid. They did the same work as one another in serving drinks. Each had his or her own way of dealing with awkward customers. Each was subject to the same risk of abuse or unpleasantness. But, whichever way each adopted In dealing with awkward customers, the job of each, as a P.Cob, was of equivalent rating".

The importance of women in the society has been described differently by different authors. In *Adelute v. Williams*, the great Judge and Juris P.B. Mukharji, author of the book 'The New Jurisprudence which is known as the 'Grammar of Modern Law has observed:

"It is sometimes said that the devil knoweth not the mind of man equally it should follow that the devil does not know the mind of a woman. Perhaps the cynic of this age will say that even God does not know it either. What is perhaps truer is that no man knows the mind of a woman. I am not thinking of rare exceptions but most of the men who proudly proclaim to know the feminine mind are either romantic or foolish". He also goes to quote a sloka 'Grihini Grihamuchayate' - the wife is the home. Wherever the wife is, home is; (AIR 1968 Calcutta P, 133).

Such compliments having been showered, the woman still finds herself a victim of oppression. Article 14 of Indian Constitution deals with equality before law and equal protection of laws. While Article 15 deals with prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth. Still the society treats the woman not equal to the man. Indian Constitution, true to the preamble, the Fundamental Rights and Directive Principles of State Policy have codified the laws which invest more and more rights on women. The Hindu Succession Act recognizes a daughter, a wife and a mother as Class-I heirs and successors and it will be noticed that every Hindu woman assumes all three capacities. In Andhra Pradesh, Karnataka and Tamilnadu a daughter has been recognized as coparcenar. In Andhra Pradesh the objects and reasons for enacting Section 29-A is basically to eradicate the socially pernicious system of dowry with its attendant social ills, still the woman is harassed for more dowry. No sanctity is attached to Dowry Prohibition Act which has, on the contrary evolved rates of dowry for different sections of bridegrooms.

In this context we can be proud of our Courts and Judges. In a recently reported

judgment of the Supreme Court in *P.A. Narayanan v. Union of India* the Court granted a compensation of rupees two lakhs against the Railways. It involved a case where a lady while returning home from her place of employment by local train was criminally assaulted, raped, robbed of her ornaments and wrist watch, and ultimately she succumbed to her injuries in the compartment she pulled the chain but the train was not stopped.

The Supreme Court observed:

"There is a common law duty of taking reasonable care which must be attached to all carriers including the Railways. The standard of care is high and strict. It is not a case where the commission on the part of the Railway officials can be said to be wholly unforeseen or beyond their control. Had the deceased not pulled the alarm chain with a view to stop the train, the position might have been different. But the evidence shows that despite the pulling of the alarm chain the train was not made to stop. The whole purpose of providing alarm chain in the compartment of a Railway train was, thus, frustrated. The Court can take Judicial Notice of the fact, that if an alarm chain is wrongly pulled, the person responsible for pulling it is liable to be fined. Had the train been stopped and first-aid provided when the alarm chain was pulled, the possibility that the deceased may not have met her death, even after the assault in the course of robbery, is a possibility which cannot be totally ruled out. The manner in which the Guard and the motorman acted exposes a total casual approach on their part. Here there has been a complete dereliction of duty which resulted in a precious life being taken away, rendering the guarantee under Article 21 of the Constitution illusory. Liability in this case is fault-based. Such a liability is not inconsistent with the scheme of the Railway Act 1890 either (refer Section 80 with advantage). The proof of fault in this case is strong (1998 S.C. p.1659).

GENDER BIAS:

Right from the birth of a child the gender bias is manifested. The birth of a son is

celebrated with pomp and glory but the birth of a daughter is not. In some families even gloom pervades. A daughter in the family is considered as a burden. The father immediately starts thinking about how to get her married, wherefrom to provide the dowry. This kind of bias continues unabated. In towns and villages the girls are not sent to schools. Even when they are sent their education will stop after a few years. She is treated as a machine to bear and rear children. What a mother can do father cannot. Motherhood is universally recognised; still the gender bias exists. Even working women do not have any freedom. They are always under the searching gazes of the co-employees. There should be awareness of the importance of a woman. An attitude of respect and should be developed. In a legal aid camp I spoke about the Dowry Prohibition Act. I urged on the girls not to marry if dowry is insisted on was almost ghercioed and a barrage of questions were shot at me by the anxious parents. Well- It is a system which has deep roots in the society and it is ever so difficult to obliterate it.

There are several other ways in which a woman becomes a victim. I would categorise them as voluntary victims and involuntary victims. For voluntary victims the law cannot help them at all. They do some acts which are *per se* illegal. They do not stand the test of law.

A woman with miserable financial capacity is falling a prey to the attractions and luxuries of life and agree to marry a person who is already married. It is outright a crime in law. Hindu Marriage Act prohibits such kind of marriage. She finds herself in a situation wherefrom she has no escape. She cannot call him a husband because he is already the husband of someone else. Her children are illegitimate. She has no status of her own. Beginning from the

Judgment of the Supreme Court in *Smt. Yamuna Bai v. Anantha Rao to M. Subba Reddy v. Radhamma*¹ it is consistently held that the woman whose marriage is valid under the provisions of Hindu Marriage Act alone

is entitled to maintenance. Even though out of human consideration and benevolent attitude a Judge with a lot of foresight tried to interpret the law giving relief to a second wife, in *Obula Konda Reddy v. Pedda Venkata Lakshamma*². That decision is overruled by the Division Bench of the High Court in *Subba Reddy's case*³.

Again the question of voluntary victims comes into focus when a woman adopts the profession of a prostitute or a casual concubine. She will lose her legal rights and becomes reduced to a mere commodity. She may be the victim of circumstances, nevertheless law is against her.

There are instances where a woman becomes the victim unexpectedly and due to the negligence of some others.

One Mrs. *Shantha* hailing from Karnataka was working as an assistant to a cook. She had three children, first two were born out of caesarian operation, the third one was a girl. The operation was done in Osmania General Hospital, the Gynaecologist opened the abdomen and left a foreign body inside. She suffered from excruciating pain. Thereafter the medical staff neglected the treatment. The scanning report revealed the presence of a foreign body. Unable to bear the pain she went to a private Nursing Home where the doctors took pity on her and conducted another operation. The negligence of the doctors at Osmania Hospital was brought to the notice of The Chief Justice of the Andhra Pradesh High Court through a writ petition. In a scholarly judgment, the Chief Justice awarded rupees three lakhs compensation to the victim. It is thus seen that Courts of law are availing the opportunity to help the innocent victims. In a liquor tragedy case the Orissa High Court was pleased to award damages against Government for the negligence of its officers.

The oppression, suppression and consequent depression that women have come to suffer from men has eaten deep

1. AIR 1988 SC 644.

2. 1998 (2) LS 170.

3. AIR 1976 AP 43.

into their vitals to an extent that makes them accept their present condition as being the destiny of their sex. Women constitutes about one half of the global population but they have been victims of violence and exploitation by the male dominated society all over the world.

Women, who since ancient times were respected and worshipped as incarnations of 'Shakti' are found today victimised by crimes not only from birth but from 'womb to tomb'. It is unfortunate that the woman continues to be the silent sufferer of different kinds of offences like eve teasing, gangrape, custodial rape, child prostitution, dowry harassment, and deaths, wife beating, sathi and the latest to the roster female foeticide.

Large number of crimes of various kinds are committed against women. The statutes show that every seven minutes a woman becomes the victim of a criminal offence.

Crimes against Women - This International-Scenario

'Violence against women is a subject which concerns women the world over. The acts of violence range from battering/assault, incest and rape worldwide to female circumcision in Africa, dowry deaths and female foeticide in India and militarisation in the Philippines. A recent study in Kenya has reported that 42 per cent of women were 'regularly' beaten by their partners. Similar were the findings in the case of Sri Lanka. Women in situations of armed conflict are especially vulnerable to violence. Sexual and other physical violence as a form of torture continues to be used by authoritarian regimes in prisons and in police custody. Violence against women is a manifestation of historically unequal power relations between men and women. Women all over the world face violence in one form or the other with varying degrees.

The declaration adopted by the UN Conference on Human Rights in Vienna in June 1993 recommended the appointment of a Special Reporter on violence against women. This is a significant recommendation

and is a welcome step indicative of the magnitude of the problem and the concern for violence against women.

Women are constantly subjected to harassment. They face many forms of violence, domestic abuse, wife-beating, and sexual harassment in the workplace, rape, trafficking in women, forced prostitution and so forth. It constitutes hostile physical and psychological act? It is also in the form of threats that target women by reason of sex alone, violence against also manifests as an act of aggression against the self such as suicide, self-mutilation and negligence of ailment, etc..

Violence against women has recently been recognised by the United Nations as a fundamental abuse of women's human rights (United Nations, 1993). It lists under the category of gender-based violence. Offence such as battering, sexual abuse of female children, dowry-related violence, marital rape and female genital mutilation.

Violence on women in the family has existed over the centuries and across the world. However, this issue is becoming a focus of attention because states are assuming the role of watching over the observance of citizens' human rights in the family. As the veil of family privacy is being pulled off, large number of incidents of violence against women are being reported. Gender-based violence is rampant even in the United States of America (USA) where equality in marriage is at least ideologically accepted, A United Nations (1995) Report pointed out that one woman in the USA is physically abused every seconds.

The general, though unfortunate, impression has, ever since, been that women are sub-human species, an object of contempt and ridicule, a commodity for barter, an expendable asset and a play thing for mere sexual enjoyment. The ancient Jodo-Christian Society regarded women as 'a scorpion ever ready to sting and pagan Arab saw in her the devil's whip. The Indian regarded woman a social evil to be burnt at the pyre of her husband.

Other forms of violence against women are becoming rampant. Declaration on the elimination of violence against women adopted by the General Assembly of UNO in 1993 identified three forms of violence against women *viz.*, physical, sexual and psychological, and these could place in the family or the society or even be perpetrated or condoned by the State. *Radhika Coomara Swamy* of Sri Lanka appointed as Special Reporter by the U.N. Commission 'on Human Rights' in 1994 has submitted a report in 1998 which chronicles the atrocities on women and makes recommendations to ameliorate their condition. Inhuman practices like female genital mutilation (FGM), female infanticide, sex determination tests for causing female foetal abortion *etc.*, have been identified as offences which require deterrent punishment. Consequently, the Statute of International Criminal Court adopted at an International Conference at Rome in June 1998 included a provision on violence against women. This was a sequel to the recommendation of U.N. Expert Group Meeting on Gender Based Prosecution, Toronto, Canada, in November 1997, which recommended the violence against women be included in the Statute of the International Criminal Court and that sexual violence be considered and included in the U.N. Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment Act of 1984.

Crimes against Women - The National Scenario

Women who since ancient ages were respected and worshipped as incarnation of 'Sakti' are today victimised by crimes not only from brief, but from 'Womb to Tomb'. Women's decade from 1973 to 1985 was globally dedicated to the cause of women and save them from criminal exploitation. Several enactments have been passed in India and abroad to bring about changes in the status of women and to eradicate crimes such as 'dowry', 'Sati', 'rape', 'molestation', 'immoral trafficking in women' *etc.*, but our 'News Media' visualise the impact that we

have not yet achieved the desired result. The offences and atrocities against women, far from being controlled has shown an increasing trend. In fact nature has helped men to dominate over the weaker sex in all vistas of society. Besides biological factor, social, psychological and political factors are also responsible for the denigration of women. She is under the control of her husband when young and during old age, under the control of her son, during the 'Vedic' and 'Upanishadic' age (2500 BC to 500 BC) the position of woman was at the apex, but in the 'sruti' age from 500 BC, there was a deterioration in the status of woman and this age is described as 'Dark Age for Woman for progress :

During 19th century, especially after the emergence of *Mahatma Jyothi Rao Phule*, the Father of Social Revolution *Raja Ram Mohan Roy* on the sociopolitical scenario with *Swamy Dayananda Saraswathi*, Justice *Ranada*, sister *Nibedeta*, *Gopal Krishna Gohale*, *Swamy Vivekananda*, *Annie Beasant*, *Pandita Rama Bai*, Founder of 'Aryamahila Samaj', *Mahatma Gandhi*, *Kasturba*, *Mira Ben* with their long struggles, attention of Government could be drawn to the said sad plight and exploitations of women and new legislations were enacted to save women from the victimization and crimes.

Domestic Sexual Harassment

Sexual harassment and incest are the most reprehensible crimes and are never reported as these domestic gender issues includes offenders like uncles, elder cytosine, stepfathers, stepbrother, blood brothers, father and grandfather. There are gruesome instances where a twelve year old girl became a victim of rape allegedly by her father and three sons of her father's elder brother. There are also instances where husband after deserting his wife lived adulterous life with her sister and by virtue of such torturous state of affairs, the wife ultimately led an illegitimate affair with a friend of her husband. Within the family another instance, a drunken father asking his elder daughter to change her shabby clothes forced his way to rape her seeing her undressed. In a brazen act, a twenty one year

old house wife was severely bashed-up, stripped naked and paraded in the streets by nine of her relatives in the village near West Godavari District of Andhra Pradesh.

Harassment at work which was an invisible problem until quite recently, has now become a major social problem with the widespread entry of women into the labour force. Today, almost all working women are vulnerable to sexual harassment irrespective of their status, personal character and the type of their employment. The recent involvement of a more prominent person in outraging the modesty of a senior I.As., lady officer, has led many of us to rethink about this endemic problem in the context of our current remedial measures. Sexual harassment is a multi dimensional box phenomenon that need to be studied from multi disciplinary perspectives.

Sexual harassment has been encountered in some form or other by every working woman whichever profession she happens to be in. It can prove to be one of the most destructive experiences for woman employee and its incidence has been increasing with the increasing participation of women in the workforce in both the organised and unorganised sectors. A report circulated by the International Labour Organisation Estimated that women in industrialised societies are harassed at work Sexual harassment in the workplace has until recently been ignored as a major issue. Now gradually getting wider publicity, it is obvious that its dimensions are far greater than are recorded. Sexual harassment is actually a form of abuse of power.

Surrogate Mother

One example where a woman is further exploited is to make her a surrogate mother. This consists of an arrangement between a legally wedded couple who are not blessed with off springs because of the infertility of the wife and another woman who is fertile who agrees to conceive a child through artificial insemination with sperm of the husband and carry it to full term and make over the baby to the married couple after delivery. It is actually the hiring of the womb

of the woman for full term of pregnancy. This is a classical example where the financial need of the woman is exploited the surrogate mother suffers psychologically since carrying a child for nine months in the womb would trigger off the motherhood in her and depriving her of that child would cause her inexplicable agony. This is more prevalent in western countries.

There are reported cases of atrocities on women. They will fill several volumes but a few cases I am annexing to my paper for the benefit of the readers.

The attitudes of the men must change. There should be awareness of the rights of women. They are indispensable to the men. They have the status of a mother, wife and daughter. The law will help only when the case goes to the Court. The spirit behind the beneficial social statutes should be publicised with missionary seal. Every lawyer must educate the clients about rights of women.

The brides are not there for burning. How many women can we destroy?

Lord Hemingway wrote in 'Old man & the Sea'; Man is not for death, A man can be destroyed but not defeated. I would like to substitute the world 'Man' with 'woman'

A woman can never be defeated.

On this day we will repledge ourselves to dedicate ourselves to the amelioration of the status of woman, we will try our level best to prevent—

- (i) Treating a baby girl as an unwanted accretion to the family.
- (ii) Female infanticide and fanticide (As I write this chapter the news papers report that four girls were allegedly killed by their father and brothers in Hyderabad)
- (iii) Marriage during minority,
- (iv) Exploitation of poor families to sell the girls for sexual abuse and prostitution.

- (v) Stoppage of educational opportunities,
- (vi) Suffering with health and sex related deceases.

A smile on the face of a little girl lights up the house. The tender services of a young woman in the house brings laurels to the inmates and heightens their cultural values.

Let us value their importance, and respect them.

ANNEXURE

Surinder Kumar v. State (Delhi Administration), 1987 (1) Cr. LJ P. 537 S.C.

C. Kantha was married on 26.11.1978. She was being ill treated by her husband *Surinder Kumar* because she did not bring enough dowry. On the day of occurrence the landlord of the house heard the cries of *Chandra Kantha* and rushed out of his room. He saw *Chandrakantha* lying engulfed in flames. He rushed to the Verandah along with her husband and put out the flames. She was taken to Ram Manohar Lohia Hospital where her dying declaration was recorded by the Sub-Inspector in the presence of two doctors. Husband was sentenced to life imprisonment. It was held that the recovery of stove with its lid removed and burnt matchsticks from the kitchen of the appellant's house clearly goes to show that the kerosene from the stove was poured on her and lighted matchsticks were applied to her.

Veers Brabram v. State of Andhra Pradesh, (1986) A.P.L.J. p.82. It was a case of bride burning charged under Section 302 I.P.C. The facts of the case revealed that the accused husband had illicit relations with an another woman due to which the relations with his wife were strained. At the time of the offence the husband accused was in the exclusive company of his wife. The neighbours were not allowed to save the bride from the burning. He himself did not make any effort to save her from burning. He told the police that it was an accident but changed his version

and stated that it was suicide in Section 313 Cr.P.C. examination. The kerosene bottle and burnt matchstick was found at the scene. The accused husband was sentenced to life imprisonment which was upheld by the High Court.

Vibrhan Singh and another v. State of Uttar Pradesh, (1983 AIR S.C. P. 1002).

In that case the wife was assaulted and hung up by the neck with a rope. The conduct of the husband and mother-in-law of the deceased was consistent with their active involvement in the commission of the crime. The sentence of life imprisonment was upheld by the Supreme Court and in the course of the judgment the learned judges have made the following observations

“The instances of bride killing are alarmingly on the increase of society should be ridden of this growing evil, it is imperative that whenever dastardly crime of this nature are detected and the offences brought home to the accused, the Courts deal with the offender most ruthlessly and is; pose deterrent punishment”.

Hanumanth Das v. Vinaya Kumar,
(AIR 1982 S.C.)

Asba was married to *Vinaya Kumar* in July 1972. It was an arranged marriage. She studied only upto Matriculation and was not cultured enough. Due to estrangement she began living with her parents. Husband filed a petition for divorce.

She suffered burn injuries and shifted to Government Hospital on 5.8.1978. She gave a statement to the doctor stating that her clothes caught fire accidentally.

While the Sessions Judge sentenced the husband and another to life imprisonment but the High Court acquitted them which was upheld by the Supreme Court, it was held that circumstances were not proved to convict the accused under Section 300 I.P.C.